detention device which repudiates our traditional concepts of liberty and pursue instead the goal of speedy trial of criminal suspects. That objective does not depend upon constitutional affront but instead plainly preserves and enhances the rights of us all under the Constitution.

ORDER FOR ADJOURNMENT TO 10 A.M. TOMORROW

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

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nomination on the calendar.

The PRESIDING OFFICER (Mr. GRAVEL in the chair). Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to the consideration of executive business.

SUPREME COURT OF THE UNITED STATES

The bill clerk read the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the nomination.

Mr. EASTLAND. Mr. President, I have received a letter which is self-explanatory. The letter is addressed to JAMES O. EASTLAND, chairman of the Senate Judiciary Committee, Washington, D.C. It reads:

> INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA.
>
> *Detroit, Mich., November 13, 1969.*
>
> Hon. JAMES O. EASTLAND,
> *Chairman, Senate Judiciary Committee, U.S. Senate, Washington, D.C.*
>
> DEAR SENATOR EASTLAND: Due to numerous reports in the news media stating that labor unions and in some instances stating explicitly that the Teamsters Union is opposed to the confirmation of President Nixon's nomination of Judge Haynsworth to the United States Supreme Court and, also, due to many inquiries from members of the United States Senate inquiring of our official position concerning Judge Haynsworth, please be advised that the International Brotherhood of Teamsters does not oppose the confirmation nor do we take a position for the confirmation of Judge Haynsworth.
>
> With kind personal regards, I remain
> Sincerely yours,
> CARLOS MOORE,
> *Political and Legislative Director.*

Mr. President, I rise to address myself to the nomination of Clement F. Haynsworth, Jr., to be Associate Justice of the Supreme Court of the United States.

First, let me say as chairman of the Judiciary Committee, that no nomination in the history of the Senate has ever received such close and careful scrutiny. No nominee in the history of the Senate has been subjected to such extensive interrogation and exhaustive investigation.

And, I might add, no nominee in the history of the Judiciary Committee has been so open and candid in his testimony and so cooperative in his conduct.

Mr. President, this nomination was announced from the Western White House on August 18 and received by the Senate on August 21. After timely notice in the CONGRESSIONAL RECORD and in the press, the committee commenced hearings on this nomination on September 16 and continued with 8 days of testimony, during which time the committee heard 33 witnesses, including Judge Haynsworth.

Every citizen who requested to be heard was given an opportunity to testify before the committee, and those unable to testify were allowed to file statements for the record. Each witness, including private citizens representing no one but themselves, were allowed all the time they asked to testify and were accorded every consideration possible under the circumstances. At the end of the hearings each witness who had failed to appear when called was again summoned and given another opportunity to testify. Those failing to appear were allowed to file and have their statements included in the printed record.

I want to state for the record that in my 13 years as chairman of this committee—and, to the best of my knowledge, in the history of the Senate—no nominee for judicial office has made the sweeping disclosures about his personal financial condition and transactions as has Judge Haynsworth. He was completely forthright and candid with this committee. He responded to all reasonable requests made of him.

Prior to the beginning of these hearings Judge Haynsworth made unprecedented disclosures to the committee, including but not limited to the income tax returns for himself and his wife from 1957 to date, and a complete financial statement.

Judge Haynsworth voluntarily requested that the entire Justice Department file on the Vend-A-Matic charges be made available to the committee and the public.

Judge Haynsworth also supplied to the committee a list of all of Vend-A-Matic's major customers as of December 1963, and all other information in his possession, or knowledge, pertaining to his investment in Carolina Vend-A-Matic Co.

I would like to say that Automatic Retailers of America, Inc., has given this committee unprecedented cooperation in furnishing information concerning this nomination. From the very beginning, ARA has made it clear that they would comply with any reasonable and official request by this committee. For instance, prior to these hearings and immediately upon request by the committee, ARA flew the minute books of Vend-A-Matic to Washington at their own expense. In addition they have flown up to Washington all of the records pertaining to the sales and customers of Vend-A-Matic, as well as copies of all tax returns and audited statements of Vend-A-Matic that they were able to locate.

Upon request Judge Haynsworth compiled a chronological listing of all his stock transactions during his tenure on the Circuit Court of Appeals and, in addition, furnished all of the brokerage slips evidencing each purchase and sale. Judge Haynsworth also furnished a chronological listing of all of his stock transactions and copies of each deed.

On Thursday, October 2, 1969, I released to representatives of Senator BAYH the following documents pertaining to the nomination of Judge Haynsworth:

First. Records pertaining to the sales and customers of Carolina Vend-A-Matic Co. from the date of its incorporation to the date of its merger with ARA, Inc. From these records a list of customers and income from each customer of Carolina Vend-A-Matic during its entire existence can be computed.

Second. Copies of all tax returns of Carolina Vend-A-Matic Co. and its subsidiaries. The 1962 and 1963 tax returns have been obtained from the company's auditor.

Third. Copies of the audited statements for Carolina Vend-A-Matic Co. and its subsidiaries for the years ending December 31, 1961, 1962, and 1963. These were the only annual reports ever prepared for Carolina Vend-A-Matic Co.

Fourth. All of Carolina Vend-A-Matic's auditor's records, including tax returns, pertaining to the Carolina Vend-A-Matic profit-sharing and retirement plan.

Fifth. Copies of all deeds involving all real estate transactions concerning Carolina Vend-A-Matic Co. and the Carolina Vend-A-Matic Co. profit-sharing and retirement plan.

Mr. President, I have stated unequivocally, and I repeat, that no nominee in the long history of the Judiciary Committee has ever voluntarily made such full disclosure. In fact, no other nominee has ever been requested or required to do so. I can imagine the editorial abuse that would have been heaped upon this committee had we even suggested that any previous nominee file for our inspection copies of his joint income tax returns. But Judge Haynsworth has done this and much more. His adversaries have taken full advantage of it. They have pored through this mass of information with a fine-tooth comb and admit they have found nothing that would indicate that Judge Haynsworth has done anything improper, or in expectation or hope of personal gain. They have sent investigators into his State in search of something, anything, to use against him. They have pored over some 300 cases in which he was involved, one by one, in hope of finding something to discredit him. But they admit they have found nothing.

In addition to furnishing this information to the committee, Judge Haynsworth voluntarily appeared before the committee and not only answered all questions put to him but also offered to return for further testimony upon the request of any Senator.

What kind of man is Clement Haynsworth? What does his conduct before the committee and the testimony of impartial witnesses reveal?

In his appearance before the committee, Judge Haynsworth showed himself to be truthful, frank, and candid. He testified with the confidence of a man with nothing to hide and nothing in his public record or private life to be ashamed of. His testimony was well reasoned and plain spoken, as are his opinions on the bench. He did not attempt to be clever or humorous or impassioned, but, consistent with his character, was honest and forthright. He answered each question put to him directly and was neither vague nor evasive. He demonstrated the same judicial temperament before this committee that he has shown throughout his tenure as a member of the court. With dignity, restraint, and courage, he underwent an exhaustive interrogation without complaint. He withstood a trial-by-ordeal within the committee and a trial-by-rumor without the committee with no trace of bitterness, or anger, or outrage which others felt for him.

The testimony of leading Senators, noted lawyers, and recognized legal scholars showed him to be a lawyer's lawyer and a judge's judge, a man of the law from a distinguished family of lawyers. Witness after witness described him as a preeminent jurist, a legal scholar, and at all times, a perfect gentleman.

A study of his case reveals a fair minded, well reasoned, plain spoken approach to the law. Judge Haynsworth's opinions show that he writes as he speaks, with clarity and perception, in a style unpretentious and unambiguous. They reveal those qualities of mind and heart required of a great Justice. His decisions show, as does his testimony, that he is a man devoid of flamboyant style and artificial, meaningless rhetoric, a man neither impatient, impulsive, nor impassioned; a man more concerned with substance than form, more concerned with seeing justice done than coining a clever cliche or turning a phrase.

Judge Haynsworth's record on the bench shows him to be a man who has concern without emotion, compassion without tears, who can render justice without passion, who can write clearly with confidence and authority, without resort to oratory or demagoguery.

While it is true that these are my conclusions, I believe they will be inescapable to anyone who will make the effort to read the record. They are supported by the testimony of impartial unsolicited witnesses, who came to Washington at their own expense, with no score to settle, no votes to win, no cross to bear, no cause to champion, no interest to protect. They are supported by the President of the United States and by a broad cross-section of Senators, lawyers, and legal scholars.

As stated by the distinguished junior Senator from South Carolina (Mr. HOLLINGS), who is himself a noted trial lawyer:

Judge Haynsworth comes with neither a party labor nor a label of philosophy. After outstanding academic accomplishment at Furman University and Harvard Law School, and after 32 years of practice before the bar, for the past 12 years now he has labored in the vineyards of the judicial branch. For this, the New York Times has labeled him "obscure." Appellate judges hardly make headlines. In fact, they are not supposed to. In accordance with the doctrine of stare decisis, the intermediate circuity court must hew the line of Supreme Court decisions. But, as Senator Tydings of your committee will tell you, no one has been more assidious in the advancement of the administration of justice than Chief Judge Haynsworth of the Fourth Circuit Court of Appeals. He is considered by his peers on the bench and scholars of the law as being in the vanguard for the improvement of our judicial machinery. Judge Haynsworth has not won his promotion for outstanding backdoor politics at the White House. Rather, he is promoted for his excellent record as a judge.

As Senator HOLLINGS has so eloquently stated, Judge Haynsworth is a "gentleman and a scholar" who has "labored in the vineyards of the law." He is not a national celebrity, nor one of the "beautiful people," nor a member of the jet set. He is not famous or notorious, and he has not tried to be. It is true that as an attorney he was not a Melvin Belli or a Percy Foreman, and while this type lawyer has a place before the bench, I am not sure they have a place on the bench. He has not sought fame or recognition or notoriety.

As Judge Haynsworth has himself said, the law is not only his profession, it is his life.

The committee was also privileged to hear the testimony of Lawrence E. Walsh, chairman of the American Bar Association's Standing Committee on the Federal Judiciary. Judge Walsh brought with him an illustrious record and a distinguished career. A member of the New York Bar since 1936, Judge Walsh has held numerous positions of great distinction, including district attorney and counsel to the Governor of New York, director of the New York Waterfront Commission, Federal judge, and Deputy Attorney General of the United States. He had recently returned from Paris, where he served as a personal representative of the President in the peace negotiations.

Mr. President, I hope the Senate will give careful and serious consideration to the eloquent testimony of this famous lawyer, statesman and judge. As stated by Judge Walsh:

The committee has for many years at the request of either the Attorney General or the chairman of this Judiciary Committee evaluated the professional qualifications of persons under consideration for Federal judgeships. In this particular case the request came from you, sir, as chairman of tbis committee. After receiving that request, we proceeded in four ways. We had a survey made of Judge Haynsworth's opinions. Through Mr. Ramsey and Mr. Owens, we interviewed every member of his court, the Fourth Circuit of Appeals, except one who is abroad. We also, through Mr. Ramsey and Mr. Owens, interviewed a number of district judges and a number of practicing lawyers. They selected the lawyers to try to get a fair sample of the bar throughout the circuit. They interviewed lawyers from each State in the circuit. They interviewed lawyers who frequently represent defendants, lawyers who frequently represent plaintiffs, lawyers who represent labor unions, and lawyers who are in the Admiralty Bar, lawyers on both sides who sometimes are plaintiffs and defendants in that bar. I also knew of a number of lawyers and judges in this circuit and I personally talked with them.

I think I can summarize the investigation this way. As far as Judge Haynsworth's opinions are concerned, he has written more than 300. Probably 90 percent of them are not controversial in any way. He has participated in many, many more, probably well over 1,000, but looking to the 10 percent of his opinions which were in areas which inevitably would invite controversy, we can see that in those areas where the Supreme Court is perhaps moving the most rapidly in breaking new ground he has tended to favor allowing time to pass in following up or in any way expanding these new precedents.

The areas in which you might notice this would be in the areas of civil rights but also in the areas perhaps of labor law and in the areas of the rights of, for example, seamen and longshoremen. The Supreme Court has greatly expanded the old definitions of seaworthiness and things like that. In all of these areas, whether they are politically sensitive or not, you see the same intellectual approach.

It was our conclusion, after looking through these cases, that this was in no way a reflection of bias. This was a reflection of a man who has a concept of deliberateness in the judicial process and that his opinions were scholarly, well written, and that he was, therefore, professionally qualified for this post for which he is being considered.

Incidentally, in reporting to this committee for the lower courts, we usually express our qualifications without limitation. When we report on a person under consideration for the Supreme Court, we realize that professional qualification is only one of many factors that has to be considered in this case. The Supreme Court has such broad responsibilities that are many things that must go into selection besides professional qualification. It is only for that reason that we limit our endorsement to professional qualification. We feel that it is beyond the scope of our committee to go into these other factors, so we do not express any view as to the points of view expressed by Judge Haynsworth, for example. All we say is that they are within the limits of good professional thinking.

Then the interviews which were conducted support completely the analysis which we had reached ourselves. Each member of his court and each member of the bar who was interviewed supported this general evaluation. I think it was Senator Tydings who posed the three questions which must be considered at this time: first, integrity, second, judicial temperament, and third, professional ability. As far as integrity is concerned, it is the unvarying, unequivocal and emphatic view of each judge and lawyer interviewed that Judge Haynsworth is, beyond any reservation, a man of impeccable integrity. His word is good.

* * * * *

Going to judicial temperament, we found he is extremely popular in the circuit. He is well liked by the lawyers who appear before him. He is patient. He hears them well and gives them a full chance to develop their points of view. When he makes up his mind, he is firm, which again they like.

As far as his professional qualification is concerned, he is spoken of in the highest terms. I do not think we ever quite put it in this way but among the lawyers in his circuit and the district judges, certainly those that we talked to in the circuit, in terms of professional qualification, they will put him right at the top of those who would be eligible for consideration for this post from that circuit.

Now, here are reservations as to his, some of his particular points of view. I mean, there were lawyers who will differ. Some will wish that he would lean more toward plaintiffs in personal injury cases, for example, or that he was perhaps for faster progress in civil rights cases or more oriented toward labor in labor cases. They will say that and they

will say because of this they wish the President had picked someone else. This is a minority of the group that we talked to but even they, and this I thought was the real test as far as our job was concerned, they conceded his professional qualifications and they conceded his intellectual integrity and they conceded his personal integrity and they like him as a man.

Now, I knew a number of district judges and, in fact, I had gone through some civil rights matters with some of them, so I talked to them myself and they spoke in highest terms of Judge Haynsworth. I mean, whether or not they agree with particular points of view, they support him fully, as a man and as an honest man, a man of integrity.

Beyond that he has been an excellent chief judge, he has been a good administrator, a fair administrator, and you sense an enthusiasm from the district judges as you talk to them in his district.

I think that perhaps is a fair summary of what we found, Mr. Chairman.

Mr. President, I would also direct the attention of the Senate to the following colloquy between Senator ERVIN, Senator TYDINGS, and Mr. Norman Ramsey, who accompanied Judge Walsh as a representative of the American Bar Association and who was described by Senator TYDINGS as a "distinguished lawyer from my State":

Senator TYDINGS. Do you know of any lawyer who is from Maryland who has ever argued a case before a fourth circuit panel, a panel on which Judge Haynsworth sat, who felt he was not fair and impartial, and that he was not a good judge, even if the opinion or panel ruled against him?

Mr. RAMSEY. I have never heard that comment made. I have lost a few myself and obviously I did not agree with the court on ones I lost but I never felt it was in any way due to any bias, prejudice or improper conduct on Judge Haynsworth.

Senator ERVIN. Concerning lost cases, I think there is an old couplet: "Now wretch e'er felt the halter draw with good opinion of the law."

Mr. RAMSEY. I have never heard, sir, any adverse comments on Judge Haynsworth during his tenure on the bench.

Senator TYDINGS. Would it be a fair statement to say that not just the great weight but the overwhelming opinion of the lawyers of Maryland who have had any contact, direct or indirect, with Judge Haynsworth would be that he, regardless of his political philosophy or political allegiance or political registration, is competent and qualified to be a Justice of the Supreme Court?

Mr. RAMSEY. I believe that is correct, sir, and I think our State bar association has advised the chairman of the committee that in the opinion of the board of governors of our association, he is eminently well qualified to be a member of the Supreme Court and in addition, I would concur that I think that is unvaryingly the opinion of our board.

Mr. President, the senior and junior Senators from Maryland have announced against confirmation of the nominee, so as a passing note I call special attention to the testimony of Mr. Ramsey, of Maryland, and I would also point out that every single district and circuit judge from Maryland has endorsed this nominee and vouched for his ability, impartiality, and integrity. This is the judgment of those who have served with him and know him best.

Consider the testimony of Judge Harrison L. Winter, Judge of the U.S. Court of Appeals for the Fourth Circuit. Judge Winter told the committee:

To summarize my views, I would say that I know of no fairer judge, no more gracious, considerate or understanding leader, and no judicial officer more possessed of judicial temperament.

* * * * *

Judge Haynsworth and I have differed on the decision of cases. At times I have sought to give decisions of the Supreme Court wider scope and wider application than he has. At times the converse has been true. And at times he and I have found ourselves in disagreement with our brethren on the Court, so that we were in a dissenting position. But I must say, sir, and gentlemen, that when he and I have disagreed between ourselves, I have never felt or thought that his position on a particular matter has exceeded the area of legitimate and informed debate.

From my association with him, I have a profound respect for his capabilities as a legal scholar and as an intelligent, capable and informed judge.

The Senate should also consider the testimony of Louis B. Fine, a noted Virginia lawyer of the Jewish faith. Mr. Fine has served as president of the Virginia Bar Lawyers' Association, has been for 12 years an officer of the American Trial Lawyers' Association, and a member of its board of governors. Mr. Fine asked to appear before the committee and came at his own expense. He described Judge Haynsworth in the following language:

I had the pleasure of meeting Judge Haynsworth when he was first appointed to the United States Court of Appeals for the Fourth Circuit. I have only known him as a judge and only socially as a member of the Judicial Council for the Fourth Circuit.

I have grown to love and respect him.

I represented the Teamsters, the Painters Union, the Carpenters Union, and the Longshoremen's Union of Norfolk. I have appeared for them in legal controversies before the Supreme Court of Appeals of Virginia, and I feel that it is my duty under Canon 8 to appear here, and I appear unsolicited by the Department of Justice or by Judge Haynsworth or anybody else.

I feel that the criticism that has been made by labor is unfounded, and I feel that the representation that has been made here that he is anti-Negro is not true, and I say that on the same basis that I am not anti-Semitic being of the Jewish faith.

* * * * *

Judge Haynsworth is eminently qualified by virtue of education, character, integrity and experience to be an Associate Justice of the United States Supreme Court.

* * * * *

I have appeared before him in his Court in any number of cases. His grasp of the law and his opinions are crystal clear, and are based upon the ever-growing common law, with a total respect for law and order.

He is loved, admired and respected as one of our great judges.

All of his personal and official conduct reflects a disposition which is in conformity with the American ideals of equal justice for all people, regardless of race, color or creed.

I can only speak for myself personally, but as one who has represented both plaintiffs and defendants from personal injury actions to antitrust suits, as well as one who has represented labor unions in my jurisdiction. I am confident that labor has nothing to fear from Judge Haynsworth.

I wish to state without any hesitancy that with Judge Haynsworth on the United States Supreme Court bench he will be one of the greatest in American jurisprudence.

Several witnesses who appeared unsolicited, and at their own expense, felt compelled to do so by canon 8 of the Canons of Ethics, which expressly puts upon the bar the duty of defending judges from unjust criticism.

John P. Frank, of Phoenix, Ariz., was such a witness. I will not detail the illustrious career of Mr. Frank but I would note his unquestioned credentials as a liberal Democrat, a supporter of President Kennedy, President Johnson, and Vice President Humphrey, a leader in civil rights litigation, and an admirer of the Warren Court. Yet, Mr. Frank told the committee:

I suppose I am one of the foremost publicists in the support of Chief Justice Warren and whom I ardently admire and the work of the Court. But I think the liberty, I hope without sanctimony, but there is another canon involved here beyond those which have been mentioned and that is canon 8 of the new Canons of Ethics. Canon 8 expressly puts upon the bar the duty of rising to defend judges from unjust cirticism, and I think for that purpose it is not material under canon 8 whether we agree with a particular judge or whether we don't. Obviously given my point of view and experience I would without doubt have preferred a different administration to be appointing a more liberal Justice. But my side lost an election, and the fact of the matter is that as a member of the bar we are called upon by canon 8 to rise to the defense of judges unjustly criticized, and it is my abiding conviction, sir, that the criticism directed to the disqualification or nondisqualification of Judge Haynsworth is a truly unjust criticism which cannot be fairly made.

Mr. President, Mr. Frank is the leading authority in the United States on disqualification of judges. Much has been made about the Darlington case. Here is what this leading authority in the country said about it:

It follows that under the standard Federal rule, Judge Haynsworth had no alternative whatsoever. He was bound by the principle of the case. It is the judge's duty to refuse to sit when he is disqualified but it is equally his duty to sit when there is no valid reason not to. I do think that it is perfectly clear under the authority that there was virtually no choice whatever for Judge Haynsworth except to participate in that case and do his job as well as he could.

Judge Haynsworth's nomination was also supported by a number of leading law professors, including Charles Allan Wright, of the University of Texas, and G. W. Foster, Jr., of the University of Wisconsin. Charles Allan Wright, for example, is a noted scholar and a responsible, impartial voice from the academic community. Mr. Wright has studied all of Judge Haynsworth's opinions and has watched his development as a jurist since his appointment to the bench. Based upon his studies of Judge Haynsworth's record, Mr. Wright made the following observations in a statement filed with the committee:

With this professional interest, and with these writing commitments, I necessarily study with care all of the decisions of the federal courts, and inevitably form judgments about the personnel of those courts. We are fortunate that federal judges are, on the whole, men of very high caliber and great ability. Among even so able a group, Clement Haynsworth stands out. Long before I ever met him, I had come to admire him from his writings as I had seen them in Federal Reporter.

* * * * *

There are judges who have been great essayists. We remember persons such as Justice Cardozo and Judge Learned Hand as much for their contributions to literature as for their contributions to law. Judge Haynsworth is not of this number. Very rarely does he indulge himself in a well-turned epigram or in quotable rhetoric. Instead his opinions are direct and lucid explanations of the process by which he has reached a conclusion. He faces squarely the difficulties a case presents but he resists the temptation to speculate about related matters not necessary to decision.

* * * * *

It would be very hard to characterize Judge Haynsworth as a 'conservative' or a 'liberal'—whatever these terms may mean—because the most striking impression one gets from his writing is of a highly disciplined attempt to apply the law as he understands it, rather than to yield to his own policy preferences.

* * * * *

I end as I began. I cannot predict the votes of Justice Haynsworth. The cases I have reviewed in this statement demonstrate, I believe, that in the areas of criminal procedure and freedom of expression the record of Judge Haynsworth on the Fourth Circuit has been a constructive and forward-looking one. But I support his nomination, not because his views on these subjects or others are similar to mine, but because his overall record shows him to have the ability, character, temperament, and judiciousness that are needed to be an outstanding Justice of the United States Supreme Court.

I also mentioned that Mr. G. W. Foster, Jr., of the University of Wisconsin Law School, supported the Haynsworth nomination. Mr. Foster, filing a statement with the committee, said that "by faith I am a liberal Democrat" and summed up his opinion of Judge Haynsworth in the following language:

Judge Haynsworth is an intelligent, sensitive, reasoning man. He does not fit among that small handful of front-running federal judges who have consistently made new law in the racial area. He has earned a place, however, among those who serve in the best tradition of the system as pragmatic, open-minded men, neither dogmatic nor doctrinaire. His decisions, including those in the racial area, have been consistent with those of other sensitive and thoughtful judges who faced the same problems at the same time.

Mr. President, I would also like to draw special and final attention to the testimony of John Bolt Culbertson, of Greenville, S.C., a liberal Democrat, a member of Americans For Democratic Action, a lawyer for various labor unions, including textile and teamsters, and a representative, at times, of the NAACP. Mr. Culbertson has an unquestionable reputation as a lawyer for the poor, the weak, and the defenseless. By his own testimony his clients and his politics have not endeared him to the establishment of South Carolina, and, according to Mr. Culbertson's further testimony, have at times endangered his life.

Mr. Culbertson was considered by many members of the committee to be one of the most effective witnesses to appear before us in some time. He was effective because he obviously spoke from the heart and told the truth as he saw it. The junior Senator from Michigan was moved to tell the witness:

You have been a very effective and very impressive witness.

The junior Senator from Indiana felt compelled to note:

From what you told us I have the distinct impression that you told it as you thought it was in your heart.

Nor, might I add, was the standing or testimony of this witness diminished by a shoddy and shameful attempt to discredit him by a witness for the NAACP.

Mr. Culbertson, aside from his many credentials as a favorable witness, spoke as a life-time associate of Judge Haynsworth. Because of the great impression this witness made upon the committee, I would ask my colleagues to give serious consideration to the following testimony from our hearing record:

Mr. CULBERTSON. He is absolutely honest. He has impeccable integrity. He is a man whose word I would believe about anything. I have never put into writing any agreement that I have had with the Haynsworth firm. They are honorable people. They have a different philosophy from me because I am a real genuine double-dipped Democrat, and they are not liberal enough for me. I want them, to see them go further.

The CHAIRMAN. What about Judge Haynsworth's legal ability?

Mr. CULBERTSON. Legal ability?

The CHAIRMAN. Yes.

Mr. CULBERTSON. Judge Haynsworth, in my opinion, has one of the best legal minds, the most incisive mind that I have run into.

* * * * *

Clement Haynsworth's mind, legal mind, is really sharp and he is a competent man. Now, don't misunderstand me, he has decided a lot of cases. I take a lot of cases on social security for disability before that court and I haven't had much success up there, and I have got some of those, one of those cases on the way now, on the pauper's oath, to the U.S. Supreme Court, but what I am saying in response to Senator Eastland's question is that he has as good a legal mind as there is in the United States, in my opinion. Now, I don't know whether that answers that or not.

The CHAIRMAN. And he has made a fair judge?

* * * * *

Mr. CULBERTSON. If I didn't believe he was fair and honest, Senator, a thousand mules couldn't pull me from South Carolina up here.

I must confess that I have, on my own, gone through Judge Haynsworth's background with a 'fine-tooth comb,' and I have not discovered anything which I think could possibly disqualify Judge Haynsworth, either as a Federal Judge or as United States Supreme Court Justice. I may not always agree with his decisions, but he is an honest man, he has perfect judicial temperament, he is both competent, industrious, and able. I am convinced that he decides each case on its merits as he sees the merits, and that he tries to do the just and right thing in all situations. He does not, in my opinion, prejudge any case. By background and education, I would consider him to be conservative in his thinking, and that he is not the kind of judge who would try to legislate law by Court decision, but who follows precedents already established. I would not be afraid to submit any case of mine for Judge Haynsworth's decision. I am a Democrat. I was for years, for a good many years ago when I was younger than that, I was State president of the Young Democrats of South Carolina.

Hubert Humphrey was my candidate for President. I was asked by the way to head up the South Carolina forces for McCarthy but I told them no, I can't do that. I am a Humphrey man. I donated $500 in this last campaign and I will give him more if he is again a candidate. I will tell you where I got that $500. Had this white boy and Negro from New York charged by the FBI for stealing a car and bringing it into Greenville. I represented the Negro, some other lawyer represented the white man. I charged him $500 during that campaign, and I got a directed verdict from the judge of innocent and my colored man went back to New York and the $500 went to Hubert Humphrey and I will get him some more money if he is a candidate.

Had Mr. Humphrey won I would have advocated his appointment of Arthur Goldberg to the Supreme Court. I would not have suggested Judge Haynsworth. I was happy when Arthur Goldberg was appointed to the U.S. Supreme Court by President Kennedy and I was happy when President Johnson appointed Thurgood Marshall to the U.S. Supreme Court. I might say that I spoke with Thurgood Marshall in Jackson, Miss., and Columbia, S.C., and I spoke with James Foreman of the CORE in Columbia, S.C. I am not bashful, and I would be happy to see Arthur Goldberg back on the Supreme Court. But President Nixon won the office, and it is his prerogative to appoint the members of the U.S. Supreme Court. We Democrats lost. It is my feeling that President Nixon has a mandate from the American people, including the people of South Carolina, who gave him her votes.

I feel, therefore, that President Nixon owes an obligation to the people of this Nation to appoint to high office men and women who are qualified to carry out the promises that President Nixon made during his campaign. That applies, of course, to appointments to the highest Court of this land. If President Nixon searched the whole Nation over, looking for a man to appoint to the Supreme Court to fill this requirement, he could not find a more ideally suited man for the job than Judge Haynsworth. I hope that my friends in the civil rights movement and in the labor movement can understand and appreciate my position concerning this appointment because while I agree with them in many, many ways, and I think that some good will come out of the protests by them, nonetheless, I believe that they must agree with me that this is President Nixon's appointment; he has picked a fine man, and I am confident that once he is seated, which he certainly will be, that all their fears will disappear. I predict that Judge Haynsworth with prove to be one of the greatest Justices of the Supreme Court that ever has been on this Court. I believe that my friends of liberal persuasion can understand that if we have the right when our crowd is in power, to appoint our Judges, then our opponents, by the same token, have this right when they win. As a South Carolinian, I shall be proud to have Judge Haynsworth on our highest Court and if I were a Member of the U.S. Senate, I would vote for the confirmation of his appointment, and for this endorsement I do not apologize to anyone.

It has been one of the recurring themes of the Haynsworth hearing that somehow the nominee is out of touch with the real America. It is repeatedly suggested and inferred that he is not, as the senior Senator from Massachusetts says "a contemporary man of our times," that he is not in the social, political, and economic "mainstream" of America. Thus, according to Life magazine, the nominee is "far removed from the whiffs of tear gas at Chicago and Berkeley—a long and solitary distance from the dust and clangor, the desperations and urgencies of the times—invisible, refined out of existence, indifferent—like people who are living 50 years ago."

In other words, it is feared that Judge Haynsworth will not march in step with the mob in the street and is neither responsive to or sympathetic with the aspirations of the masses. In essence,

it is feared that he will not maintain the forward thrust of the Warren Court.

I am especially intrigued with the reservation expressed by the senior Senator from Massachusetts that he might not be able to vote for the nominee if it were shown that "his decisions were perhaps running against the general stream of the law even though a reasonable man would not reach the conclusion that in any way he was biased or prejudiced."

That phrase, "running against the general stream," calls to mind a recent article in the American Bar Association Journal of October 1969, entitled, "Law and Communist Reality in the Soviet Union," by Charles S. Maddock and Kazimierz Grzybowski. In commenting on the state of the law in the Soviet Union the authors observed:

> In its own literature the Soviet Union describes the real Soviet man as a "person who puts the interest of society first and is imbued with a sense of collectivism". This same statement continues:
>
> "It cannot be said, of course, that everybody in the USSR measures up to that ideal. There are some who pull against the stream, against the efforts and ideas of the masses. It is extremely difficult, in a comparatively short period of time even with conditions as they are in the Soviet Union, *to rid people of an individualist outlook* (emphasis supplied). Century-old traditions and the influence of a world in which individualism is assiduously cultivated have their effect. But the experience of the USSR shows that gradually it can be done."

The stated fear that Judge Haynsworth will run "against the general stream" also calls to mind Senator Walsh's eloquent defense of Justice Brandeis wherein he said:

> It is easy for a brilliant lawyer so to conduct himself as to escape calumny and villification. All he needs to do is to drift with the tide.

Quite frankly, Mr. President, I think it is immaterial and irrelevant whether we can be assured that a prospective Justice will not "run against the general stream." History reveals that had that test been adhered to in the past, the Court would have been deprived of many of its most illustrious members. It is doubtful whether a Holmes, a Brandeis, a Cardozo, or a Frankfurter could have passed such a test. This country is big enough for men of all races, men of all faiths, men of all social, political, and economic philosophies. Surely a nine-member Court is also big enough for men of different ideals and men from different regions of this country. I will say at this point, Mr. President, that the area of this country from which he comes, in my opinion, has had much to do with this fight over Judge Haynsworth. However, since the question has been raised as to whether Judge Haynsworth is a "contemporary man of our times," I would like to make some general observations about what kind of American Judge Haynsworth is and what kind of people will identify with him. I might preface these remarks with the suggestion that it is not the Judge Haynsworths who are out of touch with America and with the values and aspirations of the American people. Perhaps it is the so-called liberal establishment that does not understand what is in the minds and hearts of the American people and does not fully comprehend the issues, the ideas, and the forces that are sweeping and changing this land of ours. They have been so busy shouting that they have not taken time to listen. With one broad sweep of the brush they have always painted everyone with a dissenting view as a racist or a bigot or a Fascist. Controlling the great communications media they have found it easier to shout down and drown out opposition rather than to answer it. They have sought to destroy and discredit every man and movement offering resistance to their policies. Ruthlessly using the power of mass communication as an instrument rather than a medium, they have given us a case study of the methods and techniques of propaganda which have been used with chilling effect at other times, in other lands, by other men.

The Haynsworth hearing is a case in point. It has shown us how attention can be focused upon unfavorable testimony and events, how words can be quoted out of context, how the truth can be ignored, and how rumor reported as fact. It has shown us how facts themselves can be shaded, twisted, and perverted with a subtle ruthlessness almost imperceptible to the casual reader or viewer, how the truth and the lie can be so intricately interwoven as to be indistinguishable. As we have seen in the coverage of the Democratic Convention in Chicago, events can even be staged for the proper effect. In a nutshell, the studied purpose of these methods and the desired result of their authors is to discredit ideas and destroy men who cannot be counted on to dance to the tune of the liberal press.

Thus, Mr. President, the liberal establishment of the East has always regarded as dull, insipid, and mediocre any man or idea out of step with their own social, political, and economic philosophy. To prove that they learn nothing from the past, I would like to read from an editorial which appeared in the New York World of April 23, 1930, regarding the nomination of John J. Parker of South Carolina to be an Associate Justice of the Supreme Court:

> It is Judge Parker's total lack of a distinguished record of public service and the total lack of proof that he has any distinction as a jurist which seems to us above all else to justify the Senate in saying that his nomination does not measure up to the standards which the American public rightly expects to see attained in the nomination of a Supreme Court justice.

Of course Judge Parker, along with Judge Learned Hand, has been judged by history to be among the greatest jurists our country has produced. Today there is not to be found one responsible lawyer, scholar, or historian who does not acknowledge his talent and pay tribute to his greatness.

And so today the New York Times refers to Judge Haynsworth as "a gray man with a gray record." The Washington Post says the President "has not distinguished himself in his first two opportunities to name Justices to the Supreme Court" and calls for men who are "truly distinguished." A columnist for the Washington Evening Star says:

> The Court needs a man of impeccable distinction, which Haynsworth plainly is not.

This columnist says that Judge Haynsworth "talks like a smalltown businessman" and his conversation is extremely "small potatoes." "Despite his limitations" he will probably be confirmed, says this writer. "So Richard Nixon will have his way and give the 'forgotten American' a rather forgettable American."

While this columnist's petty sarcasm was obviously intended as a measured insult to the nominee, I do not believe Judge Haynsworth is offended to be identified with the "forgotten American." For he may be called the "forgotten American," he may be called the "silent American" or the "average American," but by whatever name, he works in our factories, he runs our farms, and he fights our country's wars, regardless of his race, creed, religion, or the area of the country he calls home. He works hard for what he has, he loves his family and hopes to pass on to his children a stronger country, a better life, with more bountiful opportunities and a higher standard of living than he himself has known. He also has "rising expectations" and seeks a greater share of the affluent society in which we live, but he does not hope to get it by robbing a store or rioting in the streets. God is not dead to him, nor is his love for and loyalty to the country of his birth and those ideas and ideals that made our Nation great, those institutions of our democracy that have kept our country free. Those who share the viewpoint of the columnist I have mentioned charge that this so-called forgotten American is not concerned about the aspirations of the poor, about the problems of the cities, about the plight of impoverished nations, about the war in Vietnam, and about the frustrations of the young in a society of increasing complexity. This simply is not true, for, in fact, the average American is a decent, compassionate, and generous man. He has willingly given his blood to set captive peoples free and his country's treasure to aid and assist peoples throughout the world. He is a concerned American. He is concerned about the war in Vietnam, for his sons are carrying the greatest burden there and are doing most of the dying there. But if he thinks our Nation's policies are not right, he will try to set them right within the framework of our democratic processes, but right or wrong, he will not betray it. He wants peace more than anything, but he wants peace with honor; he wants the war to stop, but he does not want to see his country defeated and humiliated.

Yes, this "average American" or "forgotten American" is concerned about many things, and this "forgotten American" is also becoming a very angry American. He is angry and concerned about Supreme Court decisions that have unleashed a wave of rioting and crime in our streets. He is angry and concerned about the leniency of the courts and parole boards that unleashes dangerous

criminals upon society even when apprehended and convicted. He is angry and concerned about Supreme Court decisions that mistake license for liberty and tie the hands of local prosecutors in their efforts to stop the flood of obscenity that has innundated our country. He is concerned about the preservation of his neighborhood school, his property rights, and his State and local government, and he is angry about Supreme Court decisions which threaten these time-honored institutions. He is tired of demonstrators waving Vietcong flags, agitators calling for the violent overthrow of the Government, and he is tired of Supreme Court decisions which have rendered our country helpless to deal with the threat of internal subversion. This forgotten American is pictured by the liberal press as a reactionary clinging to values and standards of conduct which are no longer relevant in our society. To the contrary, I maintain as do many others, that to value hard work, to love one's family, to be devoted to one's country, and to value moral standards of public and private conduct are traits of character to be admired in any society and at any time. When these values become irrelevant in a society, then decadence has already set in and decline and fall surely follow. These are the values which make the forgotten American subject to ridicule by such columnists as I have mentioned and it is true, I believe, that Judge Haynsworth shares these values, and therefore it is not surprising that he, too, is subject to their ridicule and vilification.

Mr. President, it would be tragic if those who do not share these values and who seek to undermine those institutions the average American holds dear, are able by a campaign of smear and slander, to prevent the nomination of an outstanding Judge and an honorable man who has displeased them.

Mr. President, this is as far as I shall speak at this time. I shall have more to say on this case later, and on Judge Haynsworth as a man.

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

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

Mr. HRUSKA. Mr. President, on Wednesday I reported the nomination of Clement F. Haynsworth, Jr., to be Associate Justice of the Supreme Court. The Judiciary Committee reached its favorable recommendation by a vote of 10 to 7. The committee report, including individual views, has been filed and is available to all Senators.

Judge Haynsworth, who has served for 12 years as a member of the Fourth Circuit Court of Appeals, is a distinguished jurist. He is highly qualified to serve as an Associate Justice of the Supreme Court. His record has been analyzed by attorneys, judges, Senators, and professors; northerners, southerners, easterners, and westerners. The hearing record contains their considered conclusions that Judge Haynsworth is intelligent, scholarly, practical, precise, and analytical. His opinions are well written and easy to follow. It has been predicted that he will compile a brilliant record on the Supreme Court; he has the potential to be an outstanding Justice; he may be great as Justice Black. And the record goes on and on.

President Nixon has personally reviewed Judge Haynsworth's record and he supports the nominee unreservedly. He has stated twice that Judge Haynsworth is "the man of all the circuit judges in the country by age, experience, background, and philosophy the best qualified to serve on the Supreme Court at this time."

I ask unanimous consent to have printed in the RECORD at this point a news release, as published in the Washington Post on October 21, 1969, containing excerpts from the President's statement on this subject on that occasion.

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

PRESIDENT NIXON SPEAKS ON HAYNSWORTH

When I nominated Judge Haynsworth, I said that he was the man I considered to be by age, experience, background and philosophy the best qualified to serve on the Supreme Court at this time.

Today . . . I reaffirm my support of Judge Haynsworth with even greater conviction.

Judge Haynsworth "has had to go through what I believe to be a vicious character assassination" and still "comes through as a man of integrity, a man of honesty, and a man of qualifications."

"In all twelve cases raised in hearings, Judge Haynsworth was beyond suspicion."

The Bobby Baker matter "is guilt by association and character assassination of the very worst type."

I would agree with those Senators, many of whom are now opposing Judge Haynsworth, who in the Marshall confirmation, categorically said that a judge's philosophy was not a proper basis for rejecting him.

An editorial in the Washington *Post* said that "because a doubt had been raised, the name should be withdrawn." "I say categorically, I shall never accept that philosophy." "That isn't our system. Under our system, a man is innocent until proven guilty."

I have examined the charges. I find that Judge Haynsworth is an honest man. He has been, in my opinion as a lawyer, a lawyer's lawyer and a judge's judge. I think he will be a great credit to the Supreme Court and I am going to stand by him until he is confirmed.

It is not proper to turn a man down because he is a Southerner, because he is a Jew, because he is a Negro or because of his philosophy.

I had to consider . . . whether I would then take upon my hands the destruction of a man's whole life, to destroy his reputation, to drive him from the bench and from public service. I did not do so. There is no dishonor in connection with him.

Mr. HRUSKA. Mr. President, I shall not cite all of the many scholars and experts who are quoted, in their statements, as to their judgment of Judge Haynsworth, but I shall read into the RECORD at this point a statement from Prof. Charles Wright, of the University of Texas, an expert on the Federal courts, who said:

We are fortunate that federal judges are on the whole men of very high caliber and great ability. Among even so able a group, Clement Haynsworth stands out. Long before I ever met him, I had come to admire him from his writings as I had seen them in the Federal Reporter.

I am sure many Americans are wondering if this man is as qualified as all these people say—and the record abundantly establishes he is—why he is subject to such violent attack on his ability and his ethical standards.

Mr. President, the real issue in this confirmation proceeding is not the ethical standards of Judge Haynsworth, although we will meet and refute every attack that purports to impugn his ethics and discuss the matter at length.

The real issue is not his ability. He is qualified as any nominee the Senate has reviewed in this century and far better qualified than most.

The real issue is President Nixon's attempt to restore some balance to the Supreme Court of the United States. He searched for a well-qualified, experienced man, who believed in the well-defined doctrine of judicial restraint and who would endeavor to examine and apply the law while studiously avoiding the imposition on the American people of his personal views. Judge Haynsworth is such a man. His philosophy of jurisprudence, as found in his written opinions, differs considerably from that of some other recent Supreme Court nominees.

It is his philosophy, and President Nixon's choice of philosophy, that is the real source of controversy. As I will develop more fully later in this presentation, it would be a tragic error for the Senate to reject this nominee because of his philosophy and his previous decisions.

I recognize that some of my colleagues are genuinely concerned by attacks that have been made concerning the nominee's ethics or certain of his decisions. That is why we will deal carefully with these issues. I reiterate, however, that the real issue is his philosophy. It is so made by those who are opposing his confirmation. Much of the energy of the anti-Haynsworth campaign has come from labor and civil rights groups that simply disagree with his decisions. This is the genesis of the attack on his ethics. Philosophy, not ethics, is the real controversy here.

It is important to recognize at the outset of this debate the nature and extent of the investigation that has been made of this nominee. Seldom before has a single nominee for public office received a more searching examination; and never before has the nominee cooperated more fully and more willingly. The hearing record is 762 pages long; the nominee testified over 113 pages. The testimony related primarily to his personal financial and business relations. He submitted statements and facts pertaining to Carolina Vend-A-Matic; he submitted his joint income tax returns; he submitted lists of every stock he owned or had owned since 1957; he compiled exhaustive lists of stock dividends and splits and so forth.

When it was all over, did a single person who had zealously investigated the facts challenge Judge Haynsworth's honesty? The fact is that they did not.

Did anyone charge he was corrupt? The answer is, "No." Did anyone intimate that he had been improperly influenced in the decision of a case? The answer again is, "No." To my knowledge, every Senator who has looked into this matter has concluded that Clement F. Haynsworth, Jr., is an honorable, upright, and sincere jurist. If integrity is the test, Judge Haynsworth has met that test.

I do not object to a fair and impartial examination of nominees to the Supreme Court. This concern is proper. I do not deny any Senator the right to speak his mind and reach his own conclusions on the issues before the Senate. But I do solemnly disagree with those who argue that Judge Haynsworth is antilabor or anticivil rights or ethically insensitive. His opinions show a strong divorcement from any personal bias. His conduct has met the highest standards whether prescribed by statute, canon, court rule, or conscience.

ETHICAL STANDARDS OF JUDGE HAYNSWORTH

A. THE EXISTING STANDARDS

Artlcle I, section 9 of the Constitution of the United States states:

No bill of attainder or ex post facto law shall be passed.

The essential unfairness of an ex post facto law was apparent to the Founding Fathers and it should be apparent to us. If the rules are established and scrupulously observed by a man, that man cannot be faulted because someone decides a new rule should be established and applied to past conduct. Yet that is precisely what is being done regarding Judge Haynsworth's conduct in several important instances.

The Congress, the courts, and the bar establish the rules of conduct for the judiciary through statutes, rules and decisions, and canons, respectively. Congress has the legislative authority and determines the policy standards while the courts and bar interpret and guide in the interpretation of the standards. The canons have no meaningful application except insofar as they are consistent with the positive mandate of the statute.

When Congress recodified what is now title 28, Section 455, United States Code, governing disqualification it made two important changes: first, it made the statutory standards applicable to circuit judges as well as district judges; second, it made the standard of disqualification "any case in which he has a substantial interest." Previously the standard had been disqualification in any suit in which he was "concerned in interest." The clear meaning of the words is that a judge shall disqualify himself only if he has a substantial interest. Paltry or inconsequential reasons will not suffice. The cases have so held and it is the recognized rule in Federal courts that a judge has an affirmative duty to sit in a case if he is not disqualified.

The standard is clear. A judge does not become more moral and more upright the more often he disqualifies himself. On the contrary, a judge who disqualifies himself for insubstantial reasons or for reasons rejected by precedent is violating his duty.

The Federal statute does not set a minimum standard and those who abide by it do not exhibit only a minimum sensitivity to the ethical problems of disqualification. On the contrary, the statute provides an exclusive standard which can be applied only by sensitive consideration of the judge's interest in the case and the public's interest in well-run courts.

The Canons of Judicial Ethics are valuable references to judges who must decide questions of their own ethical conduct. But they are guidelines only, not hard and fast rules. These canons are available to both State and Federal judiciary irrespective of the conditions of the court and the governing statutes. It is important to understand that they are not intended to be the exclusive or binding rules of conduct, at least for the Federal judiclary. If they were binding, there would have been no need to recodify section 455, make it applicable to circuit judges and change the standards. Canon 29 has existed unchanged since the 1920's and ABA Formal Opinion 170 was rendered 30 years ago, section 455 was rewritten 20 years ago, in 1949.

Then, in 1963, the Judicial Conference of the United States adopted a resolution governing the conduct of judges. It provides:

Resolved: No justice or judge appointed under the authority of the United States shall serve in the capacity of an officer, director, or employee of a corporation organized for profit.

It may be observed parenthetically, Mr. President, that when Judge Haynsworth assumed the office of circuit judge, he resigned from several—I think as many as a half a dozen—boards of directors of corporations that had public listing and public ownership, feeling that he could not serve well, even though there was no rule or law against it, if he retained his membership on such boards.

Those are the rules as they existed prior to the nomination of Judge Haynsworth and those are the rules this Senate must apply to this man. As the hearings show, and as the debate will develop, he has abided by those rules and merits our confirmation.

B. CAROLINA VEND-A-MATIC

First. Judge Haynsworth was an original stockholder and Director of Carolina Vend-A-Matic, an automatic food vending company. In 1963, Vend-A-Matic was receiving 3 percent of its gross sales from machines located in Deering-Milliken plants. Deering-Milliken in turn controlled Darlington Manufacturing Co. which was a litigant before the Fourth Circuit. Judge Haynsworth participated in three decisions involving Darlington and the Textile Worker's Union. Two decisions, in 1961 and 1968, were favorable to the union and are not complained about. The 1963 decision was favorable to Darlington.

The heretofore unquestioned rule in the Federal courts is that a business relationship between a litigant and a judge who is a stockholder and director of a third party which did business with a litigant does not require the judge to disqualify himself. In fact, it does not allow him to disqualify himself.

The American Bar Association reviewed the law and the facts involving Vend-A-Matic and so concluded.

John P. Frank, perhaps one of the leading, if not the leading, authority on judicial disqualification, so concluded.

The Fourth Circuit, which had reviewed the relationship, so concluded. The Department of Justice in 1963 and 1969 so concluded.

The present rule is clear. Judge Haynsworth abided by it and cannot now be faulted for following the precedents.

Second. Judge Haynsworth has been attacked also for having a business connection with Vend-A-Matic at all. The argument is that he should have known that third party companies with business relations would be in his court and there would be an appearance of impropriety.

There is no rule that says a judge may not invest his money in a company that buys goods and services from some and sells them to others, but that is what this argument implies. Almost any business investment could fall under this prohibition.

There was no appearance of impropriety when the third party business relationship was not involved in the issues of the case.

The Vend-A-Matic Co. paid money to Deering-Milliken for the right to install vending machines. The right was awarded by legitimate, competitive bidding. Vend-A-Matic earned money by selling vending foods to employees. Where is the appearance of impropriety in a ruling that did not affect the number of cups of coffee sold?

Judge Haynsworth had several cases before him that involved Vend-A-Matic customers. He ruled against Darlington two out of the three times the company was before him. In the case of the Cone Mills Corporation, Judge Haynsworth ruled against this customer of Vend-A-Matic both times it was before the court. He did rule in favor of Homelite, another customer, allowing it to rescind a lease made with Trywilk Realty Company. Twice when the Deering-Milliken Research Corporation was before the court, he affirmed procedural rulings in favor of the company. Where in this record is there any impropriety?

There is no appearance of impropriety in holding a one-seventh stock interest in the company that submits competitive bids to sell coffee and food to the employees of these companies.

Third. It has been charged, as well, that Judge Haynsworth lied about the extent of his participation in Carolina Vend-A-Matic.

Look at the record. Ten days before the hearings began, he sent a letter to the committee outlining the following facts: He served as a director until 1963; he attended weekly luncheon meetings of the board; he discussed financial matters; he handled some of the credit matters; his wife served as secretary and they both received compensation in their respective capacities.

He testified that he orally resigned as an officer in 1957 but was carried on the corporate books as vice president until 1963.

He testified that he did not solicit business. None of this testimony has been

discredited, and there is no evidence to the contrary. There is strong evidence corroborating his narration.

In his candid and cooperative manner, the nominee replied to every question and spelled out his participation in the business. To question his honesty and candor in the face of this record is ludicrous.

How can an honest man lack candor? That is the paradox posed by the arguments of some of my colleagues who oppose this nomination. They agree that Judge Haynsworth is an honest man, but they argue he lacks candor.

The testimony before the Subcommittee on Improvements in Judicial Machinery in June of this year provides a good example of the lengths to which otherwise reasonable men will go to find some "evidence" to support their position.

Judge Haynsworth was a friend, or at least an acquaintance of the subcommittee chairman who had invited him to testify on the need for legislation requiring judicial disclosure of business interests. I am sure the atmosphere of the hearing was relaxed and friendly.

The judge was asked if he favored disclosure of every firm in which a judge was an officer, director, proprietor, or partner. He repiled:

I certainly would have no objection to such a thing as that. I don't believe most judges would.

Then he added a personal reminiscence:

Of course, when I went on the bench I resigned from all such business associations I had.

That statement is now represented to us as an intentional lie because Judge Haynsworth had not resigned all directorships until 6 years earlier, rather than 12 years earlier when appointed to the bench. What directorships did he not mention? Carolina Vend-A-Matic and Main Oak. The first was well known to all judges of the Fourth Circuit and to the Justice Department. The second was a dormant family corporation, also disclosed by him and known to the Fourth Circuit and the Department of Justice. There was nothing wrong with these relationships from 1957 until 1963, and in 1963, in compliance with a resolution of the Judicial Conference, he resigned.

A misstatement, Mr. President, is not a lie. And this argument that Judge Haynsworth misled the Judicial Improvements Subcommittee must be difficult even for the most cynical man to accept.

C. PARENT-SUBSIDIARY CASES

The statute which governs disqualifications of a Federal judge when a party litigant is a subsidiary of a company in which the judge owns stock is 28 U.S.C. 455, the same section previously discussed. A judge should disqualify himself in a case in which he has a substantial interest. Judge Haynsworth did not have a substantial interest in any subsidiary coming before his court. The text of this section is short. It reads:

SECTION 455. INTEREST OF JUSTICE OR JUDGE

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein.

Farrow v. *Grace Lines Inc.*, 381 F. 2d 380 (1967) involved a $50 judgment against Grace Lines for overtime pay lost by an injured seaman. The Fourth Circuit affirmed the judgment. The nominee held 300 shares, 1/60,000 of the stock in W. R. Grace Co., the parent of Grace Lines. Assuming the entire $30,000 originally claimed had been assessed against stockholders of W. R. Grace, without reference to insurers or tax treatment of the award, Judge Haynsworth's share would have been $0.48.

Maryland Casualty Co. v. *Baldwin*, 357 F. 2d 338 (1955) and *Donohue* v. *Maryland Casualty Co.*, 363 F. 2d 442 (1966) involved a subsidiary of American General Insurance Company. Judge Haynsworth held 200 preferred shares, 59/1,000,000 of those outstanding, and 67 common shares, 15/1,000,000 of those outstanding. The impact of the cases on his interest cannot be measured.

There is no opinion of the ABA stating that this sort of negligible interest in a parent corporation is grounds for disqualification. Formal Opinion 170 does not reach the point. The California Supreme Court, the only court I know of which has ruled on this issue, held a judge was not disqualified if he owned shares in the parent company. *Central Railway Co.* v. *Superior Court*, 296 Pac. 883 (1931). Again, the Senate would be creating new rules which are contrary to the statute, if it sought to condemn this conduct.

D. BRUNSWICK CORP.

Judge Haynsworth purchased 1,000 shares of Brunswick stock on December 26, 1967. At the time, he was aware that the decision in a Brunswick case in which he had participated had not been issued. He took the position during the hearings that if he had held the stock at the time the case was heard and decided on November 10, he would have been in violation of the Canons. That conclusion is debatable because 18 million shares of Brunswick were outstanding and his 1/18,000 interest in the litigation could amount to no more than $5, certainly not a substantial sum. Nonetheless, because in his opinion, he would have disqualified himself, I will accept Judge Haynsworth's conclusion for the purpose of this debate.

Whether buying the stock before deciding the case would disqualify him is not relevant, however. The question is whether having decided the case and then inadvertently having acquired the stock, should he have disqualified himself? He reasonably concluded the answer was no, and the majority of the Judiciary Committee agrees.

Judge Winter, a distinguished member of the Fourth Circuit bench and author of the Brunswick opinion, testified at length on the propriety of Judge Haynsworth's conduct. Let me repeat some of the pertinent testimony:

Senator HART. Now, would you regard it as proper on your part to have purchased the Brunswick Corp. stock before the release of the opinion?

Judge WINTER. Before the release of the opinion? I think, sir, if I had been in that situation, I would have avoided buying the stock until after the opinion had been filed and the matter disposed of. I do not think, however, that I would have been legally disqualified, since a decision has been reached in the case in my mind, since the nature of the decision was not one which could have affected the value of the stock one way or the other." (Hearings, page 241)

* * * * *

Senator BAYH. Judge Winter, if you had been made aware that Judge Haynsworth had purchased the stock as he did in the latter part of December, what action, if any, would you and Judge Jones have taken?

Judge WINTER. I think I would have called the matter to Judge Haynsworth's attention, that this was a case in which the opinion had not been announced, but I think I would have left the decision of what part he should play in it entirely up to him, because matters of personal disqualification are peculiarly a matter for personal decision. . . ." (Hearings, page 252–253)

* * * * *

Senator ERVIN. Now certainly this 0.0005 proportionate ownership of the Brunswick Corp. by Judge Haynsworth could not have given him any very substantial interest in the outcome of that case, could it?

Judge WINTER. Sir, I think the arithmetic of it would show that it was not certainly a big interest in the absolute sense, and I would not quarrel. I do not know whether Judge Haynsworth was aware that he had this or whether he had not.

Senator ERVIN. Yes.

Judge WINTER. I have not attempted to talk to him or to find out about it. But let me put it this way. If he concluded that that was not a substantial interest I would not have questioned his judgment for a moment, or if he had concluded that it was a substantial interest, but nevertheless it was not improper for him to sit, I would not have quarreled with him for a moment. (Hearings, page 254)

In addition, Judge Winter testified in response to specific questions from Senator TYDINGS that Judge Haynsworth's conduct did not violate Canon 26 or Canon 29.

It was regrettable that Judge Haynsworth was put in the position of making the decision to not disqualify himself. But in view of the nature of the case—it was a clear-cut decision on a limited point of law—he concluded the burden of rehearing the case was unwarranted. We, in the Senate, must keep in mind the real burden, administratively, in setting a case for rehearing, selecting a new panel, rehearing, redeciding the case, and drafting an opinion. Justice was rendered in this case, and delaying the disposition would only have delayed justice and would not have altered the result.

Judge Haynsworth says he wishes he had never heard of the Brunswick Corp. and never purchased the stock. The members of the committee agree. This inadvertent error, however, is no reason for refusing to confirm him. A nominee must be honest, honorable, and sensitive to ethical considerations. He cannot be expected to be infallible.

E. J. P. STEVENS CO.

Judge Haynsworth holds 550 shares of stock in J. P. Stevens Co. This stock ownership has been attacked as a violation of Canon 26. The committee took testimony on this point, reviewed the canon, and concluded that Judge Haynsworth has acted properly.

J. P. Stevens Co. was a very close client when Judge Haynsworth was a practicing

attorney. He concluded that it would not be proper, "in his opinion"—see 28 United States Code section 455—to sit in any case where J. P. Stevens was a litigant, and he has not.

In view of the fact that Judge Haynsworth would never have to disqualify himself in a J. P. Stevens case because of his stock ownership, the committee concluded that Canon 26 was not relevant and there was no reason for him to dispose of his stock.

F. THE AMERICAN BAR ASSOCIATION

Mr. President, for the past 18 years, it has been the custom that nominees for judicial posts be reviewed by the American Bar Association and the ABA recommendation be forwarded to the Judiciary Committee.

The Committee on the Federal Judiciary of the American Bar has been delegated the responsibility for the investigation and recommendation. The committee consists of one member appointed from each of the 12 judicial circuits, and a chairman appointed at large. The purpose of the committee is to review the professional qualifications of a nominee. This includes his ability, experience, and integrity.

The committee interviewed his colleagues on the fourth circuit, a cross section of district judges and practicing attorneys, and the nominee himself. His opinions were surveyed. The committee concluded that Judge Haynsworth was "highly acceptable from the viewpoint of professional qualifications." Judge Walsh testified on Judge Haynsworth's behalf.

At the time of the hearings as well as before, the issue of the Darlington case had been raised. The committee on the Federal judiciary included the issue in their deliberations. It was found that: "Judge Haynsworth had no interest, direct or indirect, in the outcome of the case before his court. There was no basis for any claim of disqualification, and it was his duty to sit as a member of his court."

When subsequent attacks were made against Judge Haynsworth involving Brunswick and the parent-subsidiary cases, the committee met again, and here is what it said:

The Committee met today and carefully reviewed the matters which have come to its attention since its original report on Judge Haynsworth to the United States Senate Committee on the Judiciary. It has concluded by a substantial majority that such matters do not warrant a change in that report.

Sixteen past presidents of the American Bar Association have affirmed their confidence in the processes and judgment of the ABA committee. In a telegram to Chairman EASTLAND, they concluded:

Accordingly, we hereby affirm our support of Judge Haynsworth and urge his confirmation as a Justice of the United States Supreme Court.

It is the professional judgment of the American Bar Association, Mr. President, that Judge Haynsworth is fully qualified to take his seat on the Supreme Court of the United States.

HAYNSWORTH'S RECORD AS A CIRCUIT JUDGE

A. AN OVERVIEW

A sitting judge compiles a record on which he himself can be judged for competence and ability. Judge Haynsworth has a 12-year record in which his competence can be measured. It is an illustrious and a proud record.

After reviewing his opinions, the American Bar Association judged the nominee to be highly qualified. Judge Walsh reported that "as far as his professional qualification is concerned, he is spoken of in the highest terms." Mr. Ramsey of the ABA committee testified that "he is eminently well qualified to be a member of the Supreme Court."

Professor Wright's statement before the committee was particularly helpful. He reviewed many of Judge Haynsworth's opinions on many different subjects besides civil rights and labor cases. It was his conclusion that: "(H) is overall record shows him to have the ability, character, temperament, and judiciousness that are needed to be an outstanding Justice of the United States Supreme Court."

In every case which a judge decides, and over a 12-year period that is thousands, there is at least one dissatisfied party: the loser. It is not surprising that Judge Haynsworth's nomination brought forth criticism of his record. Careful analysis, however, shows those criticisms are themselves biased and misleading.

B. CIVIL RIGHTS

In this presentation, I will not undertake to review the many cases cited by opponents and supporters of Judge Haynsworth in an attempt to define his judicial attitudes on racial matters. He has decided cases in favor of litigants claiming deprivation of civil rights and he has decided cases against them. Eminent authorities agree that his approach is fair.

Prof. G. W. Foster served as a consultant on school desegregation to the U.S. Commission on Civil Rights from 1961 until 1963. He served as a consultant to the Office of Education on school desegregation from 1964 to 1967 and participated in the drafting of the original HEW school desegregation guidelines. His statement appears on pages 602–611 of the hearings. He says:

To sum up: Judge Haynsworth is an intelligent, sensitive, reasoning man. He does not fit among that small handful of front-running judges who have consistently made new law in the racial area. He has earned a place, however, among those who serve in the best tradition of the system as pragmatic, open-minded men, neither dogmatic nor doctrinaire. His decisions, including those in the racial area, have been consistent with those of other sensitive and thoughtful judges who faced the same problems at the same time. And it simply cannot be said that his record in the racial field marks him as out of step with the directions of the Warren Court.

Mr. President, I submit that this is an accurate and fair description of Judge Haynsworth's civil rights record. It certainly justifies the confidence of every Senator concerned with civil rights that Judge Haynsworth will continue to work fairly and pragmatically to insure that all Americans receive their civil rights.

C. LABOR

An objective review of Judge Haynsworth's decisions in labor cases, like those in civil rights cases, establishes that he has taken a balanced, impartial attitude toward labor litigation. Sometimes he will uphold union contentions, sometimes he will not. The determinative issue is not who the parties are but what the law is.

George Meany, AFL–CIO president, testified that he disapproved of any judicial decision against labor. Mr. Meany is an advocate for his point of view, and the bias evident in his statement is not the standard against which to measure the conduct of a judge.

Judge Haynsworth has written and participated in numerous opinions that recognized the legitimate aspirations of workers to organize and engage in collective bargaining. The committee report discussed two such opinions: NLRB against Electro Motive Mfg. which extended the protection of the National Labor Relations Act to a supervisor, and United Steelworkers against Bagwell, which held unconstitutional a city ordinance which sought to regulate distribution of literature by unions.

In the Electro Motive case, Judge Haynsworth gave the following justification of the reinstatement of the supervisor despite the fact that supervisors were not within the statutory definition of protected employees:

The effect of the discharge, in either event, is to tend to dry up legitimate sources of information to Board agents, to impair the functioning of the machinery provided for the vindication of the employees' rights and, probably to restrain employees in the exercise of their protected rights.

Writing for the court in *NLRB* v. *Webb Furniture Corp.*, 368 F. 2d 314 (1966), Judge Haynsworth discussed good faith bargaining:

When the union tendered some concessions, the employer might reasonably be required to recognize that negotiating sessions might produce other or more extended concessions. That is the purpose of collective bargaining. By July, it was readily apparent to the union that the impasse could be broken only by concessions on its part, but it would be extraordinary to suppose that it would do so then in terms of an ultimatum, or that in its initial modification of its demands would go to the ultimate limits of its possible agreement.

These quotations from these two cases do not sound as though they came from the pen of an antilabor judge. Indeed, Judge Haynsworth joined in 45 opinions that ruled in favor of the unions. He wrote eight of them.

He also joined in opinions against labor litigants and it is these decisions which are attacked. On balance, however, it is obvious that he had no bias against labor unions.

D. THE ANALYSIS OF JUDGE HAYNSWORTH'S WRITINGS HAS COME FROM MANY SOURCES

The New Republic magazine carried an article by Professor Bickel of Yale Law School concluded:

But Judge Haynsworth is no reactionary. His civil rights record is centrist, although more cautious than some Senators would like. If the Senate demands precisely the ideological profile it would prefer, the appointment process will be in deadlock. Judge Haynsworth should be seen ideologically as falling within the area of tolerance in which the Senate defers to the President's initiative.

Professor Wright summed up his first statement as follows:

History teaches us that it is folly to suppose that anyone can predict in advance what kind of a record a particular person will make as a Justice of the Supreme Court.

All that one can properly undertake, in assessing a nominee to that Court, is to consider whether he has the intelligence, the ability, the character, the temperament, and the judiciousness that are essential in the important work he will be called upon to perform. Clement Haynsworth has shown in 12 years on the circuit court bench that he possesses all of these qualities in great measure.

I hope he will be quickly confirmed.

THE SENATE AND ITS RESPONSIBILITY

The nomination of Judge Haynsworth has unleashed a furious attack unmatched since the nomination of Judge Parker and, prior to that time, the nomination of Louis Brandeis.

In the latter case, Justice Brandeis became one of the greatest men ever to serve on the Supreme Court. In the former case, Judge Parker continued to serve with distinction as an appellate level judge, but his greater potential was never realized.

The distinguished Senator from Florida (Mr. HOLLAND) informed me during colloquy on this subject several weeks ago of what he had been told by the distinguished former senior Senator from Georgia, Mr. George. Senator George, at the end of his career, regretted more than any other vote he had cast in the Senate, his vote against Judge Parker. I hope, Mr. President, that no one serving in this body will be left with such a bitter recollection of this nomination.

Freewheeling charges have been directed at Judge Haynsworth's ethics, charges that will be hard to live down if sustained by this Senate. Yet, it is a battle, not really being fought over ethics but over the philosophy of the man.

Mr. President, what precedent will be set for the future if a man of Judge Haynsworth's reputation and ability can be brought down by often-repeated charge. If President Nixon would attempt to find another nominee to bring balance to the Supreme Court, what man would accept the ordeal of personal vilification?

Organized labor did not apologize for the campaign it waged against Judge Parker although it contributed greatly to his rejection. This is so even though it is admitted that Judge Parker was a good judge. There will be no apology if Judge Haynsworth is rejected, and he too is a good judge. This is what the next nominee will weigh in his mind.

Mr. President, I am confident that the Senate will advise and consent to the nomination of Judge Haynsworth, but I think it important to recognize the seriousness of the decision we will make within the next few days.

This Senator has served for 12 years as a member of the Judiciary Committee. I have never opposed any judicial nominee because I did not like his philosophy, and I assure the Senate I did not agree with the philosophy of some nominees. I will maintain my consistent position and call upon all my colleagues who have deferred to the President on the choice of philosophy in the past to do so in this case.

Choice of philosophy is a political consideration. To bring such considerations to bear in the Senate means to weigh 100 individual views of what is the proper philosophy against the decision made by the President. It does not work as President George Washington learned early in his administration. If 100 persons are allowed to give full sway to their own personal views, then no independent, resourceful man will ever be picked to serve on the Supreme Court.

If Judge Haynsworth is rejected because of the flimsy attacks on his record as a circuit judge, no sitting judge will be able to meet the newly established Senate test. Practicing attorneys might be a source of prospective nominees, but if they are good they will be successful and will have business relationships that will have to be scrutinized and criticized. We could turn to the law schools and find qualified men untarnished by financial dealings, representation of certain clients, or prior court opinions, but it would be difficult indeed to select a balanced court only from among teachers.

If Judge Haynsworth is judged on the merit of his record, he passes with flying colors. He is capable, possessed of judicial temperament, honest, and intelligent. I am confident, Mr. President, that a majority of my colleagues will agree with this conclusion and will in due time confirm this nomination.

Mr. BAYH. Mr. President, I have listened with considerable interest to the remarks of the distinguished chairman of our committee as well as to the remarks of the Senator from Nebraska. I have listened not only to the statements which they made today, but also to the opinions that both these gentlemen have expressed throughout the hearings.

I should like the record to show that although the conclusions that I have reached differ from the conclusions of the Senator from Nebraska and the Senator from Mississippi, I believe that they have cooperated fully to see that this matter was fully alred. They have given me, as a member of the loyal opposition, every courtesy that I could expect, and I thank them for their consideration.

Mr. President, opposing this nomination has not been an easy matter for me. And I do no think that it has been an easy matter for any of us to oppose what, at least I personally feel, is normally a Presidential prerogative: the nomination of individuals to many positions of responsibility.

I have normally been inclined to go along with the Presidential decision. On only one occasion in the past did I feel inclined to oppose a nomination. It was a nomination made by the previous administration and was the nomination of a man that I did not feel was qualified to fill the position. I learned then that opposition to a nomination is different from opposition to other issues.

I have learned from personal experience that when one opposes a man on his qualifications, he is indeed burdening himself with an unpleasant task.

Opposing Judge Haynsworth is an endeavor which I now enter only after great consideration.

Mr. President, it seems to me that when considering an appointment to the judiciary, the Senate is in a different position from that in which it finds itself when considering appointments of other public officials. The President is charged with the duty of executing the laws and making the executive branch run. It is quite reasonable that he be given considerable latitude in selecting his own people to aid him in this great task. For this reason, a Senator might well feel conscientiously bound to go very far in following the President's lead and to confirm without hesitation most of his appointments. These appointees are an integral and working part of the President's administrative team.

Just the opposite is true as to judges, however. The judge is not someone with whom the President has to work in any intimate sense. He is not a member of the administration in any remote sense. When a judge is appointed, it is contemplated that his tenure will long outlast that of the President. A Federal judge is not a part of any administration. He is not an advocate, but rather a member of the judicial branch of our Government—totally removed from either the executive or legislative branches after appointment.

The President's constitutional power to initiate the appointment process for judges is the result of a compromise at the Contitutional Convention. It was initially proposed that the power to appoint judges should lie solely with the Congress. In giving some power to the President—indeed, the initial power to nominate—the Founding Fathers reserved the right of the Senate to advise and consent. Thus the President and the Senate become partners in appointing members of the Judiciary, and the Senate has not hesitated to use the power of rejection which the framers of the Constitution granted it. In fact, the Senate has rejected more nominations to the Supreme Court than to any other office. Between 1800 and 1900, one-quarter of all those named to the High Court failed to receive confirmation. Most were rejected by the Senate; others had their nominations withdrawn because of Senate opposition. They were rejected for a variety of reasons including politics, philosophy, ability, and, indeed, temperament.

It is clear then that the scrutiny we give the nomination of Clement F. Haynsworth, Jr., to the Supreme Court is not unusual. Indeed, it is the traditional, constitutional duty of each Senator to determine in his own mind what qualifications are necessary for a Supreme Court Justice, and then to measure the qualifications of the nominee against those standards.

I believe that among public officials, judges occupy a unique position. We all

know they are addressed as "your honor." They wear solemn robes. And they preside over courtrooms of ceremonial architecture. Unlike legislative or executive officials who are constantly judged by the electorate on their political choices and proposals, Supreme Court Judges are lifetime appointees and are appraised by a test of trust: Are their decisions fair, impartial, and in accordance with the law?

It is therefore imperative that judges conduct themselves in a manner that avoids even the appearance of impropriety or bias. The law and canons of ethics guide a judge along a path that insures justice has the appearance of justice. Though the rules that have been established sometimes appear strict, they are especially important today. The Senate is asked to confirm a Supreme Court nominee to a seat that for the first time in history is a seat vacated by the resignation of a Justice accused of conduct involving the appearance of impropriety. To restore public confidence in the Court, we in the Senate should consent to a nomination only if the nominee has established those ethical standards which inspire confidence.

Mr. President, it is with deep regret and with respect for the contrary opinion that I state my belief that in nominating Judge Haynsworth to the Supreme Court, President Nixon has not presented the Senate with such a man. Though I believe Judge Haynsworth to be honest, he has not shown the proper sensitivity to ethical problems which have arisen during his career. Indeed that career has been blemished by a pattern of insensitivity to the judicial precepts concerning the appearance of impropriety.

Mr. President, I point out to the Senate that I realize the gravity of this type of assessment, but I think the time has come when we have to speak out. Public officials, whether judges or Members of Congress, must live up to high standards of ethical conduct.

In the hearings on the nomination of Judge Haynsworth and in the discussion which has followed, there have been a number of charges and countercharges. Though I recognize the rights of Senators to draw conclusions different from those I have reached, I would like to set out for the record the facts as I see them.

On at least four occasions Judge Haynsworth sat on cases in which he had direct primary interests in one of the parties. By sitting on these cases, Brunswick against Long, Farrow against Grace Lines, Inc., Maryland Casualty Co. against Baldwin, and Donohue against Maryland Casualty Co., the judge violated the disqualification law and the canons of judicial ethics.

Judge Haynsworth purchased 1,000 shares of Brunswick Corp. for $16,230 while Brunswick against Long was pending. At the time of the Grace Lines decision, Judge Haynsworth owned 300 shares of W. R. Grace and Co., which wholly owned Grace Lines. That stock was worth $13,875. Similarly, Judge Haynsworth owned 66⅔ shares of common stock and 200 shares of convertible preferred stock of American General Insurance Co., which owned over 95 percent of Maryland Casualty Co., when the Donohue and Baldwin cases were decided by his court. Maryland Casualty was a major subsidiary of American General Insurance. On the days the Donohue and Baldwin cases were decided, the value of Judge Haynsworth's stock in American General Insurance was $10,201 and $10,734, respectively.

The Federal law of disqualification is found in common law, constitutional law, and statutory law. Each source indicates that a judge should not sit on cases where he holds stock in a litigant.

As John P. Frank, the country's leading authority on disqualification law, has stated:

> The law of disqualification, in the heavy majority and clearly better view, treats a shareholder as though he individually were the concern in which he holds shares. In other words, if a judge holds shares in a corporation which is in fact a party before him, he should disqualify as much as if he himself were a party. As my study shows, every state and federal court reporting agrees that if a judge has a pecuniary interest in the party, he may not sit.

When I questioned Mr. Frank directly about section 455 of title 28 of the United States Code, which is the statute governing disqualification of Federal judges, he repeated that the majority view calls for disqualification when a judge has any financial interest in a litigant.

It is true, as Mr. Frank pointed out, that there is a minority view which allows a judge to sit where his interest in a litigant is small and there is a vast amount of stock outstanding. However, the minority view does not apply to cases involving Judge Haynsworth.

In a letter to the Judiciary Committee, Judge Haynsworth espoused the high ethical standards established by the majority of cases on disqualification law. In his words:

> I have disqualified myself in all cases . . . in which I had a stock interest in a party or in one which would be directly affected by the outcome of the litigation.

Unfortunately, what Judge Haynsworth said and what he did were two different things. As the record shows, he ignored the rules he set for himself by sitting in Brunswick, Grace Lines, and the two Maryland Casualty cases. Indeed, Judge Haynsworth admitted this in a colloquy with Senator MATHIAS. I quote from the record:

> Senator MATHIAS. You consider that your interest [Brunswick] was substantial then?
>
> Judge HAYNSWORTH. Yes, I do, without question, though it is not in the outcome in terms of that, but much more substantial that I think a judge should run the risk of being criticized.

Although Judge Haynsworth set strict standards for himself regarding disqualification, unfortunately, his conduct in these cases falls even below the standards for disqualification of the Fourth Circuit.

The Fourth Circuit accepts the minority view that a judge with very small holdings in a large corporation can sit on cases to the extent that the holdings are disclosed to the parties and the parties do not object. Yet, Judge Haynsworth did not disclose his interests in Brunswick, Grace Lines, or Maryland Casualty to the parties opposing those corporations in the cases which came before him.

There is also a question in my mind, and I think in the minds of many people, whether the minority view on stock ownership is sensible law. To argue that each case must be broken down according to the effect a decision might have on each share of stock which a judge holds is to urge the impossible. There is no way to ascertain a dollar amount for the value of a decision as precedent which may affect future litigation.

Moreover, the concept that disqualification depends on the amount of gain received by a judge as a result of his decisions is flatly contrary to cases decided by the Supreme Court. In *Commonwealth Coating* v. *Continental Casualty Co.*, 393 U.S. 145, at page 148, the Court noted that it was a constitutional principle that judges should not sit on cases in which they had "even the slightest pecuniary interest."

It has been contended that it was not improper for Judge Haynsworth to sit on the Farrow, Donohue, and Baldwin cases because he held stock in the parent companies of the subsidiaries which were before him, and not the subsidiaries themselves. It is obvious that this defense makes no practical sense. It improperly emphasizes a form of corporate structure as opposed to substantial ownership which is the basis of the law. In June 1964, for example, the Judge purchased 200 shares of Maryland Casualty Co. and in August 1964, upon a corporate reorganization, he exchanged that stock for 200 shares of convertible preferred stock and 66⅔ shares of common stock of American General Insurance Co., the parent company of Maryland Casualty. Both before and after the exchange, he had a substantial ownership interest in Maryland Casualty. Thus, there is no reason to apply one rule to the June-to-August period and another to the period after August. The question was, Did he have a substantial interest?

It is true that there is one State court case decided in 1931 which supports the proposition that ownership in the parent of a subsidiary does not require disqualification. However, there is no Federal authority for such a rule of law. As Mr. Frank has pointed out, the California case which supports this distinction, Central Pacific Railway Co. against Superior Court, is based on the theory "that the judge must be capable of being made an actual party to the case" in question. Mr. Frank concluded that "this is not the better view. The proper test is whether the third party has a 'present proprietary interest in the subject matter.' "

It is true that requiring disqualification in cases involving subsidiaries of corporations in which a judge holds stock can at times be a difficult standard to adhere to. Judge Harrison L. Winter, of the fourth circuit, pointed this out to the Judiciary Committee during the hearings on the nomination. He noted that on one or two occasions it was not until the "very 11th hour" that he realized a litigant about to come before the court was the subsidiary of a corporation in which he owned stock.

However, it seems to me that, if we look at the record, it is difficult for Judge Haynsworth to plead ignorance to the parent-subsidiary relationship. His interest in American General Insurance Co. was acquired in 1964 in exchange for 200 shares of Maryland Casualty Co. when the companies merged. He had purchased the Maryland stock a few months earlier for over $12,000, a fact I think he would have remembered. He also should have known W. R. Grace & Co. wholly owned Grace Lines Inc., since W. R. Grace had been a client of Judge Haynsworth's law firm before he assumed the bench. The evidence indicates, therefore, that Judge Haynsworth's disregard for the rule requiring disqualification for interest was either willful or, I would rather suggest, grossly negligent.

Judge Haynsworth defenders protest that his failure to disqualify himself in Brunswick against Long was proper on the ground that he made his investment in Brunswick after the case had been heard and had been decided. The essential facts are these: The case was heard on November 10, 1967, by a panel of circuit judges composed of Judge Haynsworth, Judge Winter, and District Judge Woodrow Wilson Jones. The judges met in conference after hearing the case and arrived at the conclusion that a judgment in favor of Brunswick should be affirmed in an opinion to be written by Judge Winter. On or about December 15, 1967, Judge Haynsworth had his regular year-end meeting with stockbroker, Arthur C. McCall, who recommended that the judge buy Brunswick stock. The judge agreed, and his order for 1,000 shares of Brunswick stock was executed on December 26 at $16 a share. A confirmation notice was sent to Judge Haynsworth on December 26, and on the 27th the judge signed and sent his check in payment to Mr. McCall, who received it on December 28. Judge Haynsworth testified that the Brunswick case did not enter his mind during his discussion with Mr. McCall or at the time he received the confirmation and signed his check as payment for the stock.

On December 27, 1967, Judge Winter circulated his written opinion in Brunswick against Long, to Judge Haynsworth and Judge Jones by mail. During the first full week of January 1968, Judge Haynsworth and Judge Winter discussed that opinion. Judge Haynsworth noted his concurrence in the opinion and also suggested the possible need for changes due to certain points of South Carolina law noticed by his law clerk. Judge Winter accepted these changes and recirculated the amended opinion on January 17, 1968. The amended opinion was finally approved by the other judges of the court, and on February 2, 1968, after a judgment had been prepared, the opinion and judgment were filed.

The Federal rules provide for 30 days in which a party may ask for rehearing. On March 12, 1968, counsel for Long filed a petition to extend the time for filing a petition for rehearing. Counsel argued that the extension should be granted because he had not been furnished a copy of the opinion by the clerk until February 27, 1968. This petition was considered on the merits by Judges Winter, Haynsworth, and Jones who decided to deny it. On April 3, 1968, another petition for rehearing was filed. On August 26, it was denied in an order prepared by Judge Haynsworth.

Judge Haynsworth testified, and I quote:

> The . . . [first] time [after the hearing], of course, that the [Brunswick] case entered my mind was when I received the proposed opinion from Judge Winter. At that stage, I realized it had not been completely disposed of, and at that time I thought what I should do. I had now become a stockholder.
>
> My conclusion was that I should endorse it since Judge Winter had written an opinion precisely as we had agreed, since Judge Jones concurred, since no one had any doubt about it, and nothing else occurred to return the case to the discussion stage . . .
>
> I considered what I should do and I made up my own mind . . .
>
> I did not consult them at the time.

It is plain that the judge performed the following judicial acts while he was a stockholder: reviewing and joining in the judgment and opinion, reviewing and rejecting two petitions for an extension of time to file a petition for rehearing. None of these acts was ministerial—indeed, the reasoned exposition of the result reached by a court is the very essence of the judicial process.

Mr. President, I wish to point out that I have discussed the judicial decision-making process with several appellate court judges in an informal, off-the-record manner, and I have been informed it is not unusual for decisions to be changed after the informal decision has been arrived at. I also would like to note that Judge Winter did not believe final decisions were made when the judges informally voted for one party or the other. At the hearings, he said:

> I think it may be fairly stated that a case is never decided finally or never put to rest until an opinion has been filed, all post opinion motions have been denied, and the Supreme Court has denied certiorari. . .

This being so, Judge Haynsworth's failure to disqualify himself or even to notify the parties or his fellow judges of the situation was, in my judgment, improper.

The Canons of Judicial Ethics, though they do not have the force of law, have established accepted guidelines for the conduct of judges. Like the law on disqualification, the canons hold that a judge should not sit on cases where he has an interest. Canon 29 states:

> A Judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is a judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

In interpreting canon 29, the American Bar Association's Committee on Professional Ethics states in opinion 170:

> A Judge should not perform a judicial act, involving the exercise of judicial discretion, in a cause in which one of the parties is a corporation in which the judge is a stockholder.

Judge Winter recognized the significance of this opinion in his testimony before the Judiciary Committee. He stated:

> The American Bar Association Committee at least has taken the position that if you own any stock, that is it. You ought not to sit at all.

Judge Haynsworth's financial interests were involved in the Brunswick, Grace Lines, and Maryland Casualty cases, yet he did not refrain from performing judicial acts in these controversies. To argue that canon 29 does not apply in situations where the litigant is a subsidiary of a corporation in which a judge owns stock is unreasonable. The canon states that a judge should not sit in a case "in which his personal interests are involved," and opinion 170 further indicates that even one share of stock in a corporate litigant is interest. Certainly direct interest in a litigant through ownership in the parent corporation should be treated no differently.

Canon 4 and canon 34 also come into play when a judge sits on cases in which he has personal interests. They state that "a judge's official conduct should be free from impropriety and the appearance of impropriety" and that his conduct "should be beyond reproach."

Judge Haynsworth's conduct, if one looks at the record, was not beyond reproach. He disregarded the precedents on disqualification which have been so carefully established to avoid the appearances of impropriety. While not dishonest, he has callously ignored the ethical rules which the great majority of judges follow meticulously. Perhaps a letter I received from a professor at UCLA who teaches legal ethics to law students explains more clearly why Judge Haynsworth's conduct was improper. Prof. David Mellinkoff observed:

> In a United States district court a jury awards an injured seaman $50.00 on a claim against Grace Lines he thought worth $30,000.00. Saddened, he takes his case to the United States Circuit Court of Appeals. It is not difficult to imagine the bitterness in the heart of the injured seaman when he learns that one of the judges to whom he appealed in vain to right the supposed wrong of the Grace Lines was even a small owner of the company that owns Grace Lines. By the standard of the marketplace Justice Haynsworth's stockholding was trifling. It looms large in the mind of the unhappy litigant searching to discover just what it was that tipped the scales of justice against him.

On several occasions, Judge Haynsworth totally disregarded canon 26. The canon forbids a judge from investing in corporations apt to be subjects of litigation in his court. As I pointed out earlier, Judge Haynsworth purchased Brunswick stock while the case was still pending before his court. No business was more apt to be before his court than a company which was before his court when he purchased its stock.

Judge Winter, for example, said he would not have bought Brunswick stock at such a time. On September 23 he testified:

> I think, sir, if I had been in that situation, I would have avoided buying the stock until after the opinion had been filed and the matter had been disposed of.

Mr. HRUSKA. Mr. President, will the Senator yield at that point?

Mr. BAYH. I yield to the distinguished Senator from Nebraska.

Mr. HRUSKA. Mr. President, would the Senator care to read the remainder

of the answer which Judge Winter gave at that point? It is found on page 241 of the hearings.

Mr. BAYH. The Senator from Nebraska may read it if he wishes.

Mr. HRUSKA. I thank the Senator. The remainder of the answer states:

I do not think, however, that I would have been legally disqualified, since a decision had been reached in the case in my mind, since the nature of the decision was not one which could have affected the value of the stock one way or the other.

I believe that to make the record complete it would be well that the record contain the rest of the answer.

Mr. BAYH. I am glad the Senator has done that. I think we need to be consistent when we are talking about a standard. What Judge Winter would have done personally is very much a factor.

Mr. HRUSKA. Exactly.

Mr. BAYH. He personally would not have done what Judge Haynsworth did.

Mr. HRUSKA. And Judge Winter said he did not think he would have been legally disqualified, since a decision had been reached in the case in my mind, since the nature of the decision was not one which could have affected the value of the stock one way or the other.

Had the matter been brought to him he did not think he would have been legally disqualified under the canons and of statutes. That is his opinion based on his knowledge of all the facts. As an attorney, that opinion of a judge, being laid parallel with the opinion of a distinguished member of the Indiana bar, would be of some weight.

Mr. BAYH. Mr. President, I trust that we will have the opportunity to debate the points I have raised in my statement as well as the further points which I hope to bring out in debate, but since the hour is late, I should like to conclude my statement.

Mr. President, Judge Haynsworth also admitted his purchase of Brunswick stock at that time was a mistake. He testified:

As I say, Judge Winter said that he would not have bought this stock and I agree with him completely.

Judge Haynsworth also invested in two casualty companies, Nationwide Corp. and Maryland Casualty Co. It is common knowledge, even among laymen, that casualty companies are continuously involved in litigation. As Judge Winter pointed out at the hearings, "with casualty companies litigation is a part of their business."

Finally, Judge Haynsworth maintained his holding in W. R. Grace & Co. even after Grace Lines had appeared before his court on one occasion. That litigation should have warned Judge Haynsworth that the company was apt to appear again. A sensitive judge would have disposed of his holdings.

The poor judgment of Judge Haynsworth which I have described thus far does not stand alone. There are other commissions and omission of the judge which raise further questions concerning his sensitivity to judicial ethics. Foremost among these is Judge Haynsworth's relationship with Carolina Vend-A-Matic Co. and the textile industry.

Judge Haynsworth was an organizer and founder of Carolina Vend-A-Matic in 1950, with an original investment of $2,400. He sold his interest in 1964 for $450,000. He was a director and vice president of Carolina Vend-A-Matic until 1963. Although the judge stated that he orally resigned from the vice presidency in 1957, the corporation records show he was listed as vice president until 1963. They also show that he regularly attended meetings of the board of directors and voted for slates of officers including himself through the years, 1957–63. He was, in fact, paid director's fees amounting to $12,270—including director's fees of $3,100 in 1960—during the years of 1957 to 1963 and the records show his wife, Dorothy M. Haynsworth, served as secretary of the corporation for 2 years—1962–63—while he was on the Federal bench.

Although the judge claims he was an inactive officer, the only information available from the minutes of the corporation indicates that the directors were active in locating new business. A resolution by the board of directors of Carolina Vend-A-Matic which justifies the paying of fees to directors and which appears in the minute books of the corporation states that:

It was pointed out that the main sales and promotional work of Carolina Vend-A-Matic had been done by its directors who are also the officers of the corporation and that any new locations were the result of many conversations, trips and various forms of entertainment of potential customers by one or more of the directors or officers over an extended period of time. A review was had of the various locations that had been acquired during the past several years and new locations that were being considered and practically without exception, these were the result of the Board of Directors.

Judge Haynsworth took an active part in directors' meetings, often making motions himself. While he was director of Carolina Vend-A-Matic, he took part in decisions to buy and sell land to himself and other directors and the profit-sharing trust. Judge Haynsworth also endorsed notes for the corporation both before and after his appointment to the Federal bench.

In 1957, after Judge Haynsworth assumed the bench, the gross sales of Carolina Vend-A-Matic and its subsidiaries increased tremendously. Gross sales of Carolina Vend-A-Matic had only increased from $169,355 in 1951 to $296,413 in 1956. But in 1957, the year Judge Haynsworth assumed the Federal bench, sales jumped to $435,110 and continued a precipitous climb, reaching $3,160,665 in 1963, the last full year in which Judge Haynsworth owned a major share of the company. Between the end of 1956 and 1963, Carolina Vend-A-Matic sales increased by 966 percent, while sales of the vending machine industry as a whole increased by only 69 percent.

In 1963, more than three-fourths of Carolina Vend-A-Matic's total business was with textile concerns. Census figures show only 28.9 percent of the Greenville, S.C., working force was employed in textile mills. It is clear Carolina Vend-A-Matic concentrated on developing business with textile concerns.

It is also interesting to note that Judge Haynsworth's investments in stock in textile companies amounted to $49,557.60 in 1963—J. P. Stevens & Co., Burlington Industries, Dan River Mills. Thus, any precedent setting decisions in the Southern textile industry would direcity affect Haynsworth's financial position through Carolina Vend-A-Matic and through his textile stocks.

For some years there has been an exodus of textile concerns from north to south in an effort to take advantage of lower wages as a result of strong regional pressures against collective bargaining in the South. The Darlington Manufacturing Co. against NLRB came before the Fourth Circuit Court of Judge Haynsworth in both 1961 and 1963, while Carolina Vend-A-Matic had vending contracts with plants of Deering Milliken Corp., Darlington's parent company, bringing in $50,000 per year. While the litigation was pending Carolina Vend-A-Matic signed a new contract with a Deering Milliken plant, increasing their vending business with the company to $100,000 per year. The case was eventually decided in favor of Darlington in a 3 to 2 decision with Judge Haynsworth casting the deciding vote, thus establishing an important legal precedent for the textile industry. The decision was later substantially modified by the Supreme Court.

Between 1958 and 1963 Judge Haynsworth sat on at least five other cases invloving customers of Carolina Vend-A-Matic.

Judge Haynsworth's failure to disqualify himself in cases involving customers of Carolina Vend-A-Matic, particularly from the Darlington case, and his failure even to disclose his interests in CVAM again violates the strong precedents of disqualification law and the Canons of Judicial Ethics on this subject.

I do not suggest that Judge Haynsworth intentionally decided cases in a manner designed to enhance his personal financial interests. Such a charge would be unreasonable. However, such a commingling of his judicial responsibility and his financial interests gives the appearance of impropriety and leaves Judge Haynsworth open to legitimate criticism.

John Frank has testified that he believes Judge Haynsworth's interest in the litigation was too remote to require disqualification, but Supreme Court cases indicate that the law of disqualification extends to cases of considerably more remote financial relationships.

The basic standard a judge is required to follow in deciding whether or not to hear a case is set out in In Re Murchison, where the Supreme Court reversed contempt convictions handed out by a Michigan State judge who had investigated the underlying offense as a one-man grand jury. The Court stated:

This Court has said, however, that "every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law. *Tumey v. Ohio*, 273 U.S. 510, 532. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way

"justice must satisfy the appearance of justice".

This standard was clarified in Commonwealth Coatings Corp. against Continental Casualty Co. In that case, one of the parties to an arbitration proceeding had done business with one of three arbitrators, a consulting engineer. The relationship between the party and the arbitrator had been sporadic over the years and amounted to less than 1 percent of the arbitartor's business. In fact, there had been no business dealings between the two for over a year. The financial relationships in Commonwealth Coatings, obviously, was far more remote than Carolina Vend-A-Matic's relationship with Darlington. There, the relationship was current, and the business amounted to 3 percent of Carolina Vend-A-Matic sales. Yet, the Court set aside the judgment of the arbitrators and applied the constitutional rules of judicial disqualification. Justice Black stated:

It is true that petitioner does not charge before us that the third arbitrator was actually guilty of fraud or bias in deciding this case, and we have no reason, apart from the undisclosed *business* relationship, to suspect him of any improper motives. But neither this arbitrator nor the prime contractor gave to petitioner even an intimation of the close *fiancial* relations that had existed between them for a period of years. *We have no doubt that if a litigant could show that a foreman of a jury or a judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would be subject to challenge.*

This is shown beyond doubt by *Tumey* v. *Ohio*, 273 U.S. 510 (1947), where this Court held that a conviction could not stand because a small part of the Judge's income consisted of court fees collected from convicted defendants. Although in *Tumey* it appeared the amount of the judge's compensation actually depended on whether he decided for one side or the other, that is too small a distinction to allow this manifest violation of the strict morality and fairness Congress would have expected on the part of the arbitrator and the other party in this case. *Nor should it be at all relevant, as the Court of Appeals apparently thought it was here, that [t]he payments received were a very small part of [the arbitrator's] income* . . . . For in *Tumey* the Court held that a decision should be set aside where there is 'the slightest pecuniary interest' on the part of the judge, and specifically rejected the State's contention that the compensation involved there was 'so small that it is not to be regarded as likely to influence improperly a judicial officer in the discharge of his duty . . .'"

The opinion concluded by noting the similarity in rule 18 of the American Arbitration Association and the pertinent section of the 33d Canon of Judicial Ethics which stated:

Canon 33. Social Relations . . . A judge should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships, constitute an element in influencing his judicial conduct.

The Court went even further by suggesting that the standard requlred for ethical conduct rested on a broader and more fundamental constitutional concept. In the words of Justice Black:

This rule of arbitration and this canon of judicial ethics rest on the premise that any tribunal permitted by law to try cases and controversies must not only be unbiased, but must avoid even the appearance of bias.

By sitting in the litigation when Carolina Vend-A-Matic was doing business with a litigant, Judge Haynsworth breached the standards established by the Supreme Court. His testimony before the Judiciary Committee indicated his disregard for ethical standards would continue in the future. When I asked him a question concerning the propriety of his relationship with Carolina Vend-A-Matic, Judge Haynsworth admitted he would act in the same manner were the situation to arise again. I quote from the record:

Senator BAYH. Now, you have been quoted, and I wonder if it is accurate, that if you had that *Darlington-Deering Milliken* case to do over again, that you would still feel that you did not have a sufficient conflict of interest.

Judge HAYNSWORTH. Even if I knew at the time all that I know about it now, I would feel compelled to sit.

Similarly, in answer to Senator TYDINGS' question of whether Judge Haynsworth disclosed his interests to the parties, the judge stated:

No, sir; because I did not regard myself as having any financial interest in the outcome, and I still do not.

It is unfortunate, but Judge Haynsworth either refuses or is incapable of grasping the principle that the appearance of bias is as important as actual bias.

As in the cases where Judge Haynsworth owned stock in a corporate litigant, the canons of ethics apply to the judge's conduct in deciding cases involving customers of Carolina Vend-A-Matic. The canons were clearly stated throughout Judge Haynsworth's term on the bench. Their central theme is that judges must act in a way to avoid even the appearance of impropriety or bias. Reading a few sentences from the canons make this point very clear. Canon 13 states that a judge "should not suffer his conduct to justify the impression" that any person can improperly influence him. Canon 24 states that a judge should not accept inconsistent duties which might "appear to interfere with his devotion" to the proper administration of his official functions. Canon 25 states a judge should not give grounds for the "reasonable suspicion" that he is utilizing the prestige of his office to promote his business ventures. I could continue and read from several other applicable canons, but it would be repetitious. I will simply cite them for reference. They are Canons 4, 29, 33, and 34.

Judge Haynsworth violated the canons by maintaining his relationship with Carolina Vend-A-Matic. The size of the judge's interest in the company, his investments in textiles, the existence of customer relationships with parties appearing before his court, the dependence of Vend-A-Matic upon textiles, all give an appearance that the judge could have been biased.

Judge Simon Sobeloff recognized the dangers of a judge taking an active part in a business, and stated that a judge must disqualify himself even when a customer of his business concern is before his court. I quote his words in an article in the Federal Bar Journal:

One can readily see that if a judge serves as an officer or director of a commercial enterprise, not only is he disqualified in cases involving that enterprise, but his impartiality may also be consciously or unconsciously affected when persons having business relations with his company come before him.

Another matter also deserves notice. Judge Haynsworth was a trustee of the Carolina Vend-A-Matic Co. profit sharing and retirement plan from 1961 until 1964 and qualified as an administrator by law. The Welfare and Pension Plan Disclosure Act provides that an administrator of a pension fund must file with the Secretary of Labor an initial description of the plan and annual reports thereafter. Willful violation of the act can lead to 6 months imprisonment or a fine of $1,000 or both. On September 17, 1969, the director of the Office of Labor-Management and Welfare-Pension Reports of the U.S. Department of Labor advised my office by letter:

Our records do not show that any reports have been received under the name of Carolina Vend-A-Matic Company, Inc., for a Profit Sharing and Retirement Plan.

The omission by the judge was in all probability an oversight and not an intentional violation. However, I cite the facts to reinforce the obvious conclusion that complicated financial relationships and judicial responsibility can become a dangerous mixture.

Finally, the statements made by Judge Haynsworth to the Judiciary Committee and the Subcommittee on Improvements in Judicial Machinery have shown an amazing lack of candor. The judge stated that he never sat on cases where a corporation in which he held stock was a party to the litigation or would be affected by the decision. This, as I have detailed to you, simply is not true. Before Senator TYDINGS' subcommittee, the judge testified that he resigned all his directorships in 1957, when he assumed the bench. The record shows he was a director of Carolina Vend-A-Matic Co. and the Main-Oak Corp. well into 1963. Similarly Judge Haynsworth claimed his role in Vend-A-Matic was inactive. Yet the record shows he regularly attended and took active part in board meetings, that he accepted director's fees, that board members were instrumental in procurring new business, and that the judge helped Vend-A-Matic obtain bank loans. The role Judge Haynsworth played in the affairs of the company does not, in short, appear to be passive.

In closing, I repeat once again that the basis of the canons of judicial ethics and the law of disqualification is that judges must be extremely careful to avoid bias or even the appearance of bias in administering their judicial functions. Judge Haynsworth entered into and maintained numerous relationships which, in view of the fact that he continued to perform judicial acts affecting other parties to those relationships, give the appearances of bias and thus constitute breaches of the Canons of Ethics and violations of the disqualification law.

He sat on cases involving litigants in which he had a financial interest; he

purchased stock in corporations apt to appear before his court; he sat on cases involving customers of a corporation in which he was a major stockholder and for which he served as a director and vice president. Moreover, he failed to comply with Federal law in administering a profit-sharing trust, and he displayed a lack of candor in testimony before our committee.

This is not acceptable conduct for a nominee to the Supreme Court.

The Supreme Court is the final determinant of the standard of judicial conduct not only for itself but also for every court in the land. The Court requires men sensitive to the many ethical problems which often arise. I reluctantly suggest that the Senate must await such a nominee before exercising its power to consent.

Mr. President, I ask unanimous consent to have printed in the RECORD a statement which was given to the Committee on the Judiciary by Judge Haynsworth before the committee but which, for some reason or other, was not included in the record of the hearings.

It is a statement presented formally to the committee on the opening day of the hearings explaining the judge's business associations. Although the statement has been referred to widely in the hearings and elsewhere, it has never been made a part of the RECORD and I would like to do so at this time.

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

STATEMENT OF THE HONORABLE CLEMENT F. HAYNSWORTH, JR. BEFORE THE SENATE JUDICIARY COMMITTEE

At the request of Senator James O. Eastland, Chairman of the Senate Judiciary Committee, I am happy to submit the following statement regarding my participation in the decision of the Court of Appeals for the Fourth Circuit in the case of *Darlington Manufacturing Company* v. *NLRB*, 325 F. 2d 682. That case was orally argued before our Court on June 13, 1963, and was decided on November 15, 1963. Shortly thereafter the attorney for the Textile Workers Union of America, one of the litigants, wrote a letter to Judge Sobeloff, who was then Chief Judge of the Court. The letter charged, on the basis of information anonymously furnished to the writer, that Deering-Milliken, Inc., one of the prevailing parties in that litigation, had immediately before the decision in that case deliberately conferred benefits upon Carolina Vend-A-Matic Company, a corporation in which I had an interest. This charge was fully investigated under the direction of Chief Judge Sobeloff, and was determined to the apparent satisfaction of all concerned to be totally without foundation. However, recently the charge has been revived in a somewhat different form; it has been suggested that I ought to have disqualified myself from participation in the Darlington Manufacturing Company case, because Deering-Milliken was a party to that case and because Carolina Vend-A-Matic at the time had business dealings with Deering-Milliken. The other members of my Court, when they recorded their approval of my sitting, were fully informed of all of the facts including my stock interest in Carolina Vend-A-Matic, but I welcome this opportunity to submit a full statement as to the factual background of the matter, in order that this Committee and the Senate as a whole may judge for themselves.

I became a judge of the Court of Appeals in 1957. Seven years previously, I had joined with several of my partners in the practice of law and a businessman in my hometown of Greenville, South Carolina, in incorporating Carolina Vend-A-Matic Company. The initial stock was subscribed for on April 5, 1950 and paid for. The first stock certificates were issued on June 15, 1950. Some of the initial subscribers soon dropped out, and after resulting stock adjustments and until the first part of 1957, each of the five principal stockholders—of whom I was one—owned 24 shares, for which he had paid $2,400. William Mullins, who was the General Manager of the company and in active charge of its business, owned one share. In addition, I made a capital contribution to the corporation of $600 during this period.

During the period from 1950 to 1957, the business of the company grew—slowly, at first, but then at an accelerating pace. Capital requirements for its expansion exceeded the comparatively small amount of money that had been paid in by its stockholders, and were therefore financed principally by bank loans. During this time such loans were obtainable only upon the personal endorsement of each individual stockholder. The company's accelerating growth produced a steady rise in the total amount of outstanding bank loans, and two of the original stockholders became disturbed about their individual exposure to financial loss by reason of their endorsements. In 1957, these two stockholders sold their stock to other parties, and in order that all shareholders should be on an equal basis, the three principal original stockholders each sold to the new stockholders four of their original shares for a price of $1,250 per share. As a result of this transaction, each of the six principal stockholders was then the owner of 20 shares of stock.

In 1958, Carolina Vend-A-Matic employed a new General Manager, and in 1960 the six principal stockholders each sold him sufficient of their stock so that, with stock he purchased directly from the corporation, he was on an equal basis with them. At this time, there were seven principal shareholders, each owning 18 shares, and one shareholder who owned one share.

In 1952, Carolina Vend-A-Matic placed two coffee machines in Gayley Mill at Marietta, South Carolina, which was either owned by or affiliated with *Deering-Milliken*. Other food and beverages at this plant were dispensed through a canteen operated in the plant on a part-time basis by a storekeeper until 1958, when Carolina Vend-A-Matic was requested to provide vending service. It then placed in the Gayley Mill Plant six machines to dispense coffee, cold drinks, candy, cigarettes, hot soups, and sandwiches.

Prior to 1958, Carolina Vend-A-Matic had coffee machines in Judson Mills, a relatively large plant owned by or affiliated with Deering-Milliken. At that time, foods and tobaccos were dispensed from "dope wagons" operated by a Mr. Spearman, who had been conducting that operation in Judson Mills for many years. In 1958, the management of Judson Mills decided to go to a full vending service and invited proposals from Carolina Vend-A-Matic and Mr. Spearman. Judson Mills awarded the business to Mr. Spearman, whose operation in its plant was his livelihood, and Carolina Vend-A-Matic's coffee machines were removed from the plant.

In 1958, Carolina Vend-A-Matic placed one coffee machine and one candy machine in a plant operating under the name of Jonesville Products, in Jonesville, South Carolina, which was either owned by or affiliated with Deering-Milliken. Approximately 50 people were employed in this very small plant.

In 1963, Deering-Milliken constructed a new plant known as Magnolia Finishing Plant near Blacksburg, South Carolina. The purchasing agent for Deering Milliken Service Corporation invited bids from eight established companies in the vending business and received eight proposals, among which was that of Carolina Vend-A-Matic. After an appraisal of the proposals, Magnolia awarded the business to Carolina Vend-A-Matic. Presumably this determination was influenced by the ten per cent commissions which Carolina Vend-A-Matic had proposed to pay to the plant, by the fact that Carolina Vend-A-Matic had a service installation in Gaffney, South Carolina, which was quite nearby, by the fact that it prepared its own food in its own commissaries, and by the quality of its service as demonstrated at Gayley Mill. The award of this contract to Carolina Vend-A-Matic was made upon certain conditions, relating to the furnishing of facilities, and Carolina Vend-A-Matic complied with these conditions.

In June 1963, Carolina Vend-A-Matic was invited to make a proposal for full vending service in the Laurens Mills, a larger plant owned by or affiliated with Deering-Milliken. Personnel of the Laurens Mills complimented the Carolina Vend-A-Matic proposal, but in late August or early September 1963 awarded the contract in question to a Mr. Jones, who for many years had been operating "dope wagons" in the plant.

In November 1963, the plant manager of Drayton Mill, an affiliate of Deering-Milliken, invited proposals for full vending service. At the time Automatic Food Service of Spartanburg, South Carolina, was dispensing coffee in the plant from vending machines while other food services were being supplied from "dope wagons". In inviting the proposals, management suggested employment of two people who had been engaged in the operation of the "dope wagons". Carolina Vend-A-Matic submitted such a proposal, but was notified on November 16, 1963, that the contract had been awarded to Automatic Food Services of Spartanburg which had the prior experience in operation of coffee machines in that plant.

By the end of 1963, therefore, Carolina Vend-A-Matic had placed vending machines in three of the plants affiliated with Deering-Milliken, one of which had been placed initially in 1952 and supplemented in 1958, one of which had been placed in 1958, and one of which had been placed in 1963. Earlier, it had coffee-vending machines in another larger part, but had been required to remove them in 1958. While in 1963 it sought to obtain locations in two larger Deering-Milliken plants on the basis of competitive bidding, it failed to obtain either.

The facts developed as a result of the inquiry conducted by Judge Sobeloff indicate that the approximate projected annual gross sales made by the Carolina Vend-A-Matic machines inetalled in the three Deering-Milliken plants for 1963 were slightly more than $100,000. The total gross income from sales realized by Carolina Vend-A-Matic during that year was $3,155,102. Sales through Deering-Milliken affiliated plants thus represented slightly more than three per cent of Carolina Vend-A-Matic's gross sales. The number of Deering-Milliken employees served by Carolina Vend-A-Matic installations was slightly less than 700, out of a total stated to be more than 19,000 in Judge Bell's dissenting opinion in the *Darlington* case.

In 1957, when I was appointed to the Court of Appeals, I promptly resigned from the directorships I held in all corporations except two: Carolina Vend-A-Matic Company and Main-Oak Company. The latter is a corporation the shares of which are owned by members of three families, and which owns fee title to two commercial properties in Greenville. At that time I refrained from resigning my directorships in these two corporations, since to the best of my knowledge the names of their directors and officers were not publicized in any way. Both were small, closely held corporations whose shareholders consisted largely of persons who were either friends or relatives of mine. Thus it was unlikely, I felt, that my continuing as a director could possibly influence anyone.

Not only were the names of the directors of Carolina Vend-A-Matic not a matter of public knowledge, but the reports submitted

to Chief Judge Sobeloff indicated that none of the individuals in Deering-Milliken affiliated plants with whom Carolina Vend-A-Matic dealt, or who had in any way influenced the decisions as to whether a concession would or would not be awarded to Carolina Vend-A-Matic, had ever heard anything of my connection with Carolina Vend-A-Matic. Indeed, at least one had never heard of me at all.

I continued to hold stock in both Carolina Vend-A-Matic and Main-Oak after 1957. I presently own thirty out of 5,000 issued and outstanding shares of Main-Oak Corporation, whose income consists entirely of income from long-term leases on the commercial properties which it owns. I was a stockholder in Carolina Vend-A-Matic from its inception until the spring of 1964. At no time, however, did I play any active part in Carolina Vend-A-Matic's site locations. The information regarding site locations contained in the preceding part of this statement was largely unfamiliar to me until the matter was investigated following the decision in the *Darlington* case.

I took no active part in the conduct of any of Carolina Vend-A-Matic's business except that, until 1957, I assisted it in obtaining financing, and exerted some restraint in an effort to see that the amount of its indebtedness guaranteed by its stockholders did not reach proportions which I thought intolerable.

From the time of its organization, each of the principal stockholders of Carolina Vend-A-Matic held some titular office, and I was one of several vice presidents. I never performed any function in that capacity, unless what I did in connection with the bank loans could be regarded as appropriate to the office of a vice president. For at least two years, my wife served as secretary of the corporation, giving way at the end of that period to the wife of another director. Her activities as secretary were confined to routine office procedure.

It is my belief that I had resigned as vice president of Carolina Vend-A-Matic at the time I took office as a judge of the Court of Appeals in 1957. Other directors recall my informal submission of my resignation as Vice President at that time. However, a check of the company's minute book within the last few days indicates that on that record, at least, I was carried as a vice president until 1964.

In the fall of 1963 the Judicial Conference of the United States, moved by reports that some judges were serving as directors of corporations whose roster of directors was a matter of public information, adopted a resolution expressing the opinion that no judge should serve as an officer or director of any business corporation organized for profit. Promptly after the adoption of this resolution, I resigned as director of both Carolina Vend-A-Matic and of Main-Oak Corporation on October 15, 1963. If on that date I had had the slightest inkling that I was shown in the minute book of Carolina Vend-A-Matic as a vice president, I would of course have resigned that office at the same time.

Notwithstanding the fact that the particular anonymous accusation made in 1963 had proven untrue, I was naturally disturbed by the incident and determined to take steps to avoid questions, however, unfounded, of the propriety of my conduct in the future. Feeling as I did, and as I believe most judges who have considered the matter do, that a judge is every bit as obligated to sit in a case in which he is not disqualified by statute or by the Canons of Ethics as he is to disqualify himself where required to do so by these standards, an extremely broad interpretation of the standards for disqualification offered no satisfactory solution. By then it was clear that Deering-Milliken knew of my interest in Carolina Vend-A-Matic, and if they knew, other employers might be informed by them. While I had earlier resigned as a director of the corporation, I had retained a 1/7 stock interest which was too substantial to be treated as negligible. Feeling that it would be unfair to the remaining stockholders of Carolina Vend-A-Matic to insist that it forego future opportunities for further expansion into new locations, I offered to sell my stock to them.

Carolina had received a number of overtures for discussions about merger possibilities. My wish to sell my stock led to discussion with two companies which had grown to national proportions, the stock of each of which was listed on the New York Stock Exchange. Proposals were submitted by both of those concerns, Automatic Retailers of America and Servomation. On the basis of earnings and net worth, the two proposals were reasonably comparable, but the stock of Automatic Retailers of America was selling at a far higher ratio to earnings and net worth than was the stock of Servomation. Because the market value of the Automatic Retailers stock was so much greater than that of Servomation, the stockholders agreed to exchange all of the stock of Carolina Vend-A-Matic for stock of Automatic Retailers of America.

Automatic Retailers of America did not wish to acquire certain assets owned by Carolina Vend-A-Matic. Prior to the stock exchange, therefore, certain real estate and other assets were removed from the corporation's assets by the payment of a dividend in kind, and the stockholders received them as tenants in common.

In connection with the stock exchange, Automatic Retailers requested and obtained from the Securities and Exchange Commission permission for me immediately to sell the Automatic Retailers stock I would receive. As soon as the stock exchange was effected and I had received stock certificates which I could deliver, I sold the 14,173 shares of Automatic Retailers of America I had received in exchange for my eighteen shares of Carolina Vend-A-Matic. The gross sales price for the Automatic Retailers stock was $455,307.63, from which commissions, stamps, and other costs aggregating $17,597.47 were deducted, so that the net sales price was $437,710.16.

Mr. BAYH. Mr. President, I also ask unanimous consent to have other material printed in the RECORD.

Judge Haynsworth's stock and real estate holdings have also been made available and referred to widely. For the consideration of the Members of the Senate I offer these lists received by me as a member of the Judiciary Committee which were made public at various times during the hearings.

I realize the records are voluminous but I suggest that my colleagues attempt to correlate the lists, one with another. These lists are described as complete lists. No two lists correspond with each other. All were prepared by the Justice Department and forwarded to the committee as complete documents.

In order to analyze the transactions, I have had prepared a summary of the purchases and sales of Judge Haynsworth from April 17, 1964, when he sold his largest holding to date. This summary many be helpful to many in reviewing the very active dealings of Judge Haynsworth.

Finally there are summaries of real estate transactions of the judge and of the Carolina Vend-A-Matic Co. Again these transactions have been widely discussed and reported but do not appear in the RECORD.

All of these documents were supplied to me with the exception of the stock transaction summary which I prepared. As I previously suggested, there are a a number of discrepancies between the lists. Stocks are shown as held, not sold and no longer held.

I point this out to demonstrate some of the difficult problems faced in trying to carefully examine the judge's record. When these separate lists are supplied, each purporting to be a complete record and each different from the other, it is difficult to examine the pertinent case material, and one can never be sure of the facts because of the variances between the lists.

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

Investments owned by Clement Furman Haynsworth, Jr., September 1969

[Number of shares of stock]

Allied Chemical Corp	108
American General Insurance Co	201
Brunswick Corp	1,000
Burlington Industries, Inc	400
Business Development Corporation of South Carolina	10
Chrysler Corp	119
Cole Drug Co., Inc	600
Computer Servicenters, Inc	500
Dan River Mills	1,575
Fairchild Camera & Instrument Corp	100
Georgia-Pacific Corp	5,238
Government Employees Financial Corp	106
Government Employees Life Insurance Co	110
W. R. Grace & Co	300
Greenville Memorial Gardens	72
G & W Land & Development Corp	18
Gulf & Western Industries	346
Insurance Securities Inc	100
International Telephone & Telegraph Corp	200
The Investment Life & Trust Co	321
Ivest Fund, Inc	809.925
Jefferson-Pilot Corp	250
Leverage Fund of Boston, Inc. (capital)	350
The Liberty Corp. (common)	9,523
The Liberty Corp. (voting preferred stock 40 cents convertible series)	337
Main-Oak Corp	31
Monsanto Chemical Co	219
MGIC Investment Corp	630
Multimedia, Inc. (common)	11,728
Multimedia, Inc. (5 percent convertible cumulative preferred stock)	2,932
Mutual Savings Life Insurance Co	240
Nationwide Corp	500
Nationwide Life Insurance Co	20
Owens-Corning Fiberglas Corp	100
Peoples National Bank	330
Piedmont Natural Gas Co., Inc	60
The Rank Organisation Ltd	500
Scope Inc	120
Sonoco Products Co	284
South Carolina National Bank	768
Southern Weaving Co	287
Sperry Rand Corp	400
J. P. Stevens & Co	550
Synalloy Corp	52
Tenneco Inc	200
United Nuclear Corp	104

DEBENTURES

Company:	
Government Employees Financial Corp. (Convertible Subordinated 5½ percent)	$350
Government Employees Financial Corp. (Convertible Subordinated 5¼ percent)	550
W. R. Grace & Co. (Subordinate debenture 4¼ percent)	1,700

Investments owned by Clement Furman Haynsworth, Jr., September 1969—Con.

[Number of shares of stock]

BONDS

Company:	*Amount*
Calhoun-Charleston, Tenn., Utility district	$4,000
Clemson, S.C., general obligation sewer	5,000
Greenville County, S.C., Hospital	5,000
Piedmont Park F/D Gv. Co	20,000
Greater Greenville sewer district	4,000
Town of Williston, S.C.	4,000
Pickens, S.C., Waterworks System, improvement revenue	4,000
Greenville Waterworks System	10,000

LIST OF SECURITIES OWNED BY CLEMENT F. HAYNSWORTH, JR., JANUARY 1, 1957, TO DATE

Allied Chemical Corp.
American General Insurance Co.
Automotive Retailers of America.
Aztec Oil.
Bailey-Selburn, Ltd.
Broadcasting Co. of the South.
Brunswick Corp.
Burlington Industries, Inc.
Business Development Corp. of South Carolina.
Calhoun-Charleston Tennessee Utility District.
Carolina Capital Corp.
Carolina Natural Gas Corp.
Carolina Vend-A-Matic.
Carpenter Steel.
Central Bank & Trust.
Chrysler Corp.
Clemson, S.C., general obligation sewer.
Cole Drug Co., Inc.
Commerce Bank of North America.
Commonwealth Life Insurance Co. of Kentucky.
Communications Satellite Corp.
Computer Servicenters, Inc.
Consolidated Oil & Gas, Inc.
Cosmos Broadcasting Corp.
Criteron Insurance.
Dan River Mills.
Fairchild Camera and Instrument Corp.
Ford Motor Corp.
Georgia-Pacific Corp.
Government Employees Financial Corp.
Government Employees Life Insurance Co.
Grace, W. R. & Co.
Greater Greenville Sewer District.
Greenville Community Hotel Corp.
Greenville County, S.C., Hospital.
Greenville Hotel Co.
Greenville Memorial Gardens.
Greenville Waterworks System.
Gulf & Western Industries.
G & W Land and Development Corp.
Hollyridge Development Corp.
Insurance Securities, Inc.
International Tel. & Tel. Corp.
Invest Fund, Inc.
The Investment Life and Trust Co.
Jefferson-Pilot Corp.
Leverage Fund of Boston, Inc.
The Liberty Corp.
Liberty Life Insurance Co.
Main-Oak Corp.
Martel Mills Corp.
Maryland Casualty Co.
MGIC Investment Corp.
Monsanto Chemical Co.
Multimedia, Inc.
Mutual Savings Life Ins. Co.
Nationwide Corp.
Nationwide Life Insurance Co.
North Star Oil Corp.
Owens-Corning Fiberglas Corp.
Peoples National Bank.
Pickens, S.C., Waterworks System Improvement Revenue.
Piedmont Natural Gas Co., Inc.
Piedmont Park F/D Gv. Co.
The Rank Organization Ltd.
Richmond Newspapers, Inc.
Sabre-Pinon Corp.
Scope Inc.
Sonoco Products Co.
South Carolina National Bank.
Southeastern Broadcasting.
Southern Weaving Co.
Sperry Rand Corp.
Spur Oil.
Stevens, J. P. & Co.
Supervised Investors Service, Inc.
Surety Investment.
Synalloy Corp.
Tekoil.
Television Shares Management Corp.
Tenneco, Inc.
Texize Chemical.
Town of Williston, S.C.
Union Texas Natural Gas.
United Nuclear Corp.
United States Pipe & Foundry Co.
Valfour Corp.
The Warner Bros. Co.
White Staf Manufact. Co.
WMRC, Inc.
Woodside Mills.
Guaranty Ins. Trust (merged into MGIC Invest. Corp.).
Federal Intermediate Credit Bank Debentures.

[Memorandum]

LIST OF SECURITIES OWNED BY CLEMENT F. HAYNSWORTH, JR., FROM JANUARY 1, 1957, TO DATE

As previously supplied to you, a company by the name of Communications Satellite Corporation was listed as a stock owned by Judge Haynsworth. Subsequent checking indicates that Judge Haynsworth never purchased this particular stock and that the broker in question made an error in listing this particular stock as being sold to him. This error was not discovered until the new chronological list was prepared.

Stocks owned by Clement F. Haynsworth, Jr., beginning Apr. 1, 1957, subsequent purchases, sales, stock dividends, etc., through Oct. 1, 1969

STOCK SHARES AS OF APR. 1, 1957

Carolina Natural Gas Corp	75
Carolina Vend-A-Matic Co	24
Ford Motor Co	25
Martel Mills Corp., now Valfour Corp	125
Woodside Mills	350
Chrysler Corp	14
Cup O'Life Corp	100
Georgia Pacific Plywood Co., now Georgia-Pacific Corp	239
W. R. Grace & Co	100
Liberty Life Insurance Co., now The Liberty Corp	116
Greenville Hotel Co., now Main-Oak Corp	3.1
Monsanto Chemical Co	157
The Peoples National Bank	50
Sonoco Products Co	110
The South Carolina National Bank	144
The First National Bank	60
Southern Weaving Co	14
J. P. Stevens & Co., Inc	741
United Nuclear Corp., formerly Sabre-Pinon Corp., formerly Sabre Uranium Corp	50
Owens-Corning Fiberglas Corp	20
Tekoil Corp	100
WMRC, Inc., now Multimedia	990
Buckhorn Sanctuary	1
Greenville Country Club	1

APRIL 1, 1957 TO DECEMBER 31, 1957

Sales:

Martel Mills (partial liquidating dividend)	$4,375.00
Ford Motor Co. (25 shares)	922.90
Carolina Vend-A-Matic (4 shares)	5,000.00
Buckhorn Sanctuary (1 share)	1,289.01
Peoples National Bank (10 shares)	460.00
Georgia-Pacific Corp. (15/50 shares)	8.15
Carolina Natural Gas Corp. (18 shares)	36.00
Sonoco Products Co. (7 shares)	180.25
Georgia-Pacific Corp. (10/50 shares)	7.28
Georgia-Pacific Corp. (5/50 shares)	2.84
Hollyridge Development Co	3,000.00
Hollyridge Development Co	500.00

APRIL 1, 1957 TO DECEMBER 31, 1957

Stock dividends

Georgia-Pacific Corp., 35/50 shares.
Georgia-Pacific Corp., 4 & 40/50 shares.
Georgia-Pacific Corp., 4 & 45/50 shares.
Georgia-Pacific Corp., 5 shares.
Liberty Life Insurance Co., 58 shares.
Monsanto Chemical Co., 3 shares.
Westwater Corp. later North Star Oil Corp., 50 shares.
(Board of Directors of Sabre-Pinon voted tbeir shareholders of record 9–27–57 a share for share distribution of Westwater stock).

Stock exchanges and gifts

The South Carolina National Bank received for 60 shares 1st Natl. Bank stock on basis of 1.3 shares of SCNB for each share of 1st NB, 78 shares.

Liberty Life Insurance Company—Christmas present—Mother, 137 shares. *This stock was given to me by my Mother.*

1958

Sales:

Hollyridge Development Co. (3% bentures)	$2,902.50
Greenville Country Club (certificate)	500.00
Valfour Corp. (Martel Mills) (Liquidating dividend)	3,484.38

Payable in part by $3125 face amount Burlington Industries, Inc. 5.4% subordinated debentures).

Purchases:

Hollyridge Development Co. (balance on subscription)	$1,000.00
Monsanto Chemical Co. (86/100 shares)	30.01
Georgia-Pacific Corp. (45/50 shares)	29.57
Georgia-Pacific Corp. (39/50 shares)	29.06
Georgia-Pacific Corp. (33/50 shares)	29.63
Georgia-Pacific Corp. (27/50 shares)	26.60

Stock dividends

Monsanto Chemical Co., 1 & 14/100 shares.
Georgia-Pacific Corp., 5 shares.
Georgia-Pacific Corp., 5/50 shares.
Georgia-Pacific Corp., 5 & 11/50 shares.
Georgia-Pacific Corp., 5 & 17/50 shares.
Georgia-Pacific Corp., 5 & 23/50 shares.

Stock Splits

Southern Weaving Company, 56 shares (Par value of stock changed to $10 share. New stock certificates issued which would give stockholders 5 shares of $10 par value stock for each share of no par value stock formerly held.)

1959

Conversion and/or sales

Burlington debentures (face amt. $3125) sent in for conversion into common stock of Burlington Industries, Inc. 12–22–59.

156 shares common stock Burlington Industries + check for $5.78 rec'd. 12–28–59 and is shown on 1960 income tax ret.

Valfour Corp. (Martel Mills) liquidating dividend, $625.

Purchases:

Georgia-Pacific Corp. (21/50 share)	$28.57
Georgia-Pacific Corp. (3/4 share)	34.27
Georgia-Pacific Corp. (43/100 share)	21.47
The South Carolina National Bank (23 shares and 8/10 right)	1,158.00

Stocks owned by Clement F. Haynsworth, Jr., beginning Apr. 1, 1957, subsequent purchases, sales, stock dividends, etc., through Oct. 1, 1969—Continued

1959

Purchases—Continued

White Stag Mfg. Co (now part The Warner Brothers Co. 107½ Cum. Conv. Sink. Fund P/d) (100 shares)	1,600.00
Business Development Corp. of South Carolina (10 shares)	100.00
Greenville Memorial Gardens (72 shares)	4,000.00
The Investment Life and Trust Co. (200 shares)	800.00
Voting stock Liberty Life Insurance Co. (1/6 share)	3.08
Nonvoting stock Liberty Life Insurance Co. (1/6 share)	3.08

CHANGE IN PAR VALUE

Georgia-Pacific Corp. (dividend), 5 & 29/50 shares.

Georgia-Pacific Corp. (dividend), 3 & 57/100 shares.

Georgia-Pacific Corp. issued to take care of par value change from $1 to 80¢, 71 & 1/4 shares.

W. R. Grace & Co. (dividend), 2 shares.

Liberty Life Insurance Co. (nonvoting stock). All old certificates, 1,296 shares.

Liberty Life Insurance Co. (voting stock), sent in with checks for $6.16 for effectuation of this change, 1,296 shares.

Monsanto Chemical Co. (dividend), 3 & 22/100 shares.

The Peoples National Bank (dividend), 15 shares.

Sonoco Products Co. (dividend), 11 & 7/10 shares.

The South Carolina National Bank (change of par value from $10 to $5 par share), 245 shares.

Gifts (donor)

J. P. Stevens & Co., Inc. to Christ Church (given to broker on Sept 17, 1959 for transfer to Christ Church), 141 shares.

1960

Sales:

Valfour Corp. (Martel Mills liquidating dividend)	$1,388.75
Sabre-Pinon Corp. (½ share received as part of a 5-percent stock dividend)	2.88
Carolina Vend-A-Matic Co. (2 shares)	2,500.00

Purchases:

Sonoco Products Co. (3/10 share)	$9.30
Monsanto Chemical Co. (78/100 share)	42.78
W. R. Grace & Co. (96/100 share)	38.02
Georgia-Pacific Corp. (39/100 shares)	975.00
Georgia-Pacific Corp. (35/100 share)	19.73
Georgia-Pacific Corp. (31/100 share)	14.60
Texize Chemicals, Inc. (100 shares)	$975.00
Monsanto Chemical Co. (70/100 share)	31.46
Georgia-Pacific (43/100 share)	21.47

Stock dividends

Monsanto Chemical Co. (3 and 30/100 shares).

W. R. Grace & Co. (2 and 4/100 shares).

Georgia-Pacific Corp. (3 and 61/100 shares).

Georgia-Pacific Corp. (3 and 65/100 shares).

Georgia-Pacific Corp. (3 and 69/100 shares).

Georgia-Pacific Corp. (3 and 73/100 shares).

The Peoples National Bank (25 shares).

Sabre-Pinon Corp. (2 shares) (fractional share sold) (Now United Nuclear).

Gifts (donor)

Furman University was given 333 shares Liberty Life Insurance Co. nonvoting stock on May 11, 1960.

1961

Sales of fractional shares:

Sabre-Pinon Corp. (now United Nuclear) 6/10 share	$3.83
W. R. Grace & Co. 10/100 share	5.82
Liberty Life Insurance Co.—(2/10 V and 6/10 NV)	25.21
Sale of Rights, Criterion Insurance (15)	31.30

Purchases:

Monsanto Chem. Corp., January 3, 1961 (71/100 shs.)	$31.46
Television Shares Management Corp. (Later became Supervised Investors Service, Inc. (100 shs.)	1,475.00
Government Employees Life Insurance Co. (15 shs.)	1,402.50
Government Employees Life Insurance Co. (1/2 sh.)	52.50
Class B Union Texas Natural Gas Corp. (Merged into Allied Chemical) (100 shs.)	2,775.00
Georgia-Pacific Corporation (27/100 sh.)	14.73
Georgia-Pacific Corporation (23/100 sh.)	16.37
Georgia-Pacific Corporation (19/100 sh.)	12.70
Georgia-Pacific Corporation (15/100 sh.)	8.68

Gifts (donor)

On December 20, 1961 gave Furman University 150 NV Liberty Life Insuarnce Co. shs.

Stock dividends

Georgia-Pacific Corp. shares (3 and 77/100).

Georgia-Pacific Corp. shares (3 and 81/100).

Georgia-Pacific Corp. shares (3 and 85/100).

Georgia-Pacific Corp. shares (3 and 89/100).

Government Employees Life Insurance Co. (7½ shares).

W. R. Grace & Co. (2 shares).

Liberty Life Insurance Co. V stock (259 shares).

Liberty Life Insurance Co. NV stock (192 shares).

Monsanto Chemical Co. (3 and 38/100 shares).

Sabre-Pinon Corp. (Now United Nuclear) (2 shares).

Gifts (receipt)

Liberty Life Insurance Co., Christmas present from Mother, 200 shares V.

Sales:

Dan River Mills (½ share), $4.89.

Purchases:

Monsanto Chemical Co. (62/100 share)	$31.91
Georgia-Pacific Corp. (11/100 share)	5.75
Georgia-Pacific Corp. (7/100 share)	3.60
Georgia-Pacific Corp. (3/100 share)	1.06
Georgia-Pacific Corp. 99/100 share)	37.50
Georgia-Pacific Corp. (94/100 share)	35.13
Allied Chemical Corp (4/8 share)	25.36
W. R. Grace & Co. (86/100 share)	71.68
Governmental Employees Financial Corp. $15, 7 rts. 4.81 (2 shares)	19.81
Carolinas Capital Corp. (Liquidated 1967) (200 shares)	2,000.00

Stock dividends, exchanges, stock splits

Allied Chemical Corp. acquired by merger with Union Texas Natural Gas—Basis: ⅛ths share Allied Chemical for each share Union Texas, 88 shares.

Dan River Mills were obtained in exchange for 350 shares Woodside, 1,312 shares.

Georgia-Pacific Corp. (dividend), 3 & 93/100 shares.

Georgia-Pacific Corp. (dividend), 3 & 97/100 shares.

Georgia-Pacific Corp. (dividend), 4 & 1/100 shares.

Georgia-Pacific Corp. (dividend), 4 & 6/100 shares.

W. R. Grace & Co. (dividend), 2 & 14/100 shares.

Monsanto Chemical Co. (dividend), 3 & 46/100 shares.

The South Carolina National Bank (dividend), 49 shares.

J. P. Stevens & Co., Inc. (dividend), 60 shares.

Consolidated Oil & Gas, Inc. were obtained by the surrender of 100 shares of Tekoil Corp., 40 shares.

W. R. Grace & Co. (two for one stock split), 110 shares.

Gifts (receipt)

Liberty Life Insurance Co., Christmas present from Mother, 100 shares

Gifts (donor)

J. P. Stevens & Co., Inc., given Furman University, 200 shares.

1963

Sales: Consolidated Oil & Gas rights	$0.40

Purchases:

Aztec Oil & Gas (500 shares)	10,187.50
Mutual Savings Life Insurance Co. (200 shares)	2,725.00
Liberty Life Insurance Co. (3 NV & 1 V.) (4 shares)	160.00
Monsanto Chemical (54/100 share)	26.95
Monsanto Chemical (46/100 share	25.76
Georgia Pacific Corp. (89/100 share)	41.83
Georgia Pacific Corp. (84/100 share)	44.10
Georgia Pacific Corp. (79/100 share)	39.50
Georgia Pacific Corp. (74/100 share)	39.87
W. R. Grace & Co. (60/100 share)	24.03

Stock dividends

W. R. Grace & Co. (dividend), 4 & 40/100 shares.

Chrysler Corporation (2 for 1 stock split), 14 shares.

Chrysler Corporation (2 for 1 stock split), 28 shares.

Georgia-Pacific Corp. (dividend), 4 & 11/100 shares.

Georgia-Pacific Corp. (dividend), 4 & 16/100 shares.

Georgia-Pacific Corp. (dividend), 4 & 21/100 shares.

Georgia-Pacific Corp. (dividend), 4 & 26/100 shares.

Government Employees Life Insurance Co. (100% stock dividend), 23 shares.

The Investment Life and Trust Co. (10% stock dividend), 10 shares.

Liberty Life Insurance Co. (V, 25% stock dividend), 464 shares.

Liberty Life Insurance (NV, 25% stock dividend), 252 shares.

Monsanto Chemical Co. (stock dividend), 3 & 54/100 shares.

Sonoco Products Co. (stock dividend), 12 & 9/10 shares.

The South Carolina National Bank (stock dividend), 32 shares.

White Stag Manufacturing Co. (50% stock dividend—later merged into the Warner Brothers Co.), 50 shares.

Gifts (receiver)

Liberty Life Insurance Co. V stock given to me by my Mother, 704 shares.

	Number of shares or face amount of bonds	Dollars
1964		
SALES		
Consolidated Oil & Gas, Inc.	40	$118.55.
North Star Oil Corporation	50	$11.46.
Supervised Investors Services, Inc. (Formerly Television Shares Management Corp.)	100	$611.51.
U.S. Treasury bills	$40,000	$39,067.22.
Do	5,000	$4,887.50.
Do	5,000	$4,893.01.
Do	30,000	$29,385.19.
Do	7,000	$6,862.10.
Do	20,000	$19,611.27.
Do	50,000	$49,178.47.
Do	81,000	$79,760.09.
Do	21,000	$20,740.16.
Do	11,000	$10,989.00.
Automatic Retailers of America (exchanged for Carolina Vend-A-Matic)	14,173	$455,307.63.
Investment Life & Trust ½ share.	2.65	
Broadcasting Co. of South fractional share.	12.63	
PURCHASES		
Federal Int. Credit Bonds	130,000	$130,025.00.
U.S. Treasury	270,000	$262,948.55.
Do	130,000	$129,875.72.
Piedmont Park F/D	20,000	$20,387.61.
Liberty Life Insurance Co. (now The Liberty Corp.)	185	$6,521.25.
J. P. Stevens & Co., Inc	40	$1,499.80.
Monsanto Chemical Corp	19	$1,453.85.
Government Employees Life Insurance Co.	54	$3,510.00.
Government Employees Financial	98	$2,989.00.
Carolina Natural Gas	407	$2,856.54.
Allied Chemical Corp	12	$674.63.
United Nuclear Corp	46	$1,183.92.
W. R. Grace & Co	70	$3,851.08.
Dan River Mills, Inc	188	$3,464.69.
Chrysler Corp	44	$2,277.00.
Burlington Industries, Inc	44	$2,071.46.
The South Carolina National Bank	29	$1,595.00.
Texize Chemical, Inc	400	$1,800.00.
Owens-Corning Fiberglas Corp	80	$5,782.74.
Surety Investment Co. (now part of The Liberty Corp.)	102	$5,712.00.
Surety Investment Co. (now part The Liberty Corp.)	112	$6,272.00.
Insurance Securities, Inc	100	$2,556.63.
Do	500	$12,783.15.
Do	400	$10,276.76.
Surety Investment Co. (now part The Liberty Corp.)	165	$9,240.00.
Greater Greenville Sewer District Bonds.	4,000	$3,630.96.
Nationwide Corp., class A	500	$7,375.00.
Southeastern Broadcasting Co. (formerly WMRC, Inc. now part of Multimedia Corp.).	300	$9,200.00.
Insurance Securities	1,000	$28,229.52.
Town of Williston SC Waterworks & Sewer Bonds.	20,000	$20,420.36.
Broadcasting Co. of the South (now part of The Liberty Corp.).	105	$5,250.00.
Georgia Pacific Corp	1,200	$69,374.37.
Broadcasting Co. of the South, now Liberty Corp.	120	$6,000.00.
Guaranty Insurance Trust (now part of MGIC).	3,000	$7,500.00.
Greenville Waterworks System Revenue Bonds.	10,000	$10,366.54.
Maryland Casualty Co. (Purchased in June—in August exchanged for 200 shares convertible preferred stock and 66⅔ shares common stock of American General Casualty Co.).	200	$12,690.64.
Georgia-Pacific Corp	69/100 shares	$38.12
Do	55/100 shares	$31.49.
Do	37/100 shares	$21.00.
W. R Grace & Co	1/2 share	$26.40.
Sonoco Products Co	1/10 share	$4.50.
STOCK DIVIDENDS: STOCK SPLITS		
Chrysler Corp	4 shares	4 percent stock dividend.
The Broadcasting Co. of the South (now part of The Liberty Corp., but for a time it was known as Cosmos Broadcasting Corp.).	56 shares	25 percent stock dividends.
Georgia-Pacific Corp. (shares)	4 and 31/100	Stock dividend.
Do	109	25 percent stock split.
Do	17 and 45/100	Stock Dividend.
Do	17 and 63/100	Do.
W. R. Grace & Co. (shares)	3 and 50/100	Do.
The Investment Life & Trust Co. (shares).	10	Do.
Main-Oak Corp. formerly Greenville Hotel Co. (shares) (Old certificate turned in).	31—2 for 1, 4 for 1	Stock split and stock dividend.
Monsanto Chemical Co. (shares)	4	Stock dividend.
Southeastern Broadcasting Corp., now part of Multimedia Inc. (shares).	990 shares	100 percent stock dividend.
The Peoples National Bank	50 shares	50 percent stock dividend.
J. P. Stevens & Co., Inc	50 shares	10 percent stock dividend.
Aztec Oil & Gas Co	30 shares	6 percent stock dividend.

	Number of shares or face amount of bonds	Dollars
1964		
SALE OF FRACTIONAL SHARES		
The Investment Life & Trust Co	½ share	$2.65.
Consolidated Oil & Gas, proceeds of ⅜ fractional warrant		$0.90.
Consolidated Oil & Gas, proceeds of 1 right		$0.21.
The Broadcasting Co. of the South, proceeds of fractional share of stock		$12.63.
GIFTS (RECEIVER)		
Liberty Life Insurance Co	531 shares	Gift from mother.
Do	100 shares	Gift from mother, Christmas.
1965		
SALES		
Aztec Oil & Gas Co	562 shares	$9,975.50.
PURCHASES		
Sperry Rand	400 shares	$9,067.50.
Cost of additional rights to buy W. R. Grace debentures below:		$3.94.
W. R. Grace & Co. 4¼ percent subordinate debenture.	$1,700	$1,700.00.
Monsanto Chemical Co	92/100 shares	$73.44.
Aztec Oil & Gas Co	20/100 shares	$3.75.
U.S. Treasury bills	$134,000	$133,110.80.
Texize Chemicals, Inc	1,300 shares	$6,984.25.
Do	400 shares	$2,199.52.
Do	300 shares	$1,573.89.
Southeastern Broadcasting Co. (now part of Multimedia, Inc.).	100 shares	$6,550.00.
Chrysler Corp	1 right and 15 shares	$720.75.
Georgia-Pacific Corp	19/100 share	$11.92.
Do	1/100 share	$0.64.
Do	88/100 share	$49.07.
Do	64/100 share	$38.88.
STOCK DIVIDENDS: STOCK SPLITS		
Allied Chemical Corp	2 shares	Stock dividend.
Burlington Industries, Inc	200 shares	Stock split.
Georgia-Pacific Corp	17.81 shares	Stock dividend.
Do	17.99 shares	Do.
Do	18.17 shares	Do.
Do	18.36 shares	Do.
Government Employees Life Insurance Co.	2 shares	Do.
The Investment Life & Trust Co	22 shares	Do.
Liberty Life Insurance Co., now the Liberty Corp.	510 shares	Do.
Monsanto Chemical Co	4.08 shares	Do.
Nationwide Life Insurance Co	10 shares	2 percent stock dividends or 1 share for each 50 owned of Nationwide Corp.
Sonoco Products Co	142 shares	Stock split.
The South Carolina National Bank	36 shares	Stock dividend.
Aztec Oil & Gas Co	31.80 shares	Do.
GIFTS (RECEIVER)		
Liberty Life Insurance Co	100 shares	Christmas present from mother.
1966		
SALES		
Insurance Securities	100 shares	$500.37.
The Investment Life & Trust Co.	20/100 share	$1.41.
PURCHASES		
Calhoun-Charleston Tennessee Utilities District bonds.	$4,000	$4,231.79.
Richmond Newspapers, Inc	200 shares	$4,400.00.
Insurance Securities, Inc.	100 shares	$726.63.
Allied Chemical Corp	96/100 share	$44.74.
Warner Bros. Co., formerly White Stag.	6/7 share.	$33.06.
Warner Brothers Company formerly White Stag, 107 1/7 shares received in exchange for 150 shares White Stag Mfg. Co.		
Cole Drug Co	300 shares	$4,050.00.
Government Employees Financial Corp. (7 $50 5½ percent convertible subordinated debentures)	$350	$350.00.
For the above debenture purchase it was necessary to purchase 7 rights for.		$1.35.
Monsanto Co.	82/100 share.	$32.85.
Georgia-Pacific Corp.	45/100 share	$28.74.
Do	½ share	$22.40.
Do	57/100 share	$22.80.
Do	33/100 share	$11.43.
STOCK DIVIDENDS: STOCK SPLITS—EXCHANGES		
Allied Chemical Corp	2.4 shares.	Stock dividend.
Dan River Mills	75 shares	Do.

	Number of shares or face amount of bonds	Dollars
1966		
STOCK DIVIDENDS: STOCK SPLITS—EXCHANGES—Continued		
Georgia-Pacific Corp	18.55 shares	Stock dividends.
Do	468 50 shares	5-for-4 stock split.
Do	23.43 shares	Stock dividend.
Do	23 67 shares	Do.
The Investment Life & Trust Co	24 shares	Do.
Monsanto Chemical Co	4.18 shares	Do.
Mutual Savings Life Insurance Co	40 shares	Do.
Nationwide Life Insurance Co. (or 1 share for each 50 owned of Nationwide Corp.)	10 shares	2 percent stock dividend.
The Peoples National Bank. (On Aug. 2, 1966, old certificates totaling 150 shares sent into bank—a stock certificate for 300 shares was then received in 2-for-1 split.)		
1967		
SALES		
Texize Chemicals, Inc	200 shares	$3,648 92.
Do	100 shares	$1 886 33.
Do	200 shares	$3 723 16
Do	100 shares	$1,799.71.
Do	400 shares	$7,396.84.
Richmond Newspapers, class A	200 shares	$3,488.12.
Warner Bros. conv. P/d	108 shares	$3,206.96.
Insurance Securities	400 shares	$2,447.00.
Do	1,500 shares	$8,990.55
Texize Chemicals, Inc	1,000 shares	$18,739 60.
Do	500 shares	$9,246 05.
Carolinas Capital Corp. liquid distribution: Received: $1,000 cash; 120 shares Scope, Inc., 40 shares Synalloy.	200 shares owned	
American General Insurance Co. conv. P/d.	200 shares	$6,777.74
PURCHASES		
Greenville County, S.C. Hospital bonds	$5,000	$4,907.99
Southeastern Broadcasting Co. (now part of Multimedia, Inc.)	66 shares	$5,313 00.
Rank Organisation, Ltd	500	$4,176 00.
International Telephone & Telegraph	100	$10,849.80
Fairchild Camera & Instrument Corp	100	$10,199.15.
Brunswick Corp	1,000	$16,230.00.
Allied Chemical Corp	90/100 share	$36.12.
Ivest Fund, Inc	728	$10,002.72.
Georgia-Pacific Corp	9/100 share	$4.21.
Leverage Fund of Boston, Inc	350 shares	$5,250.00.
Southern Weaving Co	200 shares	$5,400.00.
Liberty Life Insurance Co	.7879480 share	$14.77.
Government Employees Life Insurance Corp	94/100 share	$45.12.
Georgia-Pacific Corp	85/100 shares	$51 21
Gulf & Western	325 shares	$19,901.62.
Georgia-Pacific Corp	60/100 share	$36. 60.
Do	35/100 share	$19 86.
Monsanto Chemical Co	72/100 share	$30. 69
STOCK DIVIDENDS		
Allied Chemical Corp	2. 10 shares	
American General Insurance Co	134 shares, common	200 percent stock dividend.
Georgia-Pacific Corp	23. 91 shares	
Do	24. 15 shares	
Do	24. 40 shares	
Do	24. 65 shares	
Government Employees Financial Corp.	3 shares	
Government Employees Life Insurance Co.	3.06 shares	
The Investment Life & Trust Co	26 shares	
Ivest Fund, Inc	1.309 shares	Dividend.
Do	31. 406 shares	Capital gain.
Liberty Life Insurance Co	1211.2120520 shares	Stock dividend.
Monsanto Chemical Co	4.28 shares	Do.
Southeastern Broadcasting Corp., now Multimedia, Inc	586 shares	Do.
The South Carolina National Bank	63 shares	Do
Southern Weaving Co	17 shares	Do.
The Broadcasting Co. of the South later Cosmos Broadcasting and in 1969 became part of The Liberty Corp	56 shares	Do
Gulf & Western Industries	9.75 shares	Do.
GIFTS (RECEIVER)		
Liberty Life Insurance Co	100 shares	Christmas gift from mother.
1968		
SALES		
Fairchild Camera & Instrument Corp	100 shares	$6,104.72.
U S. Pipe & Foundry	200 shares	$6,232.80.
Carolinas Capital Corp., final distribution, liquidation.	Cash	$325.37.
PURCHASES		
Clemson, S. C. General obligation sewer bonds.	$5 000	$5,055.00.
Tenneco, Inc	$200	$5,289 12.

	Number of shares or face amount of bonds	Dollars
1966		
PURCHASES—Continued		
Fairchild Camera & Instrument Corp.	$100	$6,858.31
Computer Servicenter, Inc	$500	$3, 000. 00.
U S. Pipe & Foundry	$200	$5, 867. 00.
Government Employees Financial	7 rights	$3. 50.
Jefferson-Pilot Corp	$200	$8, 580. 50.
Gulf & Western Industries, Inc	25/100ths share	$15. 16.
Georgia-Pacific Corp.	10/100ths share	$5 85.
Do	85/100ths share	$62. 90.
Do	59 100ths share	$49. 63.
Do	33/100ths share	$28. 92.
Government Employees Financial Corp., 11 $50 5¼ percent convertible subordinate debentures	$550	$550. 00.
Government Employees Financial Corp	94 100ths share	$31. 02.
STOCK DIVIDENDS: SPLITS		
Cole Drug Co., Inc	300 shares	1 additional share for each share held May 7, 1968.
Georgia-Pacific Corp	24.90 shares	Stock dividend.
Do	25.15 shares	Do.
Do	25.41 shares	Do.
Do	25.67 shares	Do.
Government Employees Financial Corp.	2.06 shares	Do.
Gulf & Western Industries	10.05 shares	Do
International Telephone & Telegraph Corp.	100 shares	2-for-1 stock dividend
Ivest Fund, Inc	4.129 shares	Dividend.
	38.081 shares	Capital gains
Synalloy Corp	10 shares	5-for-4 split.
EXCHANGES		
Guaranty Insurance Trust: Exchanged on Jan. 2, 1968	3,000 shares	
Mortgage Guaranty Insurance Corp.	210 shares	
MGIC Investment Corp., exchanged on Aug. 21, 1968.	630 shares	
Southeastern Broadcasting Corp., 2,932 shares exchanged for: Multimedia, Inc	2,932 5 percent convertible cumulative preferred	
Do	11,728 common	
Carolina Natural Gas Corp., 500 shares exchanged for Piedmont Natural Gas Co., Inc., 60 shares, $6 cumulative convertible 2d P/d.		
Liberty Life Insurance Co., 7,022 shares exchanged with The Liberty Corp., 7,022 shares, 1 for 1 basis.		
GIFTS, RECEIVER		
The Liberty Corp	100 shares	Christmas present from mother.
1969		
SALES		
Synalloy Corp	1/2 share [1]	$6 59.
The Investment Life & Trust Co	2/10 share [1]	$0.65.
The South Carolina National Bank	9/10 share [1]	$32.67.
PURCHASES		
The Liberty Corp	1 3 share	$8 34.
Georgia-Pacific Corp	7/100 share	$6 60.
Do	62/100 share	$29.76.
Gulf & Western Industries	95/100 share	$38.57.
Government Employees Life Insurance Co.	82/100 share	$42.03
G & W Land & Development Corp	7 10 share	$7.00.
STOCK DIVIDENDS		
Georgia-Pacific Corp	25.93 shares	Stock dividend.
Do	2,619 shares	2-for-1 stock split.
Do	52.38 shares	Stock dividend.
Government Employees Life Insurance Co.	3.18 shares	Do.
G & W Land and Development Corp	17.3 shares	1 share for each 20 shares Gulf & Western owned July 18, 1969.
The Investment Life & Trust Co.	29 shares	Stock dividend.
Jefferson-Pilot Corp	50 shares	Do.
The Peoples National Bank	30 shares	Do.
Synalloy Corp	2 shares	Do
The South Carolina National Bank	69 shares	Do
United Nuclear Corp	4 shares	Do.
EXCHANGES		
The Broadcasting Co. of the South later Cosmos Broadcasting, 337 shares exchanged with The Liberty Corp., 1,011 shares common and 337 shares $0.40 voting preferred convertible series.		
Surety Investment Co., 379 shares exchanged with The Liberty Corp., 1,389⅛ shares.		

[1] These were occasioned by stock dividends.

STOCKS OWNED BY CLEMENT F. HAYNSWORTH, JR., BEGINNING APR. 1, 1957, SUBSEQUENT PURCHASES, SALES, STOCK DIVIDENDS, ETC. THROUGH OCT. 1, 1969

[Stock Owned as of Apr. 1, 1957 (shares)]

Carolina Natural Gas Corp.	75
Carolina Vend-A-Matic Co. ($30,000)	24
Ford Motor Co	25
Martel Mills Corp., now Valfour Corp	125
Woodside Mills	350
Chrysler Corp	14
Cup O'Life Corp	100
Georgia Pacific Plywood Co., now Georgia-Pacific Corp	239
W. R. Grace & Co	100
Liberty Life Insurance Co., now the Liberty Corp	116
Greenville Hotel Co., now Main-Oak Corp	3.1
Monsanto Chemical Co.	157
The Peoples National Bank	50
Sonoco Products Co	110
The South Carolina National Bank	144
The First National Bank	60
Southern Weaving Co	14
J. P. Stevens & Co., Inc.	741
United Nuclear Corp., formerly Sabre-Pinon Corp., formerly Sabre Uranium Corp	50
Owens-Corning Fiberglas Corp	20
Tekoil Corp.	100
WMRC, Inc. now Multimedia	990
Buckhorn Sanctuary	1
Greenville Country Club	1

Date	Name of corporation	Number of shares or face amount of bonds	Dollars
	APR. 1, 1957 TO DEC. 31, 1957		
	Purchases:		
Apr. 19, 1957	Peoples National Bank	10	$460.00.
Apr. 22, 1957	Georgia-Pacific Corp	15/50	$8.15.
May 25, 1957	Carolina Natural Gas Corp.	18	$36.00.
July 5, 1957	Sonoco Products Co	7	$180.25.
Do	Georgia-Pacific Corp.	10/50	$7.28.
Sept. 30, 1957	do	5/50	$2.84.
Nov. 1, 1957	Hollyridge Development Co		$3,000.00.
Dec. 14, 1957	do		$500.00.
	Sales:		
Aug. 7, 1957	Buckhorn Sanctuary	1	$1,289.01.
Sept. 26, 1957	Martel Mills (partial liquidating dividend).		$1,500.00.
Dec. 26, 1957	Ford Motor Co	25	$922.90.
Dec. 27, 1957	Martel Mills (partial liquidating dividend).		$2,875.00.
	Carolina Vend-A-Matic	4	$5,000.00.
	Stock dividends:		
Apr. 15, 1957	Liberty Life Ins. Co	58	
June 27, 1957	Georgia-Pacific Corp	4 40/50	
Sept. 26, 1957	Georgia-Pacific Corp	4 45/50	
Oct. 15, 1957	Westwater Corporation (later North Star oil Corp.) Board of Directors of Sabre-Pinon voted their shareholders of record Sept. 27, 1957 a share for share distribution of Westwater stock).	50	
Dec. 16, 1957	Georgia-Pacific Corp	5	
Do	Monsanto Chemical Co	3.14	
	Stock exchanges and gifts (receiver):		
May 15, 1957	South Carolina National Bank received for 60 shares First Nat. Bank stock on basis of 1.3 shares of SCNB for each share of First National.	78	
Dec. , 1957	Liberty Life Insurance Co Christmas present from fr other	137	
	1958		
	Purchases:		
Jan. 6, 1958	Monsanto Chemical Co	86 100	$30.01.
Jan. 17, 1958	Hollyridge Development Co. balance on subscription.		$1,000.00.
Mar. 31, 1958	Georgia-Pacific Corp	45/50	$29.57.
July 9, 1958	----do	39/50	$29.06.
Oct. 3, 1958	-- do	33/50	$29.63.
Dec. 22, 1958	----do	27/50	$26.60.
	Stock dividends:		
Mar. 26, 1958	Georgia-Pacific Corp	5 5/50	
June 27, 1958	do	5 11/50	
Sept. 26, 1958	-- do	5 17/50	
Dec. 16, 1958	--- do	5 23/50	
	Stock splits:		
May 26, 1958	Southern Weaving Co. (Par value of stock changed to $10 share. New stock certificates issued which would give stockholders 5 shares of $10 par value stock for each share of no par value stock formerly held).	56	
	Sales:		
Mar. 26, 1958	Hollyridge Development Co. 3 percent debentures.		2,902.50.
Sept. 30, 1958	Greenville Country Club	1	500.00.
Oct. 27, 1958	Val-four Corp (liquidating dividend) debentures in Burlington.		3,484.38.
	1959		
	Purchases:		
Feb. 26, 1959	The S. C. National Bank	23 shares and 8/10ths right.	$1,158.00.
Mar. 17, 1959	White Stag Mfg. Co. (now part Warner Bros. rec'd. cum. conv. sinking fund P d.)	100 shares. 107 1/7 shares	$1,600.00.
Mar. 25, 1959	Georgia-Pacific Corp	21/50ths	$28.57.
July 2, 1959	Greenville Memorial Gardens	72	$4,000.00.
July 6, 1959	Georgia-Pacific Corp.	3/4	$34.27.
Aug. 21, 1959	The Investment Life and Tr. Co	200	$800.00.
Oct. 31, 1959	Liberty Life Insurance Co	1/6 V	$3.08.
Do	do	1 6 NV	$3.08.
Nov. 24, 1959	Business Development Corp. of SC	10	$100.00.
	Conversion and/or sales:		
Dec. 22, 1959	Burlington debentures—face amount $3,125—sent in for conversion into common stock of Burlington Industries, Inc.:		
Dec. 28, 1959	Burlington Industries	156+ck. for $5.78.	
Dec. 31, 1959	Valfour Corp. (Martel Mills)	Liquidating dividend.	$625.00.

Date	Name of corporation	Number of shares or face amount of bonds	Dollars
	1959		
	Stock dividends Change in par value stock splits:		
Jan. 20, 1959	The Peoples Natl. Bank	15	
Feb. 20, 1959	W. R. Grace & Co	2	
Feb. 26, 1959	The S. C. Natl. Bank	245	Par value change from $10 to $5 per share.
Mar. 20, 1959	Georgia-Pacific Corp	5 and 29/50ths	
June 4, 1959	do	71 and 1/4	Par value change from $1 to 80 cents.
Oct. 31, 1959	Liberty Life Insurance Co., 311 sent in to company for which there were received:		
Nov. 10, 1959	1295/6 sh. NV Liberty Life Insurance Co., stock.		
Do	1295/6 sh. V Liberty Life Insurance Co., stock. Basis of exchange: 4/6 sh. V stock for each share owned and 4/6 sh. NV stock for each share owned		
Dec. 6, 1959	Georgia-Pacific Corp	3 and 57/100ths.	
Dec. 23, 1959	Monsanto Chemical Co	3 and 22/100ths.	
Dec. 31, 1959	Sonoco Products Co	11 and 7/10ths.	
	Gifts—Donor:		
Sept. 17, 1959	J. P. Stevens & Co., Inc. (given to broker at this time for transfer to Church).	141 shares	To Christ Church.
	1960		
	Purchases:		
Jan. 8, 1960	Sonoco Products Co	3/10ths	$9.30.
Jan. 9, 1960	Monsanto Chemical Co	78 100ths.	$42.78.
Jan. 18, 1960	Georgia-Pacific Corp.	43 100ths	$21.47.
Apr. 1, 1960	W. R. Grace & Co	96/100ths.	$38.02.
Apr. 29, 1960	Georgia-Pacific Corp.	39/100ths	$21.82.
July 29, 1960	do	35/100ths	$19.73.
Nov. 4, 1960	do	31/100ths	$14.60.
Dec. 21, 1960	Texize Chemicals, Inc.	100	$975.00.
	Sales:		
Jan. , 1960	Carolina Vend-A-Matic Co	2	$2,500.00.
May 6, 1960	Valfour Corp. (Martel Mills liq. div.).		$1,338.75.
July 18, 1960	Sabre-Pinon Corp. (now United Nuclear).	1 2	$2.88.
	Stock dividends:		
Mar. 10, 1960	W. R. Grace & Co	2.04 shares.	
Mar. 25, 1960	Georgia-Pacific Corp	3.61 shares.	
June 25, 1960	do	3.65 shares.	
July 29, 1960	Sabre-Pinon Corp. (now United Nuclear).	2 shares.	
Sept. 24, 1960	Georgia-Pacific Corp	3.69 shares.	
Oct. 31, 1960	The Peoples National Bank	25 shares.	
Dec. 15, 1960	Monsanto Chemical Co	3.30 shares.	
Dec. 16, 1960	Georgia-Pacific Corp.	3.73 shares.	
	GIFTS—Donor:		
May 11, 1960	Liberty Life Insurance Co.	333 NV	Given Furman University.
	1961		
	Purchases:		
Jan. 3, 1961	Monsanto Chemical Co	71/100ths	$31.56.
Jan. 31, 1961	Georgia-Pacific Corp	27 100ths	$14.73.
Apr. 21, 1961	Government Employees Life Ins Co	15	$1,402.50.
Do	Television Shares Management Corp. (later became Supervised Investors Service, Inc.)	100	$1,475.00.
May 5, 1961	Georgia-Pacific Corp.	23/100ths	$16.37.
July 26, 1961	Union Texas Natural Gas Corp.	100 class B	$2,775.00.
Aug. 3, 1961	Georgia-Pacific Corp.	19 100ths	$12.70.
Oct. 2, 1961	Government Employees Life Ins Co	1/2	$2.50.
Nov. 8, 1961	Georgia Pacific Corp.	15/100ths	$8.68.
	Sales:		
Apr. 1, 1961	Sabre-Pinon Corp. (now United Nuclear).	6/10ths	$3.83.
Apr. 4, 1961	W. R. Grace & Co	10/100ths	$5.82.
June 19, 1961	Criterion Insurance	15 rights.	$31.30.
Oct. 23, 1961	Liberty Life Insurance Co	2/10ths V and 6/10ths NV.	$25.21.
	Stock dividends:		
Mar. 17, 1961	W. R. Grace & Co	2	
Mar. 25, 1961	Georgia-Pacific Corp	3.77	
Mar. 29, 1961	Sabre-Pinon Corp. (now United Nuclear).	2	
June 24, 1961	Georgia-Pacific Corp	3.81	
Sept. 23, 1961	do	3.85	
Oct. 5, 1961	Liberty Life Insurance Co.	259.2 V	
Do	do	192 6 NV.	

Date	Name of corporation	Number of shares or face amount of bonds	Dollars
	1961		
	Stock Dividends—Continued		
Oct. 12, 1961	Government Employees Life Insurance Co.	7½	
Dec. 15, 1961	Monsanto Chemical Co	3.38	
Dec. 16, 1961	Georgia-Pacific Corp	3.89	
	Gifts: Donor:		
Dec. 20, 1951	Liberty Life Insurance Co	150 NV	Given Furman University.
	Receiver:		
Dec. , 1961	Liberty Life Insurance Co	200 V†	Christmas present from mother.
	1962		
	Purchases:		
Jan. 5, 1962	Monsanto Chemical Co	62/100	$31.91.
Jan. 31, 1962	Georgia-Pacific Corp	11/100	$5.75.
Mar. 7, 1962	Allied Chemical Corp	4 8	$25.36.
Apr. 12, 1962	W. R. Grace & Co	86/100	$71.68.
Apr. 27, 1962	Georgia-Pacific Corp	7/100	$3.60.
May 8, 1962	Carolinas Capital Corp. (liquidated 1967).	200	$2,000.
June 29, 1962	Govt. Employees Financial Corp	2 shares and 7 rts	$19.81.
July 30, 1962	Georgia-Pacific Corp	3/100	$1.06.
Sept. 15, 1962	Georgia-Pacific Corp	99/100	$37.50.
Dec. 18, 1962	Georgia-Pacific Corp	94/100	$35.13.
	Sales:		
Nov. 1, 1962	Dan River Mills	1/2 share	$4.89.
	Stock Dividends—Exchanges—Stock splits:		
Jan. 26, 1962	The South Carolina National Bank	49	Dividend.
Mar. 7, 1962	Allied Chemical Corp. (acquired by merger with Union Texas Natural Gas) (7/8 shares Allied for each share Union Texas).	87	
Mar. 17, 1962	W. R. Grace & Co	2.14	Dividend.
Mar. 24, 1962	Georgia-Pacific Corp	3.93	Do.
Apr. 12, 1962	Consolidated Oil & Gas, Inc. of 100 shares of Tekoil Corp.	40	Acquired by surrender.
June 1, 1962	W. R. Grace & Co	110	2-for-1 stock split.
June 23, 1962	Georgia-Pacific Corp	3.97	Dividend
Sept. 24, 1962	do	4.01	Do.
Oct. 12, 1962	Dan River Mills	1312.50	Obtained in exchange for 350 shares Woodside Mills.
Nov. 24, 1962	J. P. Stevens & Co., Inc	60	Dividend.
Dec. 18, 1962	Georgia-Pacific Corp	4.06	Do.
Dec. 26, 1962	Monsanto Chemical Co	3.46	Do.
	Gifts: Donor:		
Dec. , 1962	J. P. Stevens & Co., Inc	200	Given Furman University.
	Receiver:		
Dec. , 1962	Liberty Life Insurance Company	100 V	Christmas present from mother.
	1963		
	Purchases:		
Jan. 3, 1963	Monsanto Chemical	54/100ths	$26.95.
Feb. 23, 1963	Georgia-Pacific Corp	89/100ths	$41.83.
Mar. 29, 1963	W. R. Grace & Co	60/100ths	$24.03.
Apr. 10, 1963	Liberty Life Insurance Co	3 NV and 1 V	$160.00.
May 17, 1963	Georgia-Pacific Corp	84/100ths	$44.10.
Aug. 19, 1963	do	79/100ths	$39.50.
Aug. 29, 1963	Mutual Savings Life Insurance Co	200	$2,725.00.
Oct. 30, 1963	Aztec Oil & Gas	500	$10,187.50.
Nov. 18, 1963	Georgia-Pacific Corp	74/100ths	$39.87.
Dec. 27, 1963	Monsanto Chemical	46/100ths	$25.76.
	Sales:		
July 1, 1963	Consolidated Oil & Gas	Rights	$0.40.
	Stock dividends—Stock splits:		
Mar. 1, 1963	The South Carolina National Bank	32	Dividend.
Mar. 18, 1963	W. R. Grace & Co	4.40	Do.
Mar. 23, 1963	Georgia-Pacific Corp	4.11	Do.
Apr. 1, 1963	White Stag Mfg. Co. (merged into Warner Bros.).	50	Do.
Apr. 15, 1963	Liberty Life Insurance Co V	464V	Do.
Do	Liberty Life Insurance Co	252NV	Do.
Apr. 19, 1963	Chrysler Corp	14	2-for-1 stock split.
May 1, 1963	The Investment Life & Tr. Co	10	Dividend.
May 10, 1963	Govt. Employees Life Ins. Co	23	Do.
June 22, 1963	Georgia-Pacific Corp	4.16	Do.
Sept. 24, 1963	do	4.21	Do.
Dec. 20, 1963	do	4.26	Do.
Do	Chrysler Corp	28	2-for-1 stock split.
Dec. 23, 1963	Monsanto Chemical Co	3.54	Dividend.
Dec. 31, 1963	Sonoco Products Co	12.9	Do.
	GIFTS—Receiver:		
May 16, 1963	Liberty Life Insurance Co	704V	Given to me by my mother.
	1964		
	Purchases:		
Jan. 31, 1964	Sonoco Products Co	1/10 shares	$4.50.
Mar. 21, 1964	Georgia-Pacific Corp	6 9/100 share	$38.12.
Mar. 28, 1964	W. R. Grace & Co	½ share	$26.40.
Apr. 17, 1964	Fed. Int. Credit Bonds	130,000	$130,025.00.
Do	U.S. Treasury	270,000	$262,948.44.
Do	do	1 130,000	$129,875.72.
	Total		$522,879.27.
May 7, 1964	Piedmont Park F/D	0,000	$20,387.61.

Date	Name of corporation	Number of shares or face amount of bonds	Dollars
	1964		
	Purchases—Continued		
May 8, 1964	Liberty Life Ins. Co. (Now the Liberty Corp.).	185	$6,521.25.
Do	J. P. Stevens & Co., Inc	40	$1,499.80.
Do	Monsanto Chemical Co	19	$1,453.85.
Do	Government Employees Life Ins. Co	54	$3,510.00.
Do	Government Employees Financial	98	$2,989.00.
Do	Carolina Natural Gas	407	$2,856.54.
Do	Allied Chemical Corp	12	$674.63.
Do	United Nuclear Corp	46	$1,183.92.
Do	W. R. Grace & Co	70	3,851.08
Do	Dan River Mills, Inc	188	3,464.69.
Do	Chrysler Corp	44	2,277.00.
Do	Burlington Industries	44	2,071.46.
Do	The South Carolina National Bank	29	1,595 00.
Do	Texize Chemical, Inc	400	1,800.00.
Do	Owens-Corning Fiberglas	80	5,782.74.
May 19, 1964	Surety Investment Co. (now part of The Liberty Corp.).	102	5,712.00.
May 26, 1964	do	112	6,272.00.
June 1, 1964	Insurance Securities, Inc	100	2,556.63.
June 2, 1964	do	500	12,783.15.
Do	do	400	10,276.76.
June 8, 1964	Maryland Casualty Co	200	12,690.64.
June 15, 1964	Surety Investment Co	165	$9,240.00.
July 6, 1964	Greater Greenville Sewer	4,000	$3,630.96.
July 8, 1964	Nationwide Corp., class A	500	$7,375.00.
Do	Southeastern Broadcasting (formerly WMRC, Inc., now part of Multimedia Corp.).	200	$9,200.00.
Do	Insurance Securities	1,000	$28,229.52.
Do	Town of Williston, S.C. waterworks and sewer bonds.	20,000	$20,420.36.
July 17, 1964	Broadcasting Co. of the South (now part of Liberty Corp.).	105	$5,250.00.
July 20, 1964	Georgia-Pacific Corp	1,200	$69,374.37.
Do	Broadcasting Co. of South (now Lib. Corp.).	120	$6,000.00.
Aug. 13, 1964	Guaranty Ins. Trust (now MGIC)	3,000	$7,500.00.
Aug. 17, 1964	American General Casualty Co (exchange).	200 convertible preferred 66⅔ common.	
Sept. 25, 1964	Georgia-Pacific Corp	55/100 share	$31.49.
Dec. 15, 1964	G'ville Waterwks. Sys. Rev. Bonds	10,000	$10,636.64.
Dec. 19, 1964	Georgia-Pacific Corp	37/100	$21.00.
	Sales:		
May 10, 1964	Automatic Retailers of America (exchanged for Carolina Vend-A-Matic).	14,173	$438,255.86.
May 5, 1964	The Investment Life & Trust Co	½ share	$2.65.
May 8, 1964	Consolidated Oil & Gas, Inc	40	$118.55.
Do	North Star Oil Corp	50	$311.46.
Do	Supervised Investors Services, Inc. (formerly Television Shares Management Corp.)	100	$611.51.
May 14, 1964	U.S. Treasury bills	40,000	$39,067.22.
May 20, 1964	do	5,000	$4,887.50.
May 28, 1964	do	5,000	$4,893.01.
June 5, 1964	do	30,000	$29,385.19.
June 17, 1964	do	7,000	$6,862.10.
June 18, 1964	do	20,000	$19,611.27.
July 14, 1964	Consolidated Oil & Gas, proceeds of 3/5 fractional warrant.		$0.90.
July 15, 1968	U.S. Treasury bills	50,000	$49,178.47.
July 27, 1964	Consolidated Oil & Gas, proceeds of 1 right.		$0.21.
Do	U.S. Treasury bills	81,000	$79,760.09.
Aug. 24, 1964	do	21,000	$20,740.16.
Dec. 7, 1964	The Broadcasting Co. of the South, proceeds of fractional share of stock.		$12.63.
Dec. 23, 1964	U.S. Treasury bills	11,000	$10,989.00.
	Stock dividends: Stock splits:		
Mar. 17, 1964	W. R. Grace & Co	3 and 50/100 shares.	Stock dividend.
Mar. 18, 1964	Main-Oak Corp., formerly Greenville Hotel Co.	31	2-for-1 stock split and 4-for-1 stock dividend.
Mar. 21, 1964	Georgia Pacific	4 and 31/100	Stock dividend.
Mar. 25, 1964	Southeastern Broadcasting, now part of Multimedia.	990 shares	100 percent stock dividend.
May 1, 1964	The Investment Life & Trust Co	10	Stock dividend.
May 8, 1964	Georgia-Pacific Corp	109 shares	25 percent stock split.
June 12, 1964	Aztec Oil & Gas Co	30 shares	6 percent stock dividend.
Aug. 24, 1964	The Peoples National Bank	50 shares	50 percent stock dividend.
Sept. 25, 1964	Georgia-Pacific Corp	17 45/100	Stock dividend.
Nov. 18, 1964	J. P. Stevens & Co., Inc	50 shares	10 percent stock dividend.
Nov. 20, 1964	The Broadcasting Co. of the South, now part of Liberty Corp. for a time known as Cosmos Broadcasting Co.	56 shares	25 percent stock dividend.
Dec. 15, 1964	Chrysler Corp	4 shares	4 percent stock dividend.
Dec 12, 1964	Georgia-Pacific Corp	17 & 63/100	Stock dividend.

Footnote at end of tables.

Date	Name of corporation	Number of shares or face amount of bonds	Dollars
	1964		
	Stock dividends: Stock splits—Continued		
Dec. 22, 1964	Monsanto Chemical Co	4	Stock dividend.
	Gifts (receiver):		
Feb. 3, 1964	Liberty Life Insurance Co	531 shares	Gift from mother.
Dec. 1964	do	100 shares	Gift from mother (Christmas).
	Purchases:		
Feb. 1, 1965	U S. Treasury Bills	$34,000	$133,110 80.
Feb. 25, 1965	Georgia-Pacific Corp	19 100	$11.92.
Feb. 26, 1965	W. R. Grace & Co. 4¼ percent sub. deb.	$1,700	$1,700.00
Mar. 29, 1965	Rights for the above debentures (additional).		$3.94.
Apr. 26 and May 3, 1965	Chrysler Corp	1 right and 15 shares.	$720.75.
May 17 1965	Georgia-Pacific Corp	1 100	$.64.
May 24, 1965	Aztec Oil & Gas Co.	20 100	$ .75.
June 1, 1965	Texize Chemicals, Inc	1 300	$6,984.25.
June 8, 1965	do	400	$2,199.52.
Do	do	300	$1 573.89.
Aug. 16, 1965	Georgia-Pacific Corp	83/100	$49 07.
Oct. 12, 1965	Southeastern Broadcasting Co. (now part of Multimedia, Inc.).	100	$6,550 00.
Nov. 15, 1965	Georgia-Pacific Corp	64/100	$38.88.
Dec. 27, 1965	Monsanto Chemical Co	92/100	$73.44.
Dec. 30, 1965	Sperry Rand	400	$9,067.50.
	Sales:		
Dec. 30, 1965	Aztec Oil & Gas Co	562	$9,975.50
	Stock dividends—Stock splits:		
Jan. 19, 1965	Nationwide Life Insurance Co	10	2 percent stock dividend or 1 share for each 50 owned of Nationwide Corp
Jan. 22, 1965	The South Carolina National Bank	36	Dividend.
Mar. 26, 1965	Georgia-Pacific Corp	17.81	Do
Mar. 29, 1965	Allied Chemical Corp	2	Do.
Apr. 30, 1965	Liberty Life Insurance Co. (now the Liberty Corp.)	510	Do.
May 1, 1965	The Investment Life and Trust Co	22	Do.
May 26, 1965	Government Employees Life Insurance Co.	2	Do.
June 7, 1965	Aztec Oil & Gas Co	31.80	Do.
June 25, 1965	Georgia-Pacific Corp	17.99	Do.
July 23, 1965	Burlington Industries, Inc	200	Stock split.
Sept. 25, 1965	Georgia-Pacific Corp	18 17	Dividend.
Nov. 15, 1965	Sonoco Products Co	142	Stock split.
Dec. 17, 1965	Georgia-Pacific Corp	18.36	Dividend.
Dec. 23, 1965	Monsanto Chemical Co	4.08	Do.
	Gifts: Receiver:		
Dec. 1965	Liberty Life Insurance Co	100 V	Christmas present from mother.
	Purchases:		
Jan. 11, 1966	Calhoun-Charleston Tenn. utility district bonds.	$4,000	$4,231. 79.
Mar. 11, 1966	Allied Chemical Corp	96/100	$44. 74.
Mar. 21, 1966	Warner Bros. Co., formerly White Stag.	6 7	$33. 06.
Mar. 25, 1966	Georgia-Pacific Corp	45/100	$28. 74.
May 22, 1966	Richmond Newspapers, Inc	200	$4, 400. 00.
June 24, 1966	Georgia-Pacific Corp	1/2	$22. 40.
July 6, 1966	Cole Drug Co	300	$4, 050 00.
Sep. 24, 1966	Georgia-Pacific Corp	57/100	$22. 80
Oct. 27, 1966	Government Employees Financial Corp. (7 $50 5½ percent convertible subscriber debentures).	$350	$350. 00.
Nov. 7, 1966	Government Employees Financial Corp.	7 rights	$1. 35.
Nov. 17, 1966	Insurance Securities, Inc	100	$726. 63.
Dec. 17, 1966	Georgia-Pacific Corp	33 100ths	$11. 43.
Dec. 27, 1966	Monsanto Co	82/100ths.	$32. 85.
	Sales:		
July 15, 1966	The Investment Life & Trust Co	20/100ths	$1 41.
Dec. 21, 1966	Insurance securities	100	$500.37
	Stock dividends Stock splits Exchanges:		
Feb 1, 1966	Dan River Mills	75	Dividend
Feb 10, 1966	Nationwide Life Insurance Co	10	2 percent stock dividend or 1 share for each 50 owned of Nationwide Corp.
Mar. 9, 1966	The Warner Bros. Co., formerly White Stag Manufacturing Co. (merger).	107 1/7 shares	In exchange
Mar. 25, 1966	Georgia-Pacific Corp.	18 55	Dividend.
Mar. 28, 1966	Allied Chemical Corp	2.4	Do.
Apr. 30, 1966	Mutual Savings Life Insurance Co	40	Do
June 24, 1966	Georgia-Pacific Corp	468.50	5 for 4 split.
July 15, 1966	The Investment Life & Trust Co	24	Dividend
Aug. 3, 1966	The Peoples National Bank (old certificate for 150 shares turned in to bank).	300	2-for-1 split.
Sept 24, 1966	Georgia-Pacific Corp.	23 43	Dividend.
Dec. 17, 1966	Georgia-Pacific Corp	23 67	Do.
Dec 23, 1966	Monsanto Chemical Co	4.18	Do.

Date	Name of corporation	Number of shares or face amount of bonds	Dollars
	1967		
	Purchases:		
Jan. 5, 1967	Greenville County, S.C., hospital bonds.	$5,000	$4,907 99.
Do	Ivest Fund, Inc	728	$10,002.72.
Feb. 13, 1967	Southeastern Broadcasting Co. (now part of Multimedia, Inc.).	66	$5,313. 00.
Mar. 16, 1967	Allied Chemical Corp	90/100	$36 12.
Mar. 25, 1967	Georgia-Pacific Corp	9 100	$4 21.
Mar. 27, 1967	Leverage Fund of Boston, Inc	350	$5,250 00
Apr. 12, 1967	Southern Weaving Co	200	$5,400.00.
Apr. 19, 1967	Liberty Life Insurance Co	.7,879,480 shares	$14.77.
Apr. 27, 1967	Government Employees Life Insurance Co	94 100	$45.12.
June 15, 1967	Rank Organisation, Ltd	500	$4,176.00.
June 23, 1967	Georgia-Pacific Corp	85 100	$51 21
July 31, 1967	Gulf & Western	325	$19,091 62.
Aug. 4, 1967	International Telephone & Telegraph	100	$10,849.80.
Sept. 23, 1967	Georgia-Pacific Corp	60/100 shares	$36 60.
Nov. 27, 1967	Fa rchild Camera & Instrument Corp.	100	$10,199.15.
Dec. 19, 1967	Georgia-Pacific Corp	35/100	$19.86
Dec. 26, 1967	Brunswick Corp	1,000	$16 230.00.
Dec. 29, 1967	Monsanto Chemical Co	72 100	$30.69.
	Sales:		
Jan. 5, 1967	American General Insurance Co. conv. P/d.	200	$6,777 74.
	Carolinas Capital Corp. liquid distribution, 200 shares owned:		
July 18, 1967	Received		$1,000.00.
Aug. 11, 1967	Scope, Inc	120 shares	
Aug. 17, 1967	Synaloy	40 shares	
July 19, 1967	Texize Chemicals, Inc	200	$3,648.92.
July 20, 1967	do	100	$1,886.33.
Do	do	200	$3,723.16.
Do	do	1,000	$18,739.60.
Aug. 17, 1967	do	100	$1,799.71.
Aug. 22, 1967	do	500	$9,246.05.
Do	do	400	$7,396.84.
Sept. 18, 1967	Richmond Newspapers, class A.	200	$3,488.12.
Sept. 20, 1967	Warner Bros. conv. P/d	108	$3,206.96.
Nov. 29, 1967	Insurance Securities	400	$2,447.00.
Dec. 15, 1967	do	1, 500	$8, 990. 55.
	Stock dividends:		
Feb. 24, 1967	Southern Weaving Co	17 shares	
Mar 10, 1967	The South Carolina National Bank	63 shares	
Mar. 15, 1967	Southeastern Broadcasting Corp. (now Multimedia, Inc.)	586 shares	
Mar. 24, 1967	American General Insurance Co	134 shares	200 percent stock division.
Mar. 25, 1967	Georgia-Pacific Corp	23.91 shares	
Mar. 28, 1967	Allied Chemical Corp	2.10 shares	
Apr. 24, 1967	Liberty Life Insurance Co	1,211.2120520 shares.	
May 15, 1967	The Investment Life & Trust Co	26 shares	
May 16, 1967	The Broadcasting Co. of the South (later Cosmos Broadcasting and in 1969 it became part of the Liberty Corp.,	56 shares	
May 24, 1967	Government Employees Life Insurance Co.	3.06 shares	
June 23, 1967	Georgia-Pacific Corp	24.15 shares	
Sept. 23, 1967	Georgia-Pacific Corp	24.40 shares	
Sept. 25, 1967	Government Employees Financial Corp.	3 shares	
Oct. 31, 1967	Ivest Fund, Inc	1,309 shares	Dividend.
Oct. 31, 1967	Ivest Fund, Inc	31.406 shares	Capital gain.
Dec. 19, 1967	Georgia-Pacific Corp	24.65 shares	
Dec. 26, 1967	Monsanto Chemical Co	4.78 shares	
Dec. 27, 1967	Gulf & Western Industries.	9.75 shares.	
	Gifts: Receiver:		
Dec. 1967	Liberty Life Insurance Co	100 shares, Christmas gift from mother	
	1968		
	Purchases:		
Jan. 4, 1968	Clemson S.C., general obligation sewer bonds.	$5,000	$5,055.00.
Jan. 15, 1968	Gulf & Western Industries, Inc	25/100 shares	$15.16.
Feb. 16, 1968	Tenneco, Inc.	200	$5,289.12.
Feb. 20, 1968	Georgia-Pacific Corp	10/100 shares.	$5.85.
Feb. 23, 1968	Fairchild Camera & Instrument Corp	100	$6,858.31.
Apr 26, 1968	Computer Servicenter, Inc	500	$3,000.00.
May 16 1968	Georgia-Pacific Corp	85/100 shares.	$62. 90.
July 22, 1968	U.S. Pipe & Foundry	200	$5,867.00.
Aug. 19, 1968	Georgia-Pacific Corp	59/100 shares	$49.63.
Sept. 19, 1968	Government Employees Financial	7 rights	$3.50.
Sept. 23, 1968	Government Employees Financial Corp.*	$550	$550.00.
Nov. 1, 1968	Jefferson Pilot Corp	200	$8,580.50.
Nov. 4, 1968	Government Employees Financial Corp.	94/100 shares.	$31.02.
Nov. 14, 1968	Georgia Pacific Corp	33/100 shares.	$28.92.
Nov. 1968	$50 5¼ percent Convertible Sub. Debentures.		

Date	Name of corporation	Number of shares or face amount of bonds	Dollars
	1968		
	Sales:		
July 22, 1968	Fairchild Camera & Instrument Corp.	100 shares	$6,104.72.
Sept. 26, 1968	U.S. Pipe & Foundry	200 shares	$6,232.80.
Dec. 31, 1968	Carolinas Capital Corp	cash	$325.37.
	FINAL DISTRIBUTION—LIQUIDATION		
	Stock Dividends: Splits:		
Jan. 26, 1969	International Telephone & Telegraph Corp.	100 shares	2 for 1 div.
Feb. 17, 1968	Gulf & Western Industries	10.05	Stock div.
Mar. 26, 1968	Georgia-Pacific Corp	24.90	Stock div.
Mar. 29, 1968	Synalloy Corp	10 shares	5 for 4 split.
May 7, 1968	Cole Drug Co., Inc	300 shares	1 additional share for each share held May 7, 1968.
June 25, 1968	Georgia-Pacific Corp	25 15	Stock dividend.
Sept. 24, 1968	Georgia-Pacific Corp	25.41	Do.
Nov. 15, 1968	Ivest Fund, Inc	4.129 shares	Dividend.
Nov. 15, 1968	Ivest Fund, Inc	38.081 shares	Capital gains.
Nov. 22, 1968	Government Employees Financial Corp	2.06 shares	Stock dividend.
Dec. 19, 1968	Georgia-Pacific Corp	25.67 shares	Do.
	Exchanges:		
Jan. 2, 1968	Guaranty Insurance Trust	3,000 shares	Exchanged for 210 shares. Mortgage Guaranty Insurance Corp.
Jan. 1, 1968	Southeastern Broadcasting Corp	2,932 shares	Exchanged for:
	Multimedia, Inc.	2,932 shares	5 percent convertible cumulative preferred and 11,728 common.
Mar. 22, 1968	Liberty Life Insurance Co	7,022 shares	Exchanged for 1 for 1 basis.
	The Liberty Corp	7,022 shares	
Aug. 21, 1968	Mortgage Guaranty Insurance Corp	(210 shares)	Exchanged for 630 shares of MGIC Investment Corp.
Aug. 28, 1968	Carolina Natural Gas Corp	500 shares	Exchanged for 60 shares.
	Piedmont Natural Gas Co., Inc	60 shares	$6 cumulative convertible 2d P/d.
	Gifts (receiver):		
Dec. 1968	The Liberty Corp	100 shares	Christmas present from mother.

Date	Name of corporation	Number of shares or face amount of bonds	Dollars
	1969		
	Purchases:		
Jan. 20, 1969	Liberty Corp	1/3 share	$8.34.
Feb. 24, 1969	Georgia-Pacific Corp	7/100 share	$6.60.
Mar. 27, 1969	Gulf & Western Industries	95/100 share	$38.57.
Apr. 28, 1969	Government Employees Life Ins. Co.	82/100 share	$42.03.
Aug. 20, 1969	Georgia Pacific Corp	62/100	$29.76.
Aug. 27, 1969	G & W Land & Development Corp	7/10 share	$7.00.
	Sales:		
Apr. 16, 1969	Synalloy Corp	1/2 share (stock dividend).	$6.59.
May 23, 1969	Investment Life & Trust Co	2/10 share (stock dividend).	$.65.
Aug. 17, 1969	South Carolina National Bank	9/10 share (stock dividend).	$32.67.
	Stock dividends:		
Jan. 10, 1969	The Peoples National Bank	30 shares	Stock dividend.
Mar. 14, 1969	Jefferson-Pilot Corp	50 shares	Do.
Mar. 28, 1969	Georgia-Pacific Corp	25.93 shares	Do.
Apr. 15, 1969	Synalloy Corp	2 shares	Do.
May 5, 1969	Georgia-Pacific Corp	2,619 shares	2 for 1 stodk split.
May 15, 1969	The Investment Life & Trust Co	29 shares	Stock dividend.
May 23, 1969	Government Employees Life Ins. Co.	3.18 shares	Do.
Aug. 8, 1969	United Nuclear Corp	4 shares	Do.
Sept. 10, 1969	G & W Land and Development Corp.	17.3 shares	1 share for each 20 shares Gulf & Western owned July 18, 1969.
July 15, 1969	South Carolina National Bank	69	
Sept. 24, 1969	Georgia-Pacific Corp	52.38 shares	Stock dividend.
	Exchanges:		
Jan. 17, 1969	The Broadcasting Co of the South, later Cosmos Broadcasting	337 shares	Exchanged for:
	The Liberty Corporation	1,011 shares common end 337 shares $0.40 voting preferred convertible.	
Jan. 18, 1969	Surety Investment Co	379 shares exchanged for	
	The Liberty Corp	1,389 2/3 shares	

[1] The settlement date for the purchase of the Fed. Int. Credit Bonds bought Apr. 17, 1964, was May 4, 1964. These funds were invested for the interim period on Apr. 17, 1964 in, U.S. Treasury bills maturing Apr. 30, 1964, and those bills were used to pay for the Fed. Int. Credit Bonds.

Changes to Financial Statement as directed by Harriet Wright:

The first part she says has already been given to WHR by the Judge, but she repeated it.

On page 1 under Sales, he sold in 1957 4 shares of Carolina Vend-A-Matic for $5,000. She doesn't have date, but if necessary will make an effort to find it. Sale was some time between April and December 31.

On page 2 there were three sales that were left off. Under 1958 sales they left off all sales. Add 3/26/58 Hollyridge Development Co.—3% debentures—sale amount $2,902.50.

Add Greenville Country Club—certificate—$500 sold on 9/30/58.

10/27/58 Val-Four Corp. (Martel Mills) (Liquidating dividend) (Payable in part by $3,125 face amount Burlington Industries, Inc. 5.4% subordinated debentures).

New changes follow:

12/22/58 purchase of Georgia Pacific Corp. 27/50 of a share. They listed that they paid $29.60 for it, but it was only $26.60.

On page 4—1961 under purchases.

The first purchase was left off—1/3/61 Monsanto Chemical Company—71/100 of a share $31.46.

On page 5 under Stock Dividends on 3/25/61 he received 3.77 shares of Georgia Pacific Corporation rather than 3.25 as listed.

Also on page 5 under purchases in 1962: at 6/29/62 you'll see Government Employees Financial Corporation,—2 shares and 15 rights. Correct to show 2 shares and 7 rights.

On page 13 under Exchanges. The first exchange on 1/2/68 shows Mortgage Guaranty Insurance Co. Correct to Mortgage Guaranty Insurance *Corp.*

On 1/1/68 she shows Multi Media Ins. It should be Multi Media *Inc.*

On page 14, the biggest error is the one on stock dividends in 1969: Mark out 7/15 Synalloy duplication of two shares and put in its place South Carolina National Bank—69 shares. (Synalloy is a duplicate entry. You will see it also shown at 4/15 and the typist picked it up in error on 7/15. Just x out and add instead the 69 shares of S.C. National Bank.)

She said that they would correct the pages and send them to us but in the meantime the above corrections should be made.

Purchases						Sales					
Date	Name of corporation	Number of shares or face amount of bonds	Dollar amount	Monthly amount purchased	Total amount purchased	Date	Name of corporation	Number of shares or face amount of bonds	Dollar amount	Monthly amount sold	Balance invested
Apr. 17, 1964	Fed. Inter, Credit Banks	$130,000	$130,025.00								
Do	U.S. Treasury	$270,000	262,948.55								
Do	do	$130,000	129,875.72								
	Balance April 30, 1964				$522,849.27						$522,849.27
May 7, 1964	Piedmont Park F/D	$20,000	20,387.61			May 8, 1964	Consolidated Oil & Gas Inc.	40	$118.55		
May 8, 1964	Liberty Life Ins. Co	185	6,521.25			do	North Star Oil Corp.	50	11 46		
Do	J. P. Stevens Co	40	1,499.80			do	Supervised Investors Services, Inc	100	611.51		
Do	Monsanto Chemical Corp	19	1,453.85			May 14, 1964	U.S. Treasury bills	$40,000	39,067.22		
Do	Gov't. Emply. Life Ins	54	3,510.00			May 20, 1964	do	$5,000	4,887.50		
Do	Gov't Emply. Financial	98	2,989.00			May 28, 1964	do	$5,000	4,893.01		
Do	Carolina Natural Gas	407	285,654								
Do	Allied-Chemical Corp	12	67,463								
Do	United Nuclear Corp	46	118,392								
Do	W. R. Grace & Co	70	385,108								
Do	Dan River Mills Inc.	118	346,469								
Do	Chrysler Corp	44	227,700								
Do	Burlington Industries Inc	44	207,146								
Do	S. C. National Bank	29	159,500								
Do	Texize Chemical, Inc	400	180,000								
Do	Owens-Corning Fiberglas	80	578,274								

Purchases						Sales					
Date	Name of corporation	Number of shares or face amount of bonds	Dollar amount	Monthly amount purchased	Total amount purchased	Date	Name of corporation	Number of shares or face amount of bonds	Dollar amount	Monthly amount sold	Balance invested
May 19, 1964	Surety Investment Co. (now part of the Liberty Corp.).	102	$5,712.00								
May 26, 1964	do	112	6,272.00								
	Balance May 31, 1964.			$73,902.57	$596,751.84					$49,589.25	$547,162.59
June 1, 1964	Insurance Securities Inc	100	2,556.63			June 5, 1964	U.S. Treasury bills	$30,000	$29,385.19		
June 2, 1964	do	500	12,783.15			June 17, 1964	do	7,000	6,862.10		
Do	do	400	10,276.76			June 18, 1964	do	20,000	19,611.27		
June 15, 1964	Surety Investment Co. (now part of the Liberty Corp.).	165	9,240.00								
	Balance June 30, 1964.			34,856.54	631,608.38					55,858.56	526,160.57
July 6, 1964	Greater Greenville Sewer District bonds.	$4,000	3,630.96			July 15, 1964	U.S. Treasury bills	$50,000	49,178.47		
						July 27, 1964	do	$81,000	79,760.09		
July 8, 1964	Nationwide Corp., class A	500	7,375.00								
Do	Southeastern Broadcasting Co. (now part of Multimedia, Corp.)	200	9,200.00								
Do	Insurance Securities Inc	1,000	28,229.52								
Do	Town of Williston, S.C., Waterworks & Sewer System bonds.	20,000	20,420.36								
July 17, 1964	Broadcasting Co. of the South (now part of Liberty Corp.)	105	5,250.00								
July 20, 1964	Georgia Pacific Corp	1,200	69,374.37								
Do	Broadcasting Co. of the South.	120	6,000.00								
	Balance, July 31, 1964.			149,480.21	781,088.59					128,938.56	546,702.22
Aug. 13, 1964	Guaranty Insurance Trust (now part of MGIC).	3,000	7,500.00			Aug. 24, 1964	U.S. Treasury bills	21,000	20,740.16		
	Balance, Aug. 31, 1964.			7,500.00	788,588.59					20,740.16	533,462.06
Dec. 15, 1964	Greenville Waterworks System revenue bonds.	10,000	10,636.54			Dec. 23, 1964	U.S. Treasury bills	11,000	10,989.00		
	Balance Dec. 31, 1964.			10,636.54	799,225.13					10,989.00	533,109.60
Feb. 1, 1965	U.S. Treasury bills	$134,000	133,110.80								
	Balance, Feb. 28, 1965.			133,110.80	932,335.93						666,220.40
June 1, 1965	Texize Chemicals, Inc.	1,300	6,984.25								
June 8, 1965	do	400	2,199.52								
June 11, 1965	do	300	1,573.89								
	Balance, June 30, 1965.			10,757.66	943,093.59						676,978.06
Oct. 12, 1965	Southeastern Broadcasting Co., (now part of Multimedia, Inc.)	100	6,550.00								
	Balance, Oct. 31, 1965.			6,550.00	949,643.59						683,528.06
Jan. 11, 1966	Calhoun-Charleston, Tenn., Utility District bonds.	$4,000	4,231.79								
	Balance Jan. 31, 1966.			4,231.79	953,875.38						687,759.85
May 26, 1966	Richmond Newspapers, Inc.	200	4,400.00								
	Balance May 31, 1966			4,400.00	958,275.38						692,159.85
Nov. 17, 1966	Insurance Securities, Inc.	100	726.63								
	Balance Nov. 30, 1966.			726.63	959,002.01						692,886.48
						Dec. 21, 1966	Insurance Securities	100	500.37		
	Balance Dec. 31, 1966.				959,002.01					500.37	602,386.11
Jan. 5, 1967	Greenville County, S.C., Hospital bonds.	$5,000	4,907.99								
	Balance Jan. 31, 1967.			4,907.99	963,910.00						697,294.10
Feb. 13, 1967	Southeastern Broadcasting Co (now part of Multimedia Inc.)	66	5,313.00								
	Balance Feb. 28, 1967.			5,313.00	969,223.00						702,607.10
June 15, 1967	Rank Organization Ltd	500	4,176.00								
	Balance June 30, 1967			4,176.00	973,399.00						706,783.10
						July 19, 1967	Texize Chemicals, Inc	200	3,648.92		
						July 20, 1967	do	100	1,886.33		
						do	do	200	3,723.16		
	Balance July 31, 1967.				973,399.00					9,258.41	697,524.69
Aug. 4, 1967	Intl. Tel. & Tel.	100	10,849.80			Aug. 17, 1967	Texize Chemicals, Inc	100	1,799.71		
						Aug. 22, 1967	do	400	7,396.84		
	Balance Aug. 31, 1967.			10,849.80	984,248.80					9,196.55	699,177.94
						Sept. 18, 1967	Richmond Newspapers, class A.	200	3,488.12		
						Sept. 20, 1967	Warner Bros. conv. P/D	108	3,206.96		
	Balance, Sept. 30, 1967.				984,248.80					6,695.08	692,482.86
Nov. 17, 1967	Fairchild Camera & Instrument Corp.	100	10,199.15			Nov. 29, 1967	Insurance Securities	400	2,447.00		
	Balance, Nov. 30, 1967.			10,199.15	994,447.95					2,447.00	700,235.01
Dec. 26, 1967	Brunswick Corp.	1,000	16,230.00			Dec. 15, 1967	Insurance Securities	1,500	8,990.55		
	Balance, Dec. 31, 1967.			16,230.00	1,010,677.95					8,990.55	707,474.46
Jan. 4, 1968	Clemson, S.C., general obligation sewer bonds.	5,000	5,055.00								
	Balance, Jan. 31, 1968.			5,055.00	1,015,732.95						712,529.46
Feb. 16, 1968	Tenneco, Inc	200	5,289.12								
Feb. 23, 1968	Fairchild Camera & Instrument Corp.	100	6,858.31								
	Balance, Feb. 29, 1968.			12,147.43	1,027,880.38						724,676.89

Purchases						Sales					
Date	Name of corporation	Number of shares or face amount of bonds	Dollar amount	Monthly amount purchased	Total amount purchased	Date	Name of corporation	Number of shares or face amount of bonds	Dollar amount	Monthly amount sold	Balance invested
Apr. 26, 1968	Computer Servicenter, Inc.	500	$300,000								
	Balance Apr. 30, 1968.			$300,000	$1,030,880.38						$727,676.89
July 22, 1968	U.S. Pipe & Foundry	200	586,700			July 22, 1968	Fairchild Camera & Instrument Corp.	100	$6,104.72		
	Balance July 31, 1968.			5,867.00	1,036,747.38					$6,104.72	727,439.11
Sept. 19, 1968	Gov't Emplys. Financial	(1)	3.50			Sept. 26, 1968	U.S. Pipe & Foundry	200	6,232.80		
	Balance Sept. 30, 1968.			3.50	1,036,750.88					6,232.80	721,209.87
Nov. 1, 1968	Jefferson Pilot Corp.	200	8,580.50								
	Balance Nov. 30, 1968.			8,580.50	1,045,331.38						729,790.37
Jan. 1, 1969	Pickens, S.C., Waterworks System improvement revenue bonds.	4,000	3,781.76								
	Balance Jan. 31, 1969.			3,781.76	1,049,113.14						733,572.13

[1] 7 rights.

REAL ESTATE OWNED BY CLEMENT F. HAYNSWORTH, JR., AS OF APRIL 1, 1957, AND SUBSEQUENT PURCHASES AND SALES OF REAL ESTATE THROUGH OCTOBER 1, 1969

Real estated owned as of April 1, 1957

1. Personal residence located on McDaniel Avenue in the City of Greenville, South Carolina, acquired by deed dated May 1, 1947.

2. Summer home known as Point Farm, Wadmalow Island, Charleston County, South Carolina, acquired by deed dated February 29, 1956.

3. A 1/5 interest in a lot on the corner of Lowndes Hill Road and Watson Road in Greenville County, South Carolina, purchased by deed dated September 20, 1956. This land was sold to Judge Haynsworth and four other individuals for $1,000 by Carolina Vend-A-Matic Company. The land in question was not needed by Carolina Vend-A-Matic for its operations. The grantees under this deed subsequently built a small warehouse on this property which they originally leased to Burlington Industries, Inc., under a recorded lease dated March 15, 1958. Over the years, this property has been leased to various other tenants. Judge Haynsworth's interest in this property is included in the list of the Judge's current assets filed with the Committee.

April 1, 1957 through December 31, 1957

Purchases: None.
Sales: None.

1958

Purchases: 1. Building and lot on Rutherford Street in Greenville, South Carolina, acquired by deed dated January 13, 1958, from Law Building, Inc. This was part of the distribution to Judge Haynsworth of his share in his law firm's assets. Although the transfer was made subsequent to the time Judge Haynsworth became a United States Circuit Court Judge, the agreement to make the transfer was made prior to the time he became a Judge as part of the overall settlement with Judge Haynsworth, who in no way participated in the profits or fees of the firm subsequent to the time he was confirmed as a United States Circuit Court Judge. Over the years, this property was leased to a succession of tenants until it was sold in 1967.

2. A 4/157 interest in a tract of land subsequently developed as Greenville Memorial Gardens, acquired by deed dated December 12, 1958, from Grace Pepper Rhodes.

Sales: None.

1959

Purchases: None.

Sales: Sale of the 4/157 interest in the tract of land described above to Gresnville Memorial Gardens, a South Carolina corporation, by deed dated July 2, 1959.

1960

Purchases: A ½ interest in personal residence on Crescent Avenue, in the City of Greenville, South Carolina, acquired by deed dated May 5, 1960. The other ½ interest was purchased by Judge Haynsworth's wife.

Sales: 1. Sale of personal residence on McDaniel Avenue, Greenville, South Carolina, by deed dated May 5, 1960.

2. Sale of summer home near Charleston, South Carolina, by deed dated June 21, 1960.

1961

Purchases: A 1/5 interest in a small tract of land on Watson Road in Greenville County, South Carolina, adjacent to the tract of land on which Judge Haynsworth and four others had previously built a warehouse (see above). This tract was acquired by deed dated November 13, 1961 and was purchased by the grantees from Carolina Vend-A-Matic for $750 to provide additional parking space for use in connection with their warehouse. Judge Haynsworth's interest in this property is included in the list of the Judge's current assets filed with the Committee.

Sales: None.

1962

Purchases: None.
Sales: None.

1963

Purchases: None.[1]
Sales: None.

1964

Purchases: A 1/7 interest in a tract of land on Lowndes Hill Road and Watson Road upon which the business of Carolina Vend-A-Matic had been conducted, acquired by deed dated April 8, 1964 from Carolina Vend-A-Matic Co. and a deed dated April 11, 1964 from W. S. Mullens. The consideration for this property was a partial liquidating dividend to the stockholders of Carolina Vend-A-Matic and assumption of a mortgage on this property with a balance of $20,341.80. Judge Haynsworth testified at the hearings that this was done at the request of ARA, Inc. which purchased Carolina Vend-A-Matic Co., effective April 8, 1964, as ARA did not want to purchase any of the real estate owned by Carolina Vend-A-Matic. This property is now under lease to ARA, Inc. Judge Haynsworth's interest in this property is included in the list of the Judge's current assets filed with the Committee.

Sales: None.

1965

Purchases: None.
Sales: None.

1966

Purchases: None.
Sales: None.

1967

Purchases: None.
Sales: Sale of lot on Rutherford Road, acquired January 13, 1958 to Orders Realty Co., Inc., by deed dated March 22, 1967.

1968

Purchases: None.

Sales: [2] Gift of ½ undivided remainder interest in personal residence on Crescent Avenue, Greenville, South Carolina, to Furman University. This gift was made in connection with a major capital gifts campaign conducted by Furman University, of which Judge Haynsworth is an alumnus. This property was acquired by deed dated May 5, 1960. Judge Haynsworth and his wife retained life estates in this property.

(NOTE.—Certified copies of all of the deeds have previously been supplied to the Committee. All of the leases, with the exception of the Burlington lease, a copy of which has been supplied to the Committee, were unrecorded. Copies of all these unrecorded leases will be supplied upon request.)

FOOTNOTES

[1] By deed dated May 6, 1963, Christie C. Provost, Clement F. Haynsworth, Jr., and W. S. Mullens, as Trustees of the Carolina Vend-A-Matic Co. Profit-Sharing and Retirement Plan, acquired a farm containing approximately 90 acres. Since this farm was not acquired by Judge Haynsworth individually but as Trustee for the Profit-Sharing and Retirement Plan, this transaction is not properly includible in a listing of his individual transactions. This same tract was conveyed by the same three Trustees to W. Francis Marion by deed dated April 8, 1964, in connection with the liquidation of the Carolina Vend-A-Matic Profit-Sharing and Retirement Plan.

[2] By deed dated April 5, 1968, Clement F. Haynsworth, Jr., as trustee, conveyed a small strip of land to the trustees of Leawood Baptist Church in Greenville, South Carolina. Judge Haynsworth was acting as a substituted-trustee pursuant to an Order of Court dated March 13, 1946, and since this property was never owned by Judge Haynsworth individually, this transaction is not properly includible in this chronological listing.

CHRONOLOGICAL SUMMARY OF REAL ESTATE TRANACTIONS OF CAROLINA VEND-A-MATIC COMPANY

(1) *Deeds into Carolina Vend-A-Matic Company.* Carolina Vend-A-Matic Co. acquired three pieces of real estate during its existence. One, a lot at the intersection of Lowndes Hill Road and Watson Road in Greenville County, South Carolina, by deed from Specialty Hardwoods, Inc. dated October 8, 1955, a copy of which is attached as Exhibit 1. The second was an adjoining piece of property acquired from the South Carolina National Bank, as Trustee under the Will of Fred W. Symmes, by deed dated Oc-

tober 11, 1961, a copy of which is attached as Exhibit 2. The third was acquired by deed dated May 31, 1961, but this tract was conveyed by Carolina Vend-A-Matic Company to the South Carolina National Bank as Trustee under the Will of Fred W. Symmes, deceased, in connection with the second transaction described above. Copies of these deeds are attached as Exhibits 3(a) and 3(b).

(2) *Deeds out of Carolina Vend-A-Matic Company.* Other than the deed set forth in Exhibit 3(b), Carolina Vend-A-Matic conveyed the following parcels of property:

(a) By deed dated September 20, 1956, Carolina Vend-A-Matic Company transferred for $1,000.00 a small parcel of land at the intersection of Lowndes Hill Road and Watson Road, which was not needed for its operations, to Eugene Bryant, Clement F. Haynsworth, Jr., R. E. Houston, Jr., W. Francis Marion, and Christie C. Prevost. A copy of this deed, which was a portion of the property conveyed to Carolina Vend-A-Matic Company by Specialty Hardwoods, Inc., is attached as Exhibit 4. The grantees under this deed subsequently built a small warehouse on this property which they originally leased to Burlington Industries, Inc. A copy of this lease is attached as Exhibit 5. This property has been leased to various other tenants over the years. This property was conveyed to Judge Haynsworth and the other grantees prior to the time that Judge Haynsworth became a United States Circuit Court Judge.

(b) By deed dated November 13, 1961, Carolina Vend-A-Matic Company, in consideration of $750.00, conveyed a small tract of land adjoining tract (a) above to the same grantees, who purchased it for the purpose of providing additional parking area for the use of their warehouse. A copy of this deed is attached as Exhibit 6. Judge Haynsworth's interest in the property described in (a) and (b) was reported in the list of assets filed with the Committee.

(c) By deed dated April 8, 1964, Carolina Vend-A-Matic Company, in consideration of distribution to stockholders and an assumption of a mortgage with a balance of $20,341.80, conveyed to all of the stockholders of Carolina Vend-A-Matic Company the remaining property owned by Carolina Vend-A-Matic Company at the time. Judge Haynsworth testified at the hearings that this was done at the request of ARA, Inc., which purchased Carolina Vend-A-Matic Company, as it did not want to purchase any of the real estate owned by Carolina Vend-A-Matic Company. A copy of this deed is attached as Exhibit 7. Subsequently, on April 11, 1964, one of the stockholders, W. S. Mullins, conveyed his interest in this real estate to the remaining shareholders. A copy of this deed is attached as Exhibit 8. Judge Haynsworth's interest in this property was reported in the list of assets filed with the Committee.

(3) *Real estate transactions involving Carolina Vend-A-Matic Company's Profit Sharing and Retirement Plan.* The only real estate ever acquired by the Carolina Vend-A-Matic profit sharing and retirement plan was a farm containing approximately ninety acres near Fountain Inn in Greenville County, South Carolina, which was acquired on May 6, 1963, in the name of the trustees of the plan. A copy of this deed is attached as Exhibit 9. The minutes of Carolina Vend-A-Matic Company, which have been made available to the Committee, indicate that the primary motivation for purchasing this farm was to raise beef cattle for use for Carolina Vend-A-Matic's business. It was determined that this would be a sound investment for the pension and profit sharing plan which had sufficient cash to purchase this property, and title for the property was therefore taken in the name of the profit sharing and retirement plan, which in turn leased it to Carolina Vend-A-Matic Company. Subsequently, in connection with the ARA, Inc., purchase of Carolina Vend-A-Matic, the Vend-A-Matic profit sharing and retirement plan was terminated and the assets liquidated, which required the sale of this farm.

By deed dated April 8, 1968, the date when the transaction between Carolina Vend-A-Matic Company and ARA, Inc. was consummated, the trustees of the profit sharing and retirement plan conveyed this property to W. Francis Marion, one of the stockholders of the company, at a price in excess of the original purchase price. A copy of this is attached as Exhibit 10. Mr. Marion, at the time, already owned an adjoining tract of land, which he had previously acquired (See Exhibit 11), and he has continuously used this tract for a cattle farm since the date of the purchase.

EXHIBIT 1

TITLE TO REAL ESTATE BY A CORPORATION

(Prepared by Haynsworth & Haynsworth, Attorneys at Law, Greenville, S.C.)

(Book 536, p. 289)

STATE OF SOUTH CAROLINA,
County of Greenville.

Know all men by these presents that Specialty Hardwoods, a corporation chartered under the laws of the State of South Carolina and having its principal place of business at Greenville, in the State of South Carolina, for and in consideration of the sum of Seven Thousand and No/100ths ($7,000.00) dollars, to it in hand duly paid at and before the sealing and delivery of these presents by the grantee(s) hereinafter named, (the receipt whereof is hereby acknowledged), has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto Carolina Vend-A-Matic Co., a corporation chartered under the laws of the State of South Carolina, All that piece, parcel or lot of land, situate, lying and being in the City of Greenville, Greenville County, State of South Carolina, being known and designated as Lot No. 42 and part of Lot No. 41 on a plat thereof, entitled "Property of Symmes and Houston, Greenville, S.C.", prepared by Dalton & Neves, Engineers, dated June, 1950, and having, according to said plat, the following metes and bounds, to-wit:

Beginning at an iron pin at the intersection of the Watson Road and the Lowndes Hill Road and running thence along said Lowndes Hill Road S. 85–00 E. 409 feet to an iron pin; thence continuing along said Lowndes Hill Road S. 87–00 E. 135 feet to an iron pin; thence along the remaining portion of Lot No. 41 S. 3–00 W. 200 feet to an iron pin on Watson Road; thence N. 65–31 W. 584.7 feet to the beginning point.

This is the identical property conveyed to the grantor herein by deed of J. P. Coleman dated September 21, 1950 and recorded in the R. M. C. Office for Greenville County in Deed Book 420, at page 41.

This deed is made pursuant to resolution duly adopted by the Board of Directors of the grantor by a meeting thereof on October 8, 1955.

Together with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging or in anywise incident or appertaining.

To have and to hold all and singular the premises before mentioned unto the grantee(s) hereinabove named, successors, heirs and assigns forever.

And the said granting corporation does hereby bind itself and its successors to warrant and forever defend all and singular the said premises unto the grantee(s) hereinabove named, and their successors, heirs and assigns, against itself and its successors, and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

In witness whereof the said granting corporation has caused its corporate seal to be hereunto affixed and these presents to be subscribed by its duly authorized officers, on this the 8th day of October in the year of our Lord one thousand, nine hundred and fifty-five, and in the one hundred and eightieth year of the Sovereignty and Independence of the United States of America.

SPECIALTY HARDWOODS, INC.,
By JAMES P. COLEMAN,
President.
G. P. STANLEY,
Secretary.

Signed, sealed and delivered in the presence of:

FLORA K. HAYES.
MARTHA ELLEN LEATHERS.

STATE OF SOUTH CAROLINA, *County of Greenville.*

Personally appeared before me Martha Ellen Leathers and made oath that she saw J. P. Coleman as President and G. P. Stanley as Secretary of Specialty Hardwoods, Inc., a corporation chartered under the laws of the State of South Carolina sign, seal with its corporate seal and as the act and deed of said corporation deliver the within written deed, and that she, with Flora K. Hayes, witnessed the execution thereof.

Sworn to before me this 8th day of October, A.D., 1955.

E. HOUSTON, JR.,
Notary Public for South Carolina.

Attest:

MARTHA ELLEN LEATHERS.

Recorded October 10th, 1955 at 4:57 P.M. #26398.

EXHIBIT NO. 2

TITLE TO REAL ESTATE BY A CORPORATION

(Prepared by Haynsworth, Perry, Bryant, Marion & Johnstone, Attorneys at Law, Greenville, S.C.)

(Book 680, page 541)

STATE OF SOUTH CAROLINA,
County of Greenville.

Know all men by these presents that the South Carolina National Bank of Charleston (Greenville, South Carolina), as trustee under the will of Fred W. Symmes, deceased, banking association, organized and existing under the laws of the United States of America, for and in consideration of the exchange of real estate valued at Eight Thousand and No/100ths ($8,000.00) dollars, to it in hand duly paid at and before the sealing and delivery of these presents by the grantee(s) hereinafter named, (the receipt whereof is hereby acknowledged), has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto Carolina Vend-A-Matic Company, a South Carolina corporation:

All that certain piece, parcel or tract of land situate, lying and being on the Northern side of Watson Road and the Southern side of Lowndes Hill Road in the City of Greenville, County of Greenville, State of South Carolina, and having according to a plat prepared by Piedmont Engineering Service, dated May 29, 1961, entitled "Survey for Carolina Vend-A-Matic Company", the following metes and bounds:

Beginning at an iron pin on the Northern side of Watson Road at the joint corner of the premises herein conveyed and property of the grantee herein, and running thence with the line of said property of the grantee herein N. 3–00 E. 185 feet to an iron pin on the Southern side of Lowndes Hill Road; thence with the Southern side of Lowndes Hill Road S. 85–00 E. 325 feet to an iron pin at the joint corner of the premises herein conveyed and other property of the grantor herein; thence with the line of said

property of the grantor herein S. 3–00 W. 309.1 feet to an iron pin on the Northern side of Watson Road; thence with the Northern side of Watson Road N. 64–20 W. 351.2 feet to the point of beginning.

This is a portion of the property conveyed to the grantor herein by deed of Lowndes Hill Realty Company, dated March 8, 1960, and recorded in the R.M.C. Office for Greenville County, South Carolina, in Deed Book 645 at page 519.

This conveyance is executed pursuant to the power of sale contained in the Will of the late Fred W. Symmes of record in the Office of the Probate Judge for Greenville County, South Carolina (Apartment 664, File 18).

The plat referred to hereinabove is recorded in the R.M.C. Office for Greenville County, South Carolina, in Plat Book zz at page 15.

Together with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging or in anywise incident or appertaining.

To have and to hold all and singular the premises before mentioned unto the grantee(s) hereinabove named, its successors, and assigns forever.

And the said granting corporation does hereby bind itself and its successors to warrant and forever defend all and singular the said premises unto the grantee(s) hereinabove named, and its successors and assigns, against itself and its succeossr, and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

In witness whereof the said granting corporation has caused its corporate seal to be hereunto affixed and these presents to be subscribed by its duly authorized officers on this the 11th day of August in the year of our Lord one thousand, nine hundred and sixty-one and in the one hundred and eighty-sixth year of the Sovereignty and Independence of the United States of America.

THE SOUTH CAROLINA NATIONAL BANK OF CHARLESTON (GREENVILLE, SOUTH CAROLINA), AS TRUSTEE UNDER THE WILL OF FRED W. SYMMES, DECEASED.

Signed, sealed and delivered in the presence of:

EDWARD S. HOWLE.
MARITA C. KELLY.

By JAMES R. GRAHAM,
Vice President and Trust Officer.
JAMES D. SHEPPARD,
Assistant Cashier.

STATE OF SOUTH CAROLINA, *County of Greenville.*

Personally appeared before me, Marita C. Kelly and made oath that she saw James R. Graham, as Vice President and Trust Officer, James D. Sheppard as Assistant Cashier of The South Carolina National Bank of Charleston (Greenville, South Carolina, as Trustee under the Will of Fred W. Symmes, Deceased, a banking association organized and existing under the laws of the United States sign, seal with its corporate seal and as the act and deed of said corporation deliver the within written deed, and that she, with above named, witnessed the execution thereof.

Sworn to before me this 11th day of August, 1961.

MARITA C. KELLY.

Recorded August 20, 1961 at 4:17 p.m. No. 5532.

EXHIBIT 3a

(Book 675, page 71)

TITLE TO REAL ESTATE

STATE OF SOUTH CAROLINA,
County of Greenville:

Know all men by these presents that R. F. Watson, Jr., same as Richard F. Watson, Jr., and Evelyn P. Watson in the State aforesaid, in consideration of the sum of Eight thousand and No/100ths (8,000.00) dollars, to the grantor(s) in hand paid at and before the sealing of these presents by the grantee(s) (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto Carolina Vend-A-Matic Company:

All that certain piece, parcel or tract of land situate, lying and being in the City of Greenville, County of Greenville, State of North Carolina, and having according to a plat prepared by Piedmont Engineering Service, dated May 29, 1961, the following metes and bounds:

Beginning at a point in Watson, the joint corner with the Greenville Airport property, and running thence in Watson Road N. 62–20 W. 242.8 feet to a point; thence with the line of property now or formerly of The South Carolina National Bank, as Trustees under the Will of Fred W. Symmes, Deceased, N. 2–15 E. 549.7 feet to a point in or near the Southern edge of Lowndes Hill Road; thence N. 3–55 E. 25 feet to a point in the said Lowndes Hill Road; thence with the center line of the said Lowndes Hill Road S. 84–00 E. 216 feet to a point in the line of the Greenville Airport property; thence with the line of said Greenville Airport property S. 2–100 W. 671 feet to the point of beginning.

This is a portion of the property conveyed to the grantors herein by deed of R. F. Watson, dated February 1, 1952, and recorded in the R.M.C. Office for Greenville County, South Carolina, in Deed Book 450 at page 392, and subsequently conveyed to the grantors herein by deeds dated October 23, 1953, and February 20, 1956, and recorded in the R.M.C. Office for Greenville County, South Carolina, in Deed Book 488 at page 37, and in Deed Book 545 at page 479.

This conveyance is subject to the rights of way for the highways or roads as shown on said plat.

Together with all and Singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging or in anywise incident or appertaining.

To have and to hold all and singular the said Premises before mentioned unto the grantee(s) herein above named its Successor and Assigns forever. And the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') Heirs, Executors and Administrators to warrant and forever defend all and singular the said premises unto the grantee(s) hereinabove named, and the grantee's(s') Successors and Assigns against the grantor(s) and grantor's(s') Heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the grantor's(s') hands and seals this 31st day of May in the year of our Lord One Thousand Nine Hundred and Sixty-one.

R. F. WATSON, Jr.
RICHARD F. WATSON, Jr.
(Same as Richard F. Watson, Jr.)
EVELYN P. WATSON.

Signed, Sealed and Delivered in the Presence of

W. FRANCIS MARION.
FRED D. COX, Jr.

STATE OF SOUTH CAROLINA,
County of Greenville.

Personally appeared before me W. Francis Marion and made oath that he saw the within named grantor(s) sign, seal and as their act and deed deliver the within written deed, and that he, with Fred D. Cox, Jr. witnessed the execution thereof.

Sworn to before me this 31st day of May, A.D. 1961.

FRED D. COX, Jr.,
Notary Public for South Carolina.

Attest:

W. FRANCIS MARION.

RENUNCIATION OF DOWER

STATE OF SOUTH CAROLINA,
County of Greenville.

I, W. Francis Marion, a Notary Public for S.C., do hereby certify unto all whom it may concern, that Mrs. Lee Howard Watson, wife of the within named R. F. Watson, Jr., same as Richard F. Watson, Jr. did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without compulsion, dread or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto the grantee(s), its Successors and Assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

Given under my hand and seal this 31st day of May, A.D. 1961.

W. FRANCIS MARION,
Notary Public for South Carolina.

Attest:

LEE HOWARD WATSON.

Recorded May 31st, 1961 at 4:45 P.M. #29687

EXHIBIT 3B

TITLE TO REAL ESTATE BY A CORPORATION

(Book 680—Page 542)

STATE OF SOUTH CAROLINA,
County of Greenville.

Know all men by these presents that Carolina Venda-A-Matic Company a corporation chartered under the Laws of the State of South Carolina and having its principal place of business at Greenville, in the State of South Carolina, for and in consideration of the exchange of real estate valued at Eight Thousand and No/100ths ($8,000.00) dollars, to it in hand duly paid at and before the sealing and delivery of these presents by the grantee(s) hereinafter named, (the receipt whereof is hereby acknowledged), has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the South Carolina National Bank of Charleston (Greenville, South Carolina), as trustee under the will of Fred W. Symmes, deceased:

All that certain piece, parcel or tract of land situate, lying and being in the City of Greenville, County of Greenville, State of South Carolina, and having according to a plat prepared by Piedmont Engineering Service, dated July, 1961, entitled "Property of F. W. Symmes Est.", the following metes and bounds:

Beginning at a point in Watson Road at the Southeastern corner of the premises herein described at the joint corner with property now or formerly of Greenville Airport, and running thence in Watson Road N. 62–20 W. 242.8 feet to a point; thence with the line of other property of the grantee herein N. 2–15 E. 549.1 feet to a point on or near the Southern edge of Lowndes Hill Road, thence N. 3–55 E. 25 feet to a point in Lowndes Hill Road; thence with the center line of said Lowndes Hill Road S. 85–50 E. 216 feet to a point in the line of property now or formerly of Greenville Airport; thence with the line of the said Airport property S. 2–00 W. 671 feet to the point of beginning.

This is the identical property conveyed to the grantor herein by deed of R. F. Watson, Jr., et al., dated May 31, 1961, and recorded in the R.M.C. Office for Greenville County, South Carolina, in Deed Book 675 at page 71.

This conveyance is subject to the rights of way for the highways or roads as shown on said plat.

The plat referred to hereinabove is recorded in the R.M.C Office for Greenville County, South Carolina, in Plat Book ZZ at page 15.

Together with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging or in anywise incident or appertaining.

To have and to hold all and singular the premises before mentioned unto the grantee(s) hereinabove named, its successors in office and assigns forever.

And the said granting corporation does

hereby bind itself and its successors to warrant and forever defend all and singular the said premises unto the grantee(s) hereinabove named, and its successors in office and assigns, against itself and its successors, and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

In witness whereof the said granting corporation has caused its corporate seal to be hereunto affixed and these presents to be subscribed by its duly authorized officers, on this the 11th day of August in the year of our Lord one thousand, nine hundred and sixty-one and in the one hundred and eighty-sixth year of the Sovereignty and Independence of the United States of America.

CAROLINA VEND-A-MATIC COMPANY,
W. FRANCIS MARION,
President.
GEORGE E. MCDOUGALL,
Secretary.

Signed, sealed and delivered in the presence of:

ROBT. S. GALLOWAY, JR.
FRED D. COX, JR.

STATE OF SOUTH CAROLINA,
County of Greenville.

Personally appeared before me, Robt. S. Galloway, Jr. and made oath that he saw W. Francis Marion as President and George E. McDougall as Secretary of Carolina Vend-A-Matic Company, a corporation chartered under the laws of the State of South Carolina sign, seal with its corporate seal and as the act and deed of said corporation deliver the within written deed, and that he, with Fred D. Cox, Jr., witnessed the execution thereof.

Sworn to before me this 11th day of August A.D. 1961.

FRED D. COX, JR.
Notary Public for South Carolina.

Attest:

ROBT. S. GALLOWAY, JR.

Recorded August ----------

Mr. BAYH. Mr. President, I particularly thank my good friend from Nebraska at this time for his courtesy.

Mr. BAKER. Mr. President, the Senate has begun debate on the confirmation of Circuit Judge Clement Haynsworth to be an Associate Justice of the Supreme Court of the United States. It may seem odd that the debate has just begun since it has been raging for several weeks, virtually since the President's announcement of the nomination. But formal debate began on November 13.

The Committee on the Judiciary, by a vote of 10 to 7, has recommended the confirmation of Judge Haynsworth's nomination. It is now the duty of the full Senate to advise and consent or to withhold its advice and consent to the nomination. The vote will be very close, in all likelihood. The outcome may turn on one or two votes.

I hope, and I think, that Judge Haynsworth's nomination will be confirmed. He is an outstanding jurist and will bring balance and judgment to the Court.

MESSAGE FROM THE HOUSE

As in legislative session, 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 amendment of the Senate to the bill (H.R. 474) to establish a Commission on Government Procurement.

The message also announced that the House had agreed to the amendment of the Senate to the joint resolution (H.J. Res. 966) making further continuing appropriations for the fiscal year 1970, and for other purposes.

ENROLLED JOINT RESOLUTION SIGNED

The message further announced that the Speaker had affixed his signature to the enrolled joint resolution (H.J. Res. 966) making further continuing appropriations for the fiscal year 1970, and for other purposes, and it was signed by the Acting President pro tempore.

(By order of the Senate, the following proceedings were conducted as in legislative session:)

APPOINTMENT OF ELLIS L. ARMSTRONG AS COMMISSIONER OF RECLAMATION

Mr. HRUSKA. Mr. President, the Bureau of Reclamation now has on the job a new Commissioner, Ellis L. Armstrong, who was appointed by President Nixon to succeed my fellow Nebraskan, Floyd E. Dominy, who retired from the Federal service on October 31, after 36 years of service.

Mr. Armstrong is a native of Utah but he has worked for the Bureau of Reclamation in Nebraska, and I have noted an editorial from the people who know him best, down in the southwest corner of the State. The McCook Daily Gazette, whose editor is Allen D. Strunk, is the voice of the Republican River Valley and it was particularly gratifying to me to read an editorial in the paper's edition of October 24.

The headline is, "Ellis L. Armstrong Appointment Pleasing," and I want to say it is pleasing to me as well. I have full confidence that he will carry on in the best tradition of the Bureau of Reclamation in developing the water resources of Nebraska and all of the West.

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

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

ELLIS L. ARMSTRONG APPOINTMENT PLEASING

Southwest Nebraska and Northwest Kansas is pleased and fortunate in the appointment of Ellis L. Armstrong as Commissioner of the Bureau of Reclamation.

The appointment of this man is gratifying to this part of the country because of his fine character and ability but particularly because we consider him a Nebraskan even though his native state is Utah.

From 1948 to 1954 Mr. Armstrong was project engineer at Trenton Dam. During that time many persons in the McCook and Trenton areas grew to know, respect and admire Mr. Armstrong and his family.

With the completion of the Trenton project, he went on to other accomplishments and became Deputy Project Manager for consultants working for the Power Authority of New York State on the St. Lawrence Power and Seaway project. He returned to Utah in 1957 to become director of highways, Utah State Road Commission, and held this position until he was named Commissioner of Public Roads, U.S. Department of Commerce.

Since May 1968 he has been assistant regional director of Region IV including parts of Utah, Nevada, Wyoming, Colorado and Arizona with headquarters in Salt Lake City.

Among his honors is being the 29th person ever elected and elevated to national honorary membership in Chi Epsilon, national civil engineering fraternity.

Mr. Armstrong fills the seat held by Floyd E. Dominy, formerly of Hastings, who like Armstrong has had a warm spot in his heart for the reclamation interests of Nebraska and Kansas.

Mr. Armstrong's appointment is indeed pleasing to this area and puts two former Nebraskans in key positions, the other being former University of Nebraska Chancellor Clifford Hardin now Secretary of Agriculture.

We are confident both will continue doing outstanding jobs in serving the nation and this area.

COMMITTEE MEETINGS DURING SENATE SESSION TOMORROW

Mr. BYRD of West Virginia. Mr. President, as in legislative session, I ask unanimous consent that all committees be permitted to meet during the session of the Senate tomorrow.

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

THE PROSPECT FOR VIOLENCE IN THE ANTIWAR DEMONSTRATIONS

Mr. BYRD of West Virginia. Mr. President, there have been persistent rumors that violence will accompany the 3 days of antiwar demonstrations which are scheduled to begin here this evening.

These rumors were attributed by Dr. Benjamin Spock on November 8 to an effort by the Government to scare people away from Washington. Spock was quoted in the Washington Post on November 9, 1969, as saying:

> The government is trying in every way to intimidate people who are coming here to protest against the war.

Dr. Spock is totally wrong. The rumors have persisted, not because the Government is trying to scare anyone, but because of the extremely violent nature of some of the groups which are planning to participate in the moratorium.

These groups run the gamut of left-wing extremism, and the well organized and disciplined to fairly new brands of revolutionaries who have hastily gathered together and assumed catchy names for the convenience of identification in the press.

They are all planning to come, Mr. President—the Trotskyite Young Socialist Alliance, Weathermen, the Crazies, the Mad Dogs, the Yippies, the Anarchists, the W. E. Dubois Clubs, and Youth Against War and Facism.

I am not talking about earnest young people or older persons who believe that, by their participation, they are fulfilling their constitutional obligation as citizens. I have reference, instead, to those for whom the politics of confrontation is an end in itself and for whom violence is an instrument to be used in reaching their goal—a goal nothing less than the destruction of an orderly society and constitutional government.

These factions and certain others seek only to exploit the emotional issue of

Whereas, certain programs have shown that Indian people can effectively administer their own programs; and so

Therefore, be it resolved, that the National Congress of American Indians and the National Council on Indian Opportunity support the desires of the Indian Upward Bound staff and Board of Directors, to establish a large, equal and separate Indian educational system within the State of Minnesota which will be proposed as an Educational Park Complex on the White Earth Reservation and within the urban Indian area of Minneapolis, Minnesota. The complex will be on a demonstration basis and will constitute programs such as Head Start, Kindergarten, STAIRS, Elementary, Secondary, Upward Bound, Associated Arts College, Adult Basic, Vocational Training and Leadership Training. Total control by Indian parents and Indian community residents will be practiced through an all-Indian Board of Directors;

Be it further resolved, that the National Congress of American Indians and the National Council on Indian Opportunity recommend all elected National and State of Minnesota Congressmen and Senators who are sympathetic to the Indian's educational plight meet with a selected committee of Indian people.

RESOLUTION NO. 61—FUNDS FOR ECONOMIC DEVELOPMENT—MICHIGAN

Whereas, the Inter-Tribal Council or Michigan is composed of four Michigan Indian reservations, Keweenaw Bay Indian Community, the Saginaw-Chippewa Tribe of Mount Pleasant, the Hannabville Indian Community and the Bay Mills Indian Community; and

Whereas, the Inter-Tribal Council of Michigan Inc., is incorporated under the provisions of Act No. 327 of the Public Arts of 1931, as amended; and

Whereas, the Inter-Tribal Council of Michigan has applied to the Economic Development Administration, Indian Desk, Washington, D.C., for a Title III Planning and Administrative Grants in Aid, to staff a person within the Michigan Indian Community Action Program structure to concentrate on the economic development of the four reservations in the State of Michigan.

Now, therefore, be it resolved, by the National Congress of American Indians endorse and assist the Inter-Tribal Council of Michigan in obtaining the necessary funding for this program.

RESOLUTION NO. 62—FUNDS FOR ADULT BASIC EDUCATION—PINE RIDGE

Whereas, an adult basic education program, highly mobile in nature to take the program to every district, has operated on the Pine Ridge reservation in South Dakota since 1967, has reached significant numbers of tribal members, has proved highly beneficial to the Oglala Sioux Tribe, and is supported by the Tribe, public and parochial schools, the Bureau of Indian Affairs, and the State Department of Education; and

Whereas, this program could provide a model for other tribes;

Now, therefore, be it resolved, that the National Congress of American Indians strongly supports continued funding of this program by the Office of Education, HEW; and

Be it further resolved, that such programs requested by other tribes also be funded.

RESOLUTION NO. 66—COMMENDATION TO WENDELL CHINO AND JOHN BELINDO

Whereas, Wendell Chino is completing his fourth and final year as President of the National Congress of American Indians, a period during which NCAI has made more substantial progress than ever before in making the leaders in Congress and the Executive Branch aware of and willing to assist on Indian needs and aspirations, and in making NCAI the spokesman for all the Indians;

Whereas, John Belindo, has been Executive Director since 1967, and shares credit for much of the progress achieved during that period and for organizing the largest and most meaningful Convention in the history of NCAI.

Now, therefore, be it resolved, that the National Congress of American Indians in Convention here assembled in Albuquerque, New Mexico, October 6–10, 1969, hereby records its great appreciation and commendation to Wendell Chino, and hopes that he will continue to offer effective leadership on behalf of Indians; and

Be it further resolved, that the National Congress of American Indians records its great appreciation and commendation to John Belindo.

RESOLUTION NO. 67—HOUSING—REQUEST FOR ADDITIONAL FUNDS

Whereas, the American Indians are suffering from unsanitary, unsafe, and inadequate housing and to quote Senator Joseph M. Montoya, New Mexico, labeled Indian housing "a National disgrace and a blot on our nation," and Senator Edward Kennedy stated "there is a need for 50,000 homes for the Indian people"; and

Whereas, the Affiliated Tribes of Northwest Indians are concerned with inadequate living conditions; and

Whereas, as a consequence this is resulting in serious health problems affecting the lives of Indian people to the extent the mortality rate is far above that of the national average; and

Whereas, a good home is conducive to establishing good study habits for children thus reducing school absenteeism and also the home is the hub of activity for families and the contributing factor involving health, education and welfare of individual families; and

Whereas, under the present structure of the Housing Development Program under the Bureau of Indian Affairs is unable to function effectively in the best interest of the Indian people due to inadequate funds appropriated for this purpose; and

Whereas, there is an immediate need for proper housing; and

Now, therefore, be it resolved, that the National Congress of American Indians request additional funds to be appropriated through the necessary channels for this worthy and much needed money for homes for the Indian population.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is concluded.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate resume the consideration of executive business.

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

SUPREME COURT OF THE UNITED STATES

The Senate, in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. MANSFIELD. 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. COOK. 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.

I

Mr. COOK. Mr. President, what is the historic role of the Senate; What is the relevant inquiry, politics or qualifications?

Nowhere are prejudices more mistaken for truth, passion for reason, and invective for documentation than in politics.—JOHN MASON BROWN, *"Through These Men,"* 1952.

All politicians have read history; but one might say that they read it only in order to learn from it how to repeat the same calamities all over again.—PAUL VALERY, Saturday Review.

Mr. President, many have viewed the furor surrounding the nomination of Judge Clement F. Haynsworth, Jr., to the Supreme Court as something rather unique in American history. Therefore, to put this controversy in its proper perspective, I think it appropriate and certainly timely that we examine briefly the history of some of the controversial Supreme Court appointments for the lessons they can teach and the assistance they can provide in treating his nomination with the dispassionate objectivity the dignity of this body would seem to require.

United Press International reports that in the history of the Supreme Court nine candidates have been rejected. Five other times the Senate took no action whatsoever and on five occasions the President withdrew his nominee, at least temporarily.

Harris, in his fine book "The Advice and Consent of the Senate," sums up the history of Supreme Court nominations by pointing out that approximately one-fifth of all appointments have been rejected by the Senate. However, since 1894, there has been only one rejection. In the preceding 105 years, 20 of the 81 nominees were rejected. Four of Tyler's nominees, three of Fillmore's, and three of Grant's were disapproved during a period of bitter partisanship over Supreme Court appointments.

Harris concludes of this era:

Appointments were influenced greatly by political consideration, and the action of the Senate was fully as political as that of the President. Few of the rejections of Supreme Court nominations in this period can be ascribed to any lack of qualifications on the part of the nominees; for the most part they were due to political differences between the President and a majority of the Senate.

The eminent Supreme Court historian, Charles Warren, cites only four situations in which lack of qualifications or of fitness were important factors—John Rutledge, 1795; Alexander Wollcott, 1811; George H. Williams, 1873; and Caleb Cushing, 1874.

The first rejection of a nominee was that of former Associate Justice John Rutledge, of South Carolina, in 1795. He had been nominated for the Chief Justiceship by President George Washington. Warren reports that Rutledge was rejected essentially because of a speech he had made in Charleston in opposition to the Jay Treaty. Although his opponent in the predominantly federalist

Senate also started a rumor about his mental condition, an objective appraisal reveals his rejection was based entirely upon his opposition to the treaty. Verifying this observation, Thomas Jefferson wrote of the incident:

> The rejection of Mr. Rutledge by the Senate is a bold thing, because they cannot pretend any objection to him but his disapprobation of the treaty. It is, of course, a declaration that they will receive none but tories hereafter into any department of the Government.

On December 28, 1835, President Andrew Jackson sent to the Senate the name of Roger B. Taney, of Maryland, to succeed John Marshall as Chief Justice. As Taney had been Jackson's Secretary of the Treasury and Attorney General, the Whigs in the Senate greatly disliked him. Daniel Webster wrote of the nomination:

> Judge Storey thinks the Supreme Court is gone and I think so, too.

Warren reports:

> The bar throughout the North, being largely Whig, entirely ignored Taney's eminent legal qualifications, and his brilliant legal career, during which he had shared . . . the leadership of the Maryland bar and had attained high rank at the Supreme Court bar, both before and after his service as Attorney General of the United States.

Taney was approved, after 2½ months of spirited debate, by a vote of 29 to 15 over vehement opposition including Calhoun, Clay, Crittenden, and Webster. He had actually been rejected the year before, but was resubmitted by a stubborn Jackson.

History has judged Chief Justice Taney great, and his tribulations prior to the confirmation were completely overshadowed by an outstanding career. A contrite and tearful Clay related to Taney after viewing his work on the Court for several years:

> Mr. Chief Justice, there was no man in the land who regretted your appointment to the place you now hold more than I did; there was no Member of the Senate who opposed it more than I did; but I have come to say to you, and I say it now in parting, perhaps for the last time—I have witnessed your judicial career, and it is due to myself and due to you that I should say what has been the result—that I am satisfied now that no man in the United States could have been selected more abundantly able to wear the ermine which Chief Justice Marshall honored.

It is safe to conclude that purely partisan politics played the major role in the rejections of Supreme Court nominees occuring in the 19th century. The cases of Rutledge and Taney have only been mentioned to highlight a rather undistinguished period in the history of this body when Senators exercised incredibly poor judgment on numerous occasions.

I do not mean to imply that Supreme Court appointments in the 20th century have been without controversy, because certainly this has not been the case. However, as I stated earlier, only one nominee has been rejected in the last 60 years.

The controversy surrounding President Woodrow Wilson's appointment of Louis D. Brandeis is certainly not without parallel to the current turmoil over the Haynsworth nomination. A major difference, however, is that Brandeis, unlike Haynsworth, was without support of substantial and respected portions of the legal community. William Howard Taft, Elihu Root, and three other past presidents of the American Bar Association signed the following statement:

> The undersigned feel under the painful duty to say . . . that in their opinion, taking into view the reputation, character and professional career of Mr. Louis D. Brandeis, he is not a fit person to be a member of the Supreme Court of the United States.

It is reported that hearings were conducted by a Senate Judiciary Subcommittee for a period of over 4 months and were twice reopened. The hearings volumes consisted of over 1,500 pages.

Walter Lippmann stated in the New Republic that his opponents were essentially that "powerful but limited community which dominated the business and social life of Boston."

The nomination of Brandeis, just like the nomination of Haynsworth, was a cause celebre for the opposition party in the Senate. The political nature of the opposition is indicated by the fact that the confirmation vote was 47 to 22. Three progressives and all but one Democrat voted for Brandeis and every Republican voted against him.

The basic opposition to Brandeis, just as the opposition to Haynsworth, was born of a belief that the nominee was essentially "out of step" with the prevailing views of the Court at the time.

The publicly stated reasons used to oppose Brandeis, just as the arguments against Haynsworth, were that he fell below standards of "fitness." However, the hearings concerning the Brandeis appointment, just as in the Haynsworth nomination, failed to substantiate any violation of the prevailing standards of conduct.

Louis Brandeis became one of the all-time greats of the Supreme Court. I confidently predict that Judge Clement Haynsworth's future will be just as dignified and distinguished.

Liberals in the Senate actively opposed the nominations of Charles Evans Hughes, 1930, and Harlan Fiske Stone, 1925, to the Court for various reasons best summed up as opposition to what they predicted would be their conservatism. It was generally conceded by liberals subsequently that they had misread the leanings of both nominees, who tended to side with the progressives on the Court throughout their tenures.

No review of the historical reasons for opposition to Supreme Court nominees, even as cursory as mine, would be complete without a brief discussion of the Parker nomination. John J. Parker, a member of the court of appeals for the fourth circuit from North Carolina, was designated for the Supreme Court by President Hoover in 1930. Harris reports that opposition to Parker was essentially threefold: First, he was alleged to be antilabor; second, unsympathetic to Negroes; and, third, politics dictated his selection.

Opposition to Haynsworth, another member of the fourth circuit, has followed an almost identical scenario. Judge Parker was defeated 41 to 39, but went on to become one of the outstanding judges in the Nation as he remained on the fourth circuit. The special interest groups who engineered his defeat subsequently admitted that they had defeated a nominee who was essentially liberal.

Judge Parker, however, was spared subjection to the fabricated ethical charges which have been leveled against Haynsworth.

What can we conclude from this brief summation of the Senate's history in regard to its constitutional duty to advise and consent to presidential nominations of the Supreme Court? It can be said, at least, that the challenge of the Senate remains as our revered senior statesman from Vermont (Mr. AIKEN) described it early in his Senate career when he said:

> The main issue involved in the vote which we are soon to take [upon the nomination of Aubrey Williams] is whether a man can come before this Senate for approval and have that approval granted or refused on the basis of the evidence presented on whether such judgment will be influenced by politics, prejudice, racial and religious discrimination, and all the other evils which Members of the United States Senate should rise above.

As my brief historical review, I believe, has demonstrated, the Senate has in its past almost without exception objected to nominees for the Supreme Court for political reasons. There were times, however, when it sought to hide its political objections under the veil of cries about fitness, ethics, and qualifications. This body has, in more recent years, come to the conclusion that the advice and consent responsibility of the Senate should mean an inquiry into qualifications and not politics. Various Senators of liberal persuasion have argued to conservatives in regard to appointments they liked that the ideology of the nominee was not the business of the Senate. I accept that argument. I agree that for the Senate to go back to its habit in the 19th century of purely political consideration of nominees to the Supreme Court would degrade the Court and certainly not distinguish the Senate. In addition, if political considerations were a valid inquiry, we might just as well introduce an amendment to the Constitution giving to the U.S. Senate the power to make Supreme Court appointments, as many argued for strongly during the Constitutional Convention.

I recently wrote a letter to a black student at my alma mater, the University of Louisville. He had written to me questioning my support of the Haynsworth nomination. My reply to him explains my philosophy in regard to the role of the Senate in reviewing and passing upon Supreme Court nominations. It includes a quotation from the Senator from Massachusetts (Mr. KENNEDY) during the debate on the Thurgood Marshall appointment with which I am in complete agreement.

I wrote to the young man as follows:

OCTOBER 21, 1969.

MR. CHARLES C. HAGAN,
University of Louisville,
Louisville, Ky.

DEAR MR. HAGAN: I appreciate very much your recent communication regarding my support of the nomination of Judge Clement F. Haynsworth, Jr., to be an Associate Justice of the Supreme Court

First, as to the question of his views on

labor and civil rights matters, I find myself in essential disagreement with his civil rights decisions—not that they in any way indicate a pro-segregationist pattern, but that they do not form the progressive pattern I would hope for. However, as Senator Edward Kennedy pointed out to the conservatives as he spoke for the confirmation of Justice Thurgood Marshall.

"I believe it is recognized by most Senators that we are not charged with the responsibility of approving a man to be Associate Justice of the Supreme Court only if his views always coincide with our own. We are not seeking a nominee for the Supreme Court who will express the majority view of the Senate on every given issue, or on a given issue of fundamental importance. We are interested really in knowing whether the nominee has the background, experience, qualifications, temperament and integrity to handle this most sensitive, important, responsible job."

Most Senators, especially of moderate and liberal persuasion, have agreed that while the appointment of Judge Haynsworth may have been unfortunate from a civil rights point of view, the ideology of the nominee is the responsibility of the President. The Senate's judgment should be made, therefore, solely upon grounds of qualification. As I agree with Senator Kennedy and others that this is the only relevant inquiry, I have confined my judgment of the nominee's fitness to the issue of ethics or qualifications.

Quite frankly, the criticism of Judge Haynsworth's ethical standards is completely baseless . . . those who know the judge best have testified that he is of unquestioned integrity and almost without peer as a legal scholar. The opponents of the judge are attempting to create a new ethical standard not previously in existence and apply it retroactively to Judge Haynsworth. The Washington Post, the New York Times, and other progressive papers have agreed that the ethical questions raised are not supportable, but they now say that since the furor has been raised, public confidence in the Court requires that the nomination be withdrawn. This is completely irresponsible because it would mean that the mere making of accusations should be enough to deny future nominees confirmation. This is fundamentally unfair. Each individual deserves to be judged upon the facts. The Supreme Court which you and I admire has spent the last 15 years standing up for the rights of individuals against the will of the majority. The Haynsworth affair is quite similar. Here you have the individual against the mass of aroused public opinion. Public opinion would be relevant if he were running for public office, but Supreme Court nominees are not elected but appointed, and for good reason.

If the Supreme Court were subjected to the public will rather than insulated against public outrage over unpopular decisions, do you think we would ever have been given *Brown* v. *Board of Education?* Never has a Supreme Court been more unpopular than the Warren court, but it was a good Court I am sure you will agree.

The point is that the nominee's philosophy is to be judged by the President of the United States, the elected representative of the people. While we in the Senate might object to the "ideological bent" of the nominee, we sit in judgment only on his judicial fitness. We are bound to be fair to the individual even if it means we must go against the majority of the people.

This is what the Supreme Court has done for the last 15 years. Our consideration of appointments to that body demands no less from us.

With best wishes,

Sincerely yours,

MARLOW W. COOK,
U.S. Senator.

II

The state of the law today: What is the existing standard?

Bad laws, if they exist, should be repealed as soon as possible, still, while they continue in force, for the sake of example they should be religiously observed.—ABRAHAM LINCOLN.

Since almost all of us here in the Senate have agreed that our only relevant inquiry should be the question of qualifications. We must first determine what the existing standards are by which we can measure the qualifications of Clement Haynsworth. The question is not what we wish the standards were but rather what, in fact, they are. Standards are not established by mere speeches and accusations. We must not allow a new standard to be created to stop an appointment some find objectionable for political reason. New standards, if they are needed—and I happen to think they are—must be established by legislation, not accusation. They must be created by the deliberative legislative functions of the Congress—not by an ad hoc determination designed to defeat a particular nomination. I hope the fundamental unfairness of the attempt to create a new standard for Clement Haynsworth and apply it retroactively is now apparent to my colleagues.

The relevant question, then, is what is the standard today? An examination of two recently announced cases in the fifth circuit supply the answer. It may not be the answer we would like, but it is nevertheless the state of the law today. It is the existing law, not the fabrications of aspiring politicians and special interest groups, which must dictate our judgment of the actions of Judge Haynsworth during his period on the fourth circuit court of appeals, and therefore his qualifications for the Supreme Court.

The first case is the controversial Federal Power Commission rate case, Austral Oil Co., Inc., against Federal Power Commission, which involves as much as $80 million of rate reductions per year. The fifth circuit, in a ruling issued October 17, 1969, although transferring the case to another panel for rehearings, unequivocally held that Chief Judge Brown and Judge Jones were not disqualified for any reason to sit on the case, despite the fact that both judges had considerable stock interests in several of the parties. Judge Brown individually owns stock valued at $36,400 in three of the litigants, as of the date of the hearing, and is the trustee of several trusts holding oil company stocks worth approximately $500,000. Judge Jones' wife has a beneficial interest in stock of some of the litigants and, like Judge Brown, Judge Jones is the trustee of certain trusts with a substantial portfolio in oil companies, many of which are parties in this case. The amount of stock interest and the potential impact of the case on that interest is infinitely greater than in any of the cases where opponents claim Judge Haynsworth should have disqualified himself. Yet, despite this much greater interest, the fifth circuit held:

The judges of the panel to which this case was assigned are not disqualified by prejudice, neither are they disqualified by interest, whether individual, fiduciary, or otherwise.

The second case is *Kinnear-Weed Corp.* v. *Humble Oil & Refining Compnay,* (403 F. 2d 437 (5th cir. 1968)) a patent infringement-type case commenced in 1953 in which the complaint contained a claim for $285 million in damages plus interest against Humble. The trial judge not only owned 100 shares of Humble stock, worth approximately $10,000 at the time, but he also: First, owned 25 percent of the stock and was an officer and director in a company which, during the time the judge sat on this case averaged almost 16 percent of its business with Humble; second, was a plaintiff in a contested lawsuit against Humble in which he received $409.24 out of the final settlement which was consummated after he began sitting on the case in question; and, third, executed leases and other instruments, many of which involved Humble in connection with lucrative oil leasehold interests owned by his wife. None of these dealings with Humble either singly or collectively required the trial judge to disqualify himself from this case.

As for the stock ownership in Humble, the fifth circuit in an en banc ruling written by Chief Judge Brown held:

This tiny fractional interest in the equity ownership of this huge industrial interprise does not amount, either as a matter of fact, or law, or both, to a substantial interest by the trial judge in the case or a prohibited connection with a litigant.[1]

A second ruling in this case, handed down September 5, 1969, by District Judge Ben C. Connally and as yet unpublished, found that there was absolutely no legal reason for the trial judge to disqualify himself because of his other business connections with Humble. On October 1, 1969, the fifth circuit ordered Judge Connally to enter an appropriate judgment dismissing all the conflict charges made by the plaintiff.

Surely this case should still, once and for all, the claim that Judge Haynsworth should have disqualified himself from the Darlington cases and the other cases involving customers of Carolina Vend-A-Matic as claimed by Senator BAYH and others. In fact a stronger case could be made in the Humble Oil case for disqualification than in the Darlington-type cases involving customers of Carolina Vend-A-Matic, since the company with which the trial Judge was connected did considerably more business with Humble than Carolina Vend-A-Matic did with any of the companies that came before Judge Haynsworth's court. In addition, the trial judge in the Humble case actually owned stock in Humble, and, as an individual, had other extensive business dealings with Humble, factors which were not present in any of the Carolina Vend-A-Matic cases challenged by the opponents of this nomination.

The Federal Power Commission and Humble Oil cases contain all of the claims of conflict of interest raised against Judge Haynsworth. In fact, in both these cases, the arguments for disqualification are much stronger than in any of the cases which Senator BAYH mentioned in his bill of particulars. Yet

[1] 403 F. 2d 437, 440.

the fifth circuit unequivocally held in both cases that there was no basis for disqualification. Among the judges joining in these rulings were Chief Judge Brown and Judge Wisdom, two judges that Joseph Rauh, an outspoken critic of Judge Haynsworth, stated at the hearings on Judge Haynsworth's nomination "would have been heroic additions to the Supreme Court." [2]

The charges of conflict of interest against Judge Haynsworth evaporate into nothingness in the face of these two fifth circuit cases. If Judge Haynsworth's critics continue to attack him on this basis, the attack will have to be broadened to impugn all the judges of the fifth circuit and others, such as the revered Judge Soper, who, as was reported at the hearings, sat on a case involving the B. & O. railroad while a stockholder of B. & O.[3] The very thought of charging all these other judges with violation of the judicial code and canons of ethics is ridiculous, and it is equally ridiculous, and totally without foundation, to make such charges against Judge Haynsworth.

III

The role of the press—have accurate impressions been conveyed?

Even when the facts are available, most people seem to prefer the legend and refuse to believe the truth when it in any way dislodges the myth.—JOHN MASON BROWN, Saturday Review.

We live under a government of men and morning newspapers.—WENDELL PHILLIPS.

To be perfectly blunt, the accusations which have been made against Judge Haynsworth by some of his opponents and by a much larger and more vocal group in the press only indicate an unawareness of the record and a total lack of interest in what the standards of conduct currently are for setting Federal judges. But this has not deterred the opposition.

Let us examine some of the remarks in the press. Anthony Lewis, in an article in the New York Times of October 19, 1969, concluded:

The point about Judge Haynsworth is that he does not have such high intellectual or legal qualifications. Few would call it a distinguished appointment.

Those who know him disagree. Senator JOSEPH TYDINGS, a longtime personal friend of the judge, said of him in the hearings before the Judiciary Committee:

I think I can say as a lawyer in the fourth circuit I found Judge Haynsworth, as a judge, to be thoughtful, fair and open-minded; and as an administrator and because of my subcommittee chairmanship I have become aware of the work of the chief judges of the several circuits. I have found him to be innovative and indeed, dynamic.

Senator TYDINGS subsequently decided to oppose the nomination in committee for reasons best known to himself.

Charles Allan Wright, McCormack professor of law at the University of Texas and one of the most distinguished legal scholars in the country, wrote to President Nixon:

I earnestly hope you will remain steadfast in your determination not to withdraw the nomination and that you will use all the powers of your office to obtain confirmation of Judge Haynsworth. To withdraw the nomination would give your opponents an unmerited victory, it would leave a permanent cloud over a man of high character, and it would deprive the supreme court of the services of a judge of great ability.

John Bolt Culbertson, of Greenville, S.C., a labor and NAACP lawyer for many years in the Deep South, has known Judge Haynsworth well and practiced against him. He said of the judge's legal ability in his testimony before the Judiciary Committee:

Judge Haynsworth, in my opinion, has one of the best legal minds, the most incisive mind that I have run into.

In addition, Chairman EASTLAND has received letters from all the senior district judges in the fourth circuit praising Judge Haynsworth. These are men who have worked with him and seen him sustain and overrule their decisions down through the years. They know his ability and will not be rattled nor silenced by ill-informed newsmen and politicians who ignore the facts and distort the truth.

Let us look at an example of guilt by association often used on editorial pages around the country. The Louisville Courier-Journal in my State said in an editorial on October 14, 1969:

Senator Cook makes a better front man than Senators Thurmond or Eastland would. It wouldn't look good to have these two racists out front. They are, however, key supporters of the nominee, which should tell us something.

Without commenting on their remarks about our colleagues, I feel compelled to ask who has been nominated for the Supreme Court—Senator EASTLAND, Senator THURMOND, or Judge Haynsworth? What does the fact that Senators EASTLAND and THURMOND are supporting Haynsworth tell us? Does it tell us he is unethical, anti-civil rights or antilabor? It does not. In fact, it says absolutely nothing more than that two Members of the U.S. Senate whom the Courier-Journal happens not to like will be voting to confirm the nomination.

Another sterling example of the distortions and unsubstantiated accusations bandied about is found in the same editorial. The Courier-Journal continued:

Despite all of Senator Cook's verbal thrashing around, he cannot conceal what the record shows—that Judge Haynsworth has a definite blind spot when it comes to judicial ethics.

The record, which I doubt they have read, shows none of these things. Even the Washington Post, which is unenthusiastic about the appointment, knows better. It accused the judge's supporters of raising these issues because they were so easily rejected.

It is not that he lacks integrity or honesty or that he has been involved in conflict of interest situations. These issues, it appears, were raised as strawmen by his own friends simply because they can be disproved so readily.

IV

What is Judge Clement F. Haynsworth, Jr., really like?

For the great majority of mankind are satisfied with appearances, as though they were realities, and are often more influenced by the things that seem than by those that are. (Author unknown.)

The result of the unfounded attacks against Judge Haynsworth has been an inability on the part of the public and many Senators to distinguish between appearance and reality. Therefore, answering the question, "What is Clement Haynsworth really like?" is central to our efforts on behalf of his confirmation. The best way to assess a judge is to look at the quality of his work.

Prof. Bernard J. Ward, for 15 years a member of the faculty of Notre Dame Law School, wrote in a letter to Senator HARTKE:

When the attacks upon Judge Haynsworth began, they struck me as nightmarish. I had known him for a dozen years through his opinions in the pages of the Federal Reporter. Far from being anti-black, or anti-labor, or anti-anything at all, the Judge Haynsworth I had known from hundreds of opinions was an utterly unbiased, compassionate, very human person. Indeed, the only bias I had ever so much as suspected was one in favor of the most pitiful wretches of all, the inhabitants of our jails. . . .

If there is one sure test of a judge's dedication and commitment to his office, it is his record in prisoner petition cases. Nothing is easier than for the busy or ease-loving judge to neglect those cases. They are invariably brought by friendless, helpless men who have already been afforded the normal channels of redress. Most of the cases are without merit. A judge must carefully consider scores and scores of them before coming on one that merits consideration. When he does find a meritorious petition, it usually involves him in the unpleasant work of calling in question the conduct of a fellow judge or of a member of the bar. It is utterly thankless work, work that a judge will eagerly take up only if he is utterly dedicated to his office.

Judge Haynsworth has eagerly undertaken such work during all of his twelve years on the bench. During the chief judgeships of Judge Sobeloff and Judge Haynsworth, the fourth circuit has become a model for the other ten, and for appellate courts everywhere, in the careful, painstaking consideration of prisoner petition cases. That fact will be attested to by any student of the subject; it is attested to most eloquently by the relatively enormous number of appeals in prisoner petition cases that are pressed upon the fourth circuit each year by those who know it to be sympathetic, indeed, critics of Judge Haynsworth may sneer that he is too hospitable to the claims of prisoners within his circuit, but none can deny that he has spent himself prodigously in an area that no judge would enter who was not driven by the pursuit of Justice.

Professor Ward knows Clement Haynsworth, the judge. It behooves those of us who are undecided to look to the words of persons who are knowledgeable to learn the reality rather than to rely upon the appearance.

Finally, Mr. President, in closing, I wish to read to this body a letter Judge Haynsworth received from a Frederick Leister, whose conviction for involuntary manslaughter he had upheld in an opinion he also had written. *U.S.A.* v. *Leister*, 393 F. 2d 920 (1968).

[2] Hearings, p. 469.
[3] Hearings, p. 253.

FEDERAL PRISON,
Lewisburg, Pa., October 26, 1969.

Hon. CLEMENT HAYNSWORTH,
Chief U.S. District Judge, Fourth Circuit Court of Appeals, Greenville, S.C.

DEAR JUDGE HAYNSWORTH: If you were to give up now you would be unworthy of the man who wrote the decision in my appeal: The man who saw that I had no attorney and appointed one of high calibre; the man who saw the need for treatment for the mentally ill but who gave society first priority; the man who condemned me to prison and who was right in doing so.

Because of the decision you wrote and your words, I began to strike back against the problems that I myself created. And I'm winning the battle.

This is probably the first time that you have ever been under serious attack for anything and I know how it hurts. Oh how it hurts! I have been under attack since I slipped from my mother's womb but I am not about to give up. Admittedly, I almost did a few times, but somewhere, someone always gave me the strength not to.

Your words helped me. They weren't fancy or glittering words but they were sensible words and I listened to them.

I am on my way back from the road that I once traveled, for the first time in my life, I will become a law-abiding citizen. I am not there yet but I am fast approaching my destination.

If you were to give up now, it would be a disappointment and shock to me that would certainly encourage me (and men like me) to detour if not to do so.

Stand firm, your honor, and stand proud. You have done nothing wrong, only human (and we are all human, aren't we?)

Keep in mind the tribulations that Christ and his followers encountered and yours will be easier to bear, and I am as positive as I am that I sit in this prison cell, that (1) you *will* be confirmed, and (2) that you will become one of the greatest Supreme Court Justices of all times . . .

May God bless you.

Respectfully,

FREDERICK F. LEISTER, Jr.

Let me assure Mr. Leister, today, that those of us who believe in Clement Haynsworth shall not give up until reality prevails over appearance.

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

Mr. COOK. I yield.

Mr. ERVIN. I ask the Senator from Kentucky if the attack on Judge Haynsworth does not come from exactly the same sources that made the attack on Judge John J. Parker.

Mr. COOK. The identical sources.

Mr. ERVIN. Does not the Senator from Kentucky agree with the Senator from North Carolina that, notwithstanding Judge Parker's rejection by a margin of two votes in the Senate, Judge Parker served for many years as the chief judge of the Fouth Circuit Court of Appeals and proved himself to be one of the most able jurists America has ever known?

Mr. COOK. He did, indeed.

Mr. ERVIN. As a premise to my next question I would like to state that after the close of the hearings, the charge was made that Judge Haynsworth owned stock in the Carolina Vend-A-Matic Co. and that that company had contracts with textile firms which were parties to the Darlington case and the Milliken case.

I would like to ask the Senator from Kentucky if the record does not show the only contracts Carolina Vend-A-Matic had with Darlington or Milliken were five contracts, three of them being with Gayley Mill, Clemson Industries, and Mayco Yarns, which really constituted one enterprise. The other mills were Jonesville Products and Magnolia Finishing Plant. So, in effect, they only had dealings with three plants, none of which were parties to the suit.

Mr. COOK. The Senator is correct.

Mr. ERVIN. Does not the Senator from Kentucky agree with the Senator from North Carolina that the record shows none of these textile plants were parties to the Darlington litigation?

Mr. COOK. The Senator is correct.

Mr. ERVIN. Does not the record also show that these matters were called to the attention of Chief Judge Sobeloff of the Fourth Circuit Court of Appeals after the decision in the Darlington case; that the matter was fully investigated at that time; that Patricia Eames, counsel for the Textile Workers Union of America, had called these matters to the attention of Judge Sobeloff; and that there was a complete investigation by the Fourth Circuit Court of Appeals? Also, I wish to ask the Senator if the Fourth Circuit Court of Appeals did not give Judge Haynsworth a complete acquittal of any impropriety in the matter after its investigation?

Mr. COOK. The Senator is correct. As a matter of fact it came as an amazing revelation to me during the hearings, as the Senator will recall, that members of that union and their affiliates testified before the committee and said, "We were aware he was a director and vice president but we did not know his interest." Apparently the union decided it was all right to be a director and vice president and they dismissed it. They did not bring it up in the appeal or in the writ of certiorari to the Supreme Court.

Mr. ERVIN. I wish to ask the Senator from Kentucky if the record does not show that all the transactions between Carolina Vend-O-Matic and any of the mills which later developed as a part of the Milliken chain were completely known to the counsel for the Textile Workers Union right after the Darlington case, and that the Textile Union Workers' counsel did not move to set aside the judgment in the Darlington case and did not see fit to call the matter to the attention of the Supreme Court on the appeal in thls case.

Mr. COOK. I might suggest they even knew it within the 30-day period in which they could have filed a motion for a new trial. They not only did not bring it up but they did not bring it up in the writ to the Supreme Court.

Mr. ERVIN. Does not the Senator agree that the counsel for the Textile Workers Union were diligent persons and would undoubtedly have brought this matter to the attention of the Fourth Circuit Court of Appeals on a motion for rehearing or a motion to set aside, or they would have called it to the attention of the Supreme Court if they thought there was any merit to the matter?

Mr. COOK. If they thought there was any merit to it and, second, if they wished to adequately represent their client.

Mr. ERVIN. I wish to ask the Senator if the record does not show that all these matters were known to counsel for the Textile Workers Union and the Fourth Circuit Court of Appeals, and that the Circuit Court of Appeals, through Chief Judge Sobeloff, sent the file to the Department of Justice? I wish to ask the Senator if it does not appear on page 19 of the record that on February 28, 1964, after investigating the matter, then Attorney General Robert F. Kennedy wrote a letter to Chief Judge Sobeloff as follows:

FEBRUARY 28, 1964.

Hon. SIMON E. SOBELOFF,
U.S. Court of Appeals for the Fourth Circuit, Baltimore, Md.

DEAR MR. CHIEF JUDGE: This will acknowledge receipt of your letter dated February 18, 1964, enclosing the file that reflects your investigation of certain assertions and insinuations about Judge Clement F. Haynsworth, Jr.

Your thorough and complete investigation reflects that the charges were without foundation. I share your expression of complete confidence in Judge Haynsworth.

Thanks for bringing this matter to my attention.

Sincerely,

ROBERT F. KENNEDY,
Attorney General.

Mr. COOK. The Senator is correct.

Mr. ERVIN. I would like to ask the Senator if Patricia Eames, attorney for the Textile Workers Union of America, which called this matter to the attention of Chief Judge Sobeloff, did not write a letter in which she stated, in effect, satisfaction with the investigation and the conclusion reached by Chief Judge Sobeloff.

Mr. COOK. She did, indeed.

Mr. ERVIN. I wish to ask the Senator from Kentucky if the record does not disclose that there is no merit whatever in the charge made against Judge Haynsworth that he showed an antiunion bias in decisions in which he participated as a member of the Fourth Circuit Court of Appeals.

Mr. COOK. As a matter of fact, as the Senator will remember, I was very disappointed that legal counsel for the AFL-CIO judged their entire case on 10 cases that went to the Supreme Court. They did not do justice to Judge Haynsworth. They did not take into consideration cases decided at the Fourth Circuit Court of Appeals level which did not go to the Supreme Court.

I asked Mr. Meany, based on the fact that Judge Haynsworth decided in favor of the union about 40 times at the Fourth Circuit Court of Appeals level and was only reversed 10 times on the Supreme Court level, if he did not feel the 4-to-1 record in favor of labor was a pretty good one.

Mr. ERVIN. I believe the record shows that Judge Haynsworth participated in 37 cases affecting labor which were decided in favor of labor.

Mr. COOK. The Senator is correct.

Mr. ERVIN. Does the Senator from Kentucky agree with the Senator from North Carolina that the charge that Judge Haynsworth showed any racial bias ls also unfounded, and that the record shows that while he did not anticipate Supreme Court decisions, Judge Haynsworth endeavored to follow those

decisions in subsequent cases after they were rendered.

Mr. COOK. I do agree with the Senator, but I think the Senator from New York will attempt to refute that very shortly.

Mr. ERVIN. I would like to ask the Senator this question. I wish to ask the Senator if the American Bar Association committee headed by the very distinguished chairman, Lawrence E. Walsh, did not state to the committee through Judge Walsh:

Having found no impropriety in his conduct, and being unanimously of the opinion that Judge Haynsworth is qualified professionally, our committee has authorized me to express these views in support of his nomination as associate justice of the Supreme Court of the United States.

Mr. COOK. The Senator is correct.

Mr. ERVIN. Does not the Senator know that subsequent to the bringing out of other matters this committee met again and by a majority vote sustained their approval of the nomination of Judge Haynsworth?

Mr. COOK. The Senator is correct.

Mr. ERVIN. Mr. President, I ask unanimous consent that the Senator from Kentucky yield to me briefly without losing his right to the floor so that I may make an observation or two.

Mr. COOK. I am glad to yield.

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

Mr. ERVIN. Mr. President, I would like to say that I did not know Judge Haynsworth personally until he appeared before the Committee on the Judiciary subsequent to his nomination. However, he has been a member of the Fourth Circuit Court of Appeals for my circuit since 1957; and prior to the time I came to the Senate I practiced law rather extensively and read decisions of the Fourth Circuit Court of Appeals. I have continued that practice since coming to the Senate.

From my reading of the decisions of Judge Haynsworth, as chief judge of the circuit, he has demonstrated that he has no bias against any segment of our society; and he has demonstrated he is a sound judge and a good legal craftsman. My honest judgment, having spent most of my life in the law, is that he has the capacity to judge cases which come before him with, as Edmund Burke said, "The cold neutrality of an impartial judge."

I would urge the Senate not to repeat the tragedy which it enacted when it rejected the nomination of John J. Parker in this case. I knew him well. His brother was a classmate of mine at the University of North Carolina. I served in the same unit with his brother in World War I. In my opinion, his brother was the greatest civilian soldier this country ever had. He won every medal that could be given by this country—everything from the Congressional Medal of Honor on down to the other medals.

It was a great tragedy for our country to be deprived of the services of John J. Parker on the Supreme Court of the United States. I sincerely trust that the Senate will not reenact the tragedy of his rejection and deny the United States and its people the benefit of the services of a well qualified man such as Judge Haynsworth.

I thank the Senator from Kentucky for yielding.

Mr. BAYH. Mr. President, will the Senator from Kentucky yield for a moment?

Mr. COOK. I yield.

Mr. BAYH. I have been very much interested in the colloquy between my friend from North Carolina and my distinguished neighbor from Kentucky. I do not want to interrupt his remarks or indulge in a debate or discussion of any length right now because I want him to have the opportunity fully to develop his case. I think we respect each other's differences of opinion on this matter.

I think, that inasmuch as the position of Judge Sobeloff and the accusation made by Miss Eames have been put in the cauldron of discussion, it might be helpful to our colleagues and the public, for me to ask unanimous consent, if the Senator from Kentucky has no objection, to have Miss Eames letter to Judge Sobeloff printed in the RECORD at this time. It appears on page 6 of the hearings.

Mr. COOK. I have no objection.

Mr. BAYH. Mr. President, I ask unanimous consent to have the letter printed in the RECORD.

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

TEXTILE WORKERS UNION OF AMERICA,
New York, N.Y., December 17, 1963.

HON. SIMON E. SOBELOFF,
Chief Judge,
Court of Appeals for the Fourth Circuit,
Post Office Building, Richmond, Va.

DEAR JUDGE SOBELOFF: I have taken the liberty of marking this letter as "personal" because I believe that you should be the first person to see it. It is written to you in your capacity as Chief Judge of the Court of Appeals.

The consolidated Deering Milliken cases were decided by the Fourth Circuit on Friday, November 15, 1963. On the morning of Wednesday, November 20th, our Union received a telephone call in which the caller, who said that he would not identify himself, stated substantially the following:

I believe that you should know that Judge Haynsworth, who voted against your Union in the Deering Milliken case is the First Vice President of Carolina Vend-A-Matic Company, and that two days after the decision in the Deering Milliken case, Deering Milliken cancelled its contracts with the company or companies which previously supplied vending machines to all of the numerous Deering Milliken mills in the Carolinas, and proceeded to sign a new contract with the Carolina Vend-A-Matic Company pursuant to which that Company would supply vending machines to all Deering Milliken mills.

We immediately proceeded to do what we could to check the accuracy of this allegation. The first element checked out readily; there is no doubt that Judge Haynsworth is or was until very recently the First Vice President of Carolina Vend-A-Matic Company. (We do not know the extent, if any, of his shareholding in the corporation, but we are informed that he has been the First Vice President since the company was founded, and that the Judge's former partner in the law firm of Haynsworth, Perry Bryant, Marion and Johnston, in Greenville, Mr. W. Francis Marion, is and has been the President of Carolina Vend-A-Matic Company.) As to the second element of the allegation—that regarding the throwing of the Deering Milliken vending machine contracts to Carolina Vend-A-Matic—we were first informed that a notice was posted in the Drayton Mill of the Deering Milliken chain at some time prior to December 11th of this year stating that as of January 1st, a complete new set of vending machines would be installed in the mill; we were later informed that the most recent story was that as of January 1, Deering Milliken would *take bids from* vending machine companies.

We have seen two credit reports on Carolina Vend-A-Matic Company. (These reports are not our property.) The first of these reports was dated October 18, 1963. The report stated that it was based upon an interview on October 8, 1963 with the general manager of Carolina Vend-A-Matic, Mr. Wade Dennis. (The interview could not have been held any earlier than October 1, 1963, since it includes the statement that volume for *the first nine months* of 1963 had increased about 25% over that for the corresponding period of 1962.) This report stated that the First Vice President of the corporation was Clement F. Haynsworth, Jr. It further stated that annual estimated sales were $2,000,000. It happened that there was a typographical discrepancy in the report: On the first page the report stated that the company had been founded in 1960; on the second page the founding date was stated as 1950.

A second report had been sought to reconcile this typographical discrepancy. The discrepancy was corrected (the proper date was 1950) in a report sent out on December 3rd entitled "Substitute Report of Even Date [presumably October 18]: Correcting Errors in Composition." This report, still stating that it was based upon the October 8th interview, claimed that "C. F. Haynsworth, Jr. formerly shown as First Vice President resigned about September 1, 1963 and no one has been elected to that office." (The corrected report further states that annual sales were estimated at $3,000,000, an increase of a million dolars—which could represent the Deering Milliken contract.) This is apparently an attempt *retroactively* to create a September, 1963 resignation from corporate office for Judge Haynsworth, since the first report of the October 8th interview (which had to have been written later than September 30th) stated that Judge Haynsworth *was* the First Vice President.

I am sure you can imagine that our Union is gravely disturbed. After having lost a case of the most serious importance by one vote, we have been informed that the party which won the case awarded a significant contract to a firm in which one of the judges was interested. The allegations have checked out: (1) In fact, the Judge was (at least until recently) an officer of the corporation, and there has been an effort to hide that fact, and (2) in fact, a notice was posted in the mill at Drayton that the vending machines were to be changed.

Thus far, the allegations are clear and definite—the kind of thing that clearly means something if it is true. Because we see these allegations checking out as apparently true, then we begin to wonder about the import of facts whose significance is less clear. For example, we are informed that Judge Haynsworth is extremely close to former Senator Charles Daniels, who in turn is extremely close to Roger Milliken. If this fact stood alone, we would endeavor not to be purturbed by it, but it does not. Knowing these facts, we cannot help but suspect that the reason why Deering Milliken moved for a hearing en banc was to be sure to have Judge Haynsworth on the panel. We cannot help but wonder whether the sentence in the decision regarding print cloth, which was evidently

not a part of Judge Bryan's original text (since it was added in handwriting to the typed manuscript) and which the Court has subsequently, on its own motion, omitted from the decision, was not introduced at Judge Haynsworth's suggestion and then withdrawn at his suggestion because Deering Milliken had pointed out to him that by going this far, he had caused the opinion flatly to contradict the record in the case.

We of course have no subpoena power. We cannot examine the officers and look into the books of the vending machine corporation or corporations which previously had the Deering Milliken contract (the chief among which corporations we believe to be the Spartamatic Corporation of Spartanburg, South Carolina), the records of which should presumably reflect any contract cancellation which may have occurred and the date of such a cancellation. Depending on a number of facts which we do not know but which could be discovered by an investigation with subpoena powers, there may or may not be violations of 18 U.S.C. sections 201 and 202. It would appear, however, that only one fact which is now unknown—namely whether or not the Deering Milliken contract was thrown to Carolina Vend-A-Matic—needs to be known in order to conclude that Judge Haynsworth should have disqualified himself from participating in this decision.

We had intended to wait until January 1st to see whether Carolina Vend-A-Matic machines were installed on that date as the notice at Drayton suggested. But the making of the changes in the financial report and the story regarding a taking of bids suggests that Carolina Vend-A-Matic may already fear discovery and consequently have begun an effort to cover its tracks.

We believe that an investigation should be made immediately. We do not know whether we ourselves should ask the Justice Department to investigate or whether we should leave the handling of this matter entirely up to you. It is clear to us that you are the first person to whom the matter should be referred. Whether or not a criminal violation has occurred, we certainly believe that if the Deering Milliken contract was thrown to Carolina Vend-A-Matic, Judge Haynsworth should be disqualified from participating in the decision in this case, and that the resulting two-to-two decision should lead to the sustaining of the NLRB decision below.

If you have any questions to ask of our Union, either I or anyone else in this organization to whom you may wish to speak will make himself immediately available to you.

Very truly yours,

PATRICIA EAMES,
Attorney for Textile Workers Union of America, AFL–CIO.

Mr. BAYH. Mr. President, I ask the indulgence of the Senator further, if I may, to say that it is important for the Senate to determine whether, indeed, Miss Eames was alleging fraud or alleging conflict of interest.

It is my opinion that when one looks at Miss Eames' allegations as contained in the letter about the anonymous phone call, one sees that the charge made was that Judge Haynsworth was involved in fraud and that——

Mr. COOK. May I say to the distinguished Senator right there, that I cannot quite understand the significance of the charge of fraud in Miss Eames' letter, which I am delighted has been placed in the RECORD—that as a result of this, the judge would have received a greater degree of business for his company, and that he would receive contracts for his company with the litigant, and that, as a result of this, he sat in the case.

Mr. BAYH. I think it is very easy to make a decided distinction.

Mr. COOK. Would the Senator make the distinction for me?

Mr. BAYH. I would be glad to try. I am fully convinced, however, that despite whatever efforts I might make, I am not going to convince my friend from Kentucky on this difference. We are looking at it from two different standpoints.

I do not suggest there was a cabal between the appellate court judge and the textile industry in which the judge sought to get contracts for Carolina Vend-A-Matic. Such an arrangement would have been fraudulent. I think that situation is entirely different from a judge failing to disqualify himself because he has an interest in the corporation involved. I think there is an obvious difference there.

Mr. COOK. Might I suggest to the Senator from Indiana that if he will read the letter from Miss Eames, he will find out that she did not ask that he be tried for fraud, but she asks that if the charge is true, he should be disqualified from participating in the decision. Now disqualification from a decision is very different from a charge of fraud.

She says:

> We certainly believe that if the Deering-Milliken contract was thrown to Carolina Vend-A-Matic, Judge Haynsworth should be disqualified from participating in the decision in this case, . . .

Is that not the issue?

As a lawyer, I conclude, she is saying that the conflict of interest was so gross, that he should not participate in this case. Certainly, after saying that, and charging Judge Haynsworth with fraud, she would be putting his entire career as a judge in jeopardy.

Mr. BAYH. Is the Senator from Kentucky suggesting that if the facts which had been brought to light by Judge Sobeloff disclosed that Judge Haynsworth agreed to vote a certain way in return for contracts, there would be no fraud, despite what Miss Eames suggests?

Mr. COOK. Will the Senator give me a definition of fraud by his standards?

Mr. BAYH. I think the Senator from Kentucky does not need any help from a junior colleague in the Senate on that.

Mr. COOK. I am saying directly to the Senator that I do not agree with him. I am contending that——

Mr. BAYH. All right. That is what I wanted to know.

Mr. COOK. There is a difference between conflict of interest and fraud——

Mr. BAYH. If the Senator does not think this is fraud, then he is looking at it from an entirely different standpoint. I recognize it as fraud. I think that Judge Sobeloff recognized it. I think the only reason this was brought up was that the Senator from North Carolina suggested that Robert Kennedy, former Attorney General, had given Judge Haynsworth's conflict of interest a clean bill of health. It was this matter of fraud that the Attorney General was looking into. It was a spurious charge, an unfortunate charge, and I think it was good that it was laid to rest. None of us—let me make this last observation, and I will sit down and stop interrupting the Senator—none of us who are opposed to Judge Haynsworth have on any occasion suggested that he has been involved in fraud. I do not think he is that kind of man. That is not what concerns me at all. I thank my friend from Kentucky for his indulgence.

Mr. ERVIN. Mr. President, will the Senator from Kentucky yield for just one question?

Mr. COOK. I yield.

Mr. ERVIN. If there was any conflict of interest in the opinion of Attorney General Kennedy, he certainly would not have said that he shared Judge Sobeloff's complete confidence in Judge Haynsworth.

Mr. COOK. That is exactly what the Attorney General said.

Mr. HOLLINGS. Will the Senator from Kentucky yield?

Mr. COOK. I yield.

Mr. HOLLINGS. As I understand it, the Senator from Indiana has asked that the letter of Patricia Eames addressed to the Honorable Simon E. Sobeloff, dated December 17, 1963, be placed in the RECORD, is that right?

Mr. COOK. Yes.

Mr. HOLLINGS. This letter appears on page 6 of the hearing record. Let me read one sentence in the letter, about what is fraud and what is disqualification, because the Senator from Indiana charges fraud. He charges a crime, but he says, "No, we do not question his honesty." The Senator said that——

Mr. BAYH. The Senator is distorting what I said.

Mr. COOK. Mr. President, I think I have the floor. That is not what the Senator from Indiana has said at all.

Mr. HOLLINGS. Now let me get to the crime of fraud, because the Senator from Indiana has made some charges of various crimes. I will talk about the one crime of fraud.

Mr. COOK. Very well.

Mr. HOLLINGS. On page 7 of the hearings, appears a letter by Miss Eames to Judge Sobeloff, the original letter which the Senator has now made a part of the RECORD, in which she discussed whether or not a criminal violation had occurred, and in which she said:

> We certainly believe that if the Deering Milliken contract was thrown to Carolina Vend-A-Matic, Judge Haynsworth should be disqualified from participating.

The entire opposition has constantly maintained, if the distinguished Senator from Kentucky please, that the matter of disqualification was never considered by Attorney General Robert Kennedy, when the actual letter itself raised the very question whether or not the crime of fraud was involved and that they wanted to consider disqualification. That is what Senator Kennedy found. Is that not correct?

Mr. COOK. The point is well made, that there were two issues involved—first of all, "We wonder whether there was a crime or not; we want to find out; and second, under the circumstances, whether or not he should have been disqualified."

Mr. HOLLINGS. That is right.

Mr. COOK. First of all, whether fraud

was committed; and, second whether the judge should have been disqualified from sitting in the case. Judge Sobeloff decided that both of those issues were not valid, and the Attorney General placed all confidence in Judge Sobeloff and in his ruling.

Mr. HOLLINGS. I do not want to labor the point, if the distinguished Senator from Kentucky please, but the Attorney General, Robert Kennedy, not only talks of the charge of crime and considering the matter of disqualification, but, on page 15 of the hearing, in the letter of Simon Sobeloff to Robert Kennedy stated February 18, 1964, it is stated:

Investigation has convinced us that there is no warrant whatever for these assertions and insinuations.

So they took up all the ancillary or corollary matters relative to the charge itself initially, whether a crime was involved, or even if disqualifications should have been considered, or, otherwise, the assertions, and insinuations of impropriety; and it was clearly put. Is that not correct?

Mr. COOK. As a matter of fact, Judge Sobeloff also said:

Inasmuch as this relates to alleged conduct of one of our colleagues, the issue is whether he violated the law or should have disqualified himself or, in this case, if he should have been disqualified.

Mr. BAYH. Mr. President, will the Senator answer one question for me?

Mr. COOK. Yes.

Mr. BAYH. Did I understand the Senator from Kentucky, in answer to the Senator from South Carolina to suggest that I had not charged the judge with fraud?

Mr. COOK. Yes; the Senator from Indiana did not say that there was any fraudulent action on the part of the judge. I want to make that clear.

Mr. BAYH. I thank the Senator.

Mr. COOK. Mr. President, I yield the floor.

MESSAGE FROM THE HOUSE

As in legislative session a message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed the following bills and joint resolution, in which it requested the concurrence of the Senate:

H.R. 14705. An act to extend and improve the Federal-State unemployment compensation program;

H.R. 14751. An act making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1970, and for other purposes; and

H.J. Res. 888. A joint resolution to authorize the President to designate the period beginning February 13, 1970, and ending February 19, 1970, as "Mineral Industry Week."

HOUSE BILLS AND JOINT RESOLUTION REFERRED

As in legislative session, the following bills and joint resolution were severally read twice by their titles and referred, as indicated:

H.R. 14705. An act to extend and improve the Federal-State unemployment compensation program; to the Committee on Finance.

H.R. 14751. An act making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1970, and for other purposes; to the Committee on Appropriations.

H.J. Res. 888. A joint resolution to authorize the President to designate the period beginning February 13, 1970, and ending February 19, 1970, as "Mineral Industry Week"; to the Committee on the Judiciary

SUPREME COURT OF THE UNITED STATES

The Senate, in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

THE CIVIL RIGHTS OPINIONS OF JUDGE HAYNSWORTH: THE CASE ON THE MERITS AGAINST CONFIRMATION

Mr. JAVITS. Mr. President, I have refrained until now from stating my views in detail with respect to the nomination of Judge Clement F. Haynsworth, Jr., to the U.S. Supreme Court because I wanted to allow myself and other Senators ample time for a complete review of the merits of this nomination.

The hearings are now complete; the Judiciary Committee has filed its report, and the dissenting views are in. I have reviewed the record and I shall now state my view of the matter.

It is my intention to vote against confirmation. I will do so because I have found, on reviewing the written opinions of Judge Haynsworth, particularly in racial segregation cases, that, without any derogation of him personally, his views on the application of the Constitution to this most critical constitutional question of our time are so consistently out of date, so consistently insensitive to the centuries-old injustice which we as a nation have caused our black citizens to bear, that I could not support the introduction of Judge Haynsworth's judicial philosophy into the Nation's highest court.

I realize that there is much argument as to what should be the standard of decision for an individual Senator in this case, whether it should include what is learned from a man's philosophy, from his decisions. After I have analyzed the cases which have brought me to this decision, I will deal with that question.

Also I do not pass on the question of ethics. That has been stated by other Senators. We have just heard an interesting and illuminating debate on the issue among the Senators from Kentucky, South Carolina, and Indiana. Obviously, those Senators are divided in their views. As its determination was not necessary for my decision, I did not make it. That does not mean there is nothing to it. I just found it unnecessary to decide that question "yes" or "no" and I do not feel that I should deal with it in the presentation of my reasons for voting "no" on this confirmation.

ON THE MERITS—JUDGE HAYNSWORTH'S WRITTEN OPINIONS IN SEGREGATION CASES

I do not intend to analyze at this point every segregation case in which Judge Haynsworth has voted as a member of the court of appeals, for it is not always clear what an individual judge's views really are when he votes for a particular result in a particular case when the opinion is written by another judge. Indeed, in reaching a judgment particularly in en banc decisions, which were for years the rule in the Fourth Circuit desegregation cases, and in per curiam opinions, of which there were dozens on this subject, there is often a complex compromise between opposing viewpoints, so that one can never really know whether a voting judge who is not the author of the opinion really wanted it the way it appears in the published decision of the court.

When a judge himself writes the decision for the court, on the other hand, or where he writes his own dissenting views or a special concurring opinion, we can see exactly how he feels and thinks, for the opinion is in his own words.

I now intend, therefore, to analyze every segregation case in which Judge Haynsworth states his own views in his own words. I think this review demonstrates that, with the exception of one or two cases in which it would have been almost impossible to decide the case the other way, Judge Haynsworth has been consistently in error, systemically and relentlessly opposed to implementation of the Supreme Court's 1954 desegregation decision and consistently sympathetic to every new device for delay for desegregation.

First, it ought to be noted that Judge Haynsworth was on the court of appeals for 5 years before he wrote an opinion in a civil rights case, either for the court or dissenting. Perhaps it was because there was so little desegregation going on until 1963 that the outcome of any particular case in the fourth circuit was unlikely to make much difference in any event. Perhaps it was because Chief Judge Sobeloff chose to assign the decisions to other judges. Suffice it to say that from 1957 until 1962, I have looked in vain for a statement of Judge Haynsworth's views on this question in his own words.

In 1962, Judge Haynsworth, on the Court of Appeals for 5 years, finally wrote his first opinion in a civil rights case. This case, *Dilliard* v. *School Board of Charlottesville* (308 F. 2d 920 (4th Cir-1962))—8 years after the Supreme Court' landmark Brown school desegregation decision—was the first big case involving geographical zoning, in which each Negro had to take the initiative and ask to transfer out of his previously-segregated school. The circuit court struck the plan down, holding that "the purpose and effect of the arrangement is to retard intergration and retain segregation of the races." Judge Haynsworth, in his first civil rights opinion, dissented, arguing—as had been done unsuccessfully 8 years earlier in Brown—that the Negro child is hurt more by being sent to a strange white school than by being left in his black one.

There is a now-famous line in Judge Haynsworth's dissent:

If separation of Negro children "solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone" [quoting from *Brown* v. *Board of Education*], such a child may be subjected to a much

more searing experience if, bereft of established friends and relations compelled to attend a school or classes in which all others are of the opposite race.

There is a familiar ring to Judge Haynsworth's words, "searing experience," for that is the very same argument which was made by the attorney general of South Carolina in 1954 before the U.S. Supreme Court in Briggs against Elliott, a case merged with Brown against Board of Education, the landmark case, for decision. The South Carolina attorney general, in his brief to the Supreme Court, said:

This Court may judicially notice the fact that there is a large body of respectable expert opinion to the effect that separate schools, particularly in the South, are in the best interests of children of both races as well as of the community at large.

That was the argument which the Supreme Court rejected in the Brown case, and yet 8 years after Brown, Judge Haynsworth, having read the decision but seemingly having learned nothing, was still arguing that it was in the best interests of the black children to stay with other black children in black schools. The Court of Appeals in Dillard rejected the school board's argument, Judge Haynsworth's dissent to the contrary notwithstanding, and the Supreme Court denied review and let the majority decision stand. (374 U.S. 827 (1963).)

Now I shall trace Judge Haynsworth's legal views right up to today. I started with the first of his decisions.

Judge Haynsworth's second civil rights opinion came the following year in *Bell* v. *School Board of Powhatan County*, 321 F. 2d 494 (4th Cir. 1963). This was on a technical but critically important point in segregation cases. The question was whether the court of appeals would allow counsel fees to be taxed against the school board for following a course of "undeviating adherence to the system of segregation, sustained by acts of omission and commission." The trial judge in that case had denied counsel fees but was reversed by the court of appeals. But again, 1 year later, Judge Haynsworth dissented and would have affirmed the trial judge, on grounds of trial court discretion—a euphemism, too often in that circuit, for ignoring the obvious.

So far, two out of two.

Judge Haynsworth's next civil rights opinion came in the same year, in *Simkins* v. *Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (4th Cir. 1963). I know that case very well, Mr. President, because I argued about it with the greatest and most ardent strength of which I am capable here on this floor, in the historic debate on the Civil Rights Act of 1964. Simkins was the case in which the plaintiff challenged the constitutionality of a Hill-Burton grant to a segregated hospital receiving State aid in addition to Federal funds. The court—that is, the circuit court—found such Federal aid unconstitutional, but Judge Haynsworth dissented again, on the ground that there was no "State action" and that the hospital, receiving State and Federal assistance, nevertheless would "serve no public purposes, except that their operation contributes to public health." Again the Supreme Court denied review, sustaining the circuit court majority.

Evidently, the rest of the court of appeals felt there was ample State action arising from the use of public funds, and most assuredly there was precedent for applying the 14th amendment in this instance, for the Supreme Court in 1961 had already ruled, in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961), that a private restaurant operated under lease from a public parking authority could not discriminate against black customers, because the public lease, and the public land under the restaurant, were sufficient public support to constitute the whole enterprise "State action" subject to the 14th amendment. The Court noted that the parking authority could have required nondiscrimination as a condition of the lease, and stated that "no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be," (365 U.S. 725)—a comment which has particular importance at a time when there is considerable discussion in the South concerning an abandonment of public education altogether in response to the Supreme Court's most recent desegregation ruling.

In any event, the majority of the court of appeals in Simkins did, in fact, find sufficient State action to outlaw discrimination in the hospital involved, Judge Haynsworth's dissent to the contrary notwithstanding, and the Supreme Court denied certiorari, 376 U.S. 938 (1964).

So that is three out of three.

Judge Haynsworth's first majority opinion came the same year in *Griffin* v. *Board of Supervisors of Prince Edward County*, 322 F. 2d 332 (4th Cir. 1963), *reversed*, 377 U.S. 218 (1964).

He was promptly reversed by the U.S. Supreme Court. This case came 9 years after Brown, in a case involving a school board in litigation ever since. The case raised the question whether Prince Edward County complied with an order to desegregate when it closed all schools in the county, although the white parents set up "private schools" for white children only, who then received State tuition grants. Judge Haynsworth upheld the school board, reversing the district court, and held that the closure of the schools satisfied the Constitution even if the school board actually procured the closure. Judge Bell dissented on the ground that the State could not support white private schools while closing the public schools to blacks. Judge Haynsworth was joined in the majority by Judge Boreman; we are told that Judge Sobeloff disqualified himself because he had been of counsel in an earlier connected case. So Judge Haynsworth finally got a majority. But the Supreme Court reversed unanimously, supporting the decision of the trial judge and the dissenting views of Judge Bell.

Wrong four times out of four for Judge Haynsworth.

Eventually, Judge Haynsworth wrote one which stuck. In *Pettaway* v. *County School Board of Surry County*, 332 F. 2d 457 (4th Cir. 1964), the District Court had denied a preliminary injunction which would have restrained payment of Virginia tuition grants and would have required a school reopening. Judge Haynsworth affirmed. For some reason, certiorari was not applied for, and the case never went to the Supreme Court, perhaps because the case only involved interim relief.

Finally, in 1964, Judge Haynsworth wrote an opinion on the right side of a desegregation case—but it is interesting that in doing so, he announced that he disagreed with the result on the merits. In *Eaton* v. *Grubbs*, 329 F. 2d 710 (4th Cir. 1964), an issue like Simkins was raised again—discrimination in a hospital. The Court found sufficient "State action." Judge Haynsworth wrote a special concurring opinion, stating that he still thought he was right in his Simkins dissent, but felt bound by the Circuit Court's en banc decision in the earlier case—despite the Supreme Court's even earlier ruling in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961).

Presumably he just wanted to let the world know that, if it were up to him, the hospital could go right on segregating.

Judge Haynsworth's sixth civil rights opinion—a set of opinions—covered several companion cases, *Bradley* v. *School Board of Richmond, Va.*, 345 F. 2d 310 (4th Cir. 1965), and *Gilliam* v. *School Board of Hopewell, Va.*, 345 F. 2d 325 (4th Cir. 1965), both vacated sub. nom., *Bradley* v. *School Board*, 382 U.S. 103 (1965), and *Nesbit* v. *Statesville City* Board of Education, 345 F. 2d 333 (4th Cir. 1965). In Bradley and Gilliam, Judge Haynsworth, writing for the Court sitting en banc, approved a plan of desegregation based on "freedom of choice"—again, a euphemism for forcing each black family to bear the burden of applying for a transfer out of a segregated school, and the risk of various forms of retaliation—which, of course, as we all know, the Supreme Court struck down as soon as the question came before it. The question of faculty segregation was also presented to Judge Haynsworth, but he remanded without directing the district court to consider that question. Judges Sobeloff and Bell dissented as to that part of the case, and would have directed the district court to hold a hearing on faculty segregation. The Supreme Court vacated, agreeing with Judges Sobeloff and Bell, and directed such a hearing. In that particular case, that is, in this case involving freedom of choice, the Supreme Court vacated the circuit court's order, and agreed with the minority.

The same day, Judge Haynsworth wrote the decision in Nesbit, which involved a freedom of choice, "stair step" plan. Judge Haynsworth remanded for a further hearing; Judges Sobeloff and Bell again dissented, referring to their dissents in Bradley. The same result, with the same opinions and the same dissent, on the same grounds, occurred the same day in *Bowditch* v. *Buncombe County Board of Education*, 345 F. 2d 329 (4th Cir. 1965). Why certiorari was not applied for in the Nesbit and Bowditch cases is unknown to me; in any event, the decisions are clearly wrong in light

of what the Supreme Court said in vacating Judge Haynsworth's order in Bradley.

Thus, four more decisions find Judge Haynsworth without a single opinion within the framework of the 14th amendment as the Supreme Court had, up to that time, unanimously construed it.

Nine out of nine.

Next came two cases in which Judge Haynsworth did, in fact, vote against a discriminatory practice, but in each instance only when the result was so absolutely clear and unavoidable that there was substantially nothing to decide.

The first of these two cases was *Brown* v. *County School Board,* 346 F. 2d 22 (4th Cir. 1965), in which Judge Haynsworth wrote for a unanimous court in remanding a segregation case for a further hearing, after counsel for both sides of the case had asked for such a remand. The decision, therefore, while not erroneous, was really nothing more than a stipulation and left no issue for the judge to decide.

And thereafter Judge Haynsworth decided *Hawkings* v. *North Carolina Dental Society,* 355 F. 2d 718 (4th Cir. 1966), in which the fourth circuit unanimously ruled that a State dental society, which had, in effect, been given the State's licensing power, was exercising sufficient "State action" to be subject to the nondiscrimination strictures of the 14th amendment. To decide otherwise would have extended Judge Haynsworth's twice-rejected "State action" misconception to permit discrimination in "private" activities which not only had State financial support but also those which carried with them the force of State law. To decide otherwise would have been to abandon equal protection altogether.

But as soon as the next segregation case was presented to Judge Haynsworth for opinion, he was wrong again, and was again reversed by the Supreme Court. In *Green v. County School Board of New Kent County,* 382 F. 2d 338 (4th Cir. 1967), reversed, 391 U.S. 430 (1967), and its companion case, *Bowman* v. *County School Board of Charles County, Va.,* 382 F. 2d 326 (4th Cir. 1963), Judge Haynsworth wrote his landmark "freedom of choice" opinion, holding that a "freedom of choice" plan satisfied the Constitution, whether it produced desegregation or not. Judges Sobeloff and Winter dissented—although agreeing to a remand to the district court on another point—and said that the plans "manifestly perpetuate discrimination." The Supreme Court reversed Judge Haynsworth, basing the decision on the dissents of Judges Sobeloff and Winter and holding that "freedom of choice" is not "an end in itself" and that if there are other plans promising a speedier end to segregation, freedom of choice would be unacceptable.

The Supreme Court's Green decision—that is the case in which Judge Haynsworth was reversed—was handed down on May 27, 1968, 14 years after the school desegregation decision in Brown against Board of Education. Four days later, on May 31, 1968, the Court of Appeals for the Fourth Circuit handed down its decision in *Brewer* v. *School Board of the City of Norfolk,* 397 F. 2d 37 (4th Cir. 1968). We know the fourth circuit opinion in Brewer was actually written before the Supreme Court's Green decision because of footnotes appearing in the published opinions. In Brewer, the school district had drawn geographical school zones and the court of appeals properly stated that the question was whether the plan produced desegregation, or whether discrimination in housing, and so forth, would result under the plan in continuation of unlawful segregation. But Judge Haynsworth again dissented, explicitly stating again his preference for a freedom-of-choice plan.

He could have withdrawn that decision before it was published, but instead, he filed it and let it stand in the teeth of the Supreme Court's Green opinion, thereby, in my judgment, confirming what I think is his general attitude—a gratuitous persistence in error, though only in the form of a dissent.

Last year, after a series of erroneous opinions, Judge Haynsworth finally wrote an opinion in favor of a black plaintiff in a school desegregation case, upholding a district court order to abandon a freedom-of-choice plan—but not because Judge Haynsworth had abandoned his preference for freedom of choice. On the contrary, he simply found that the choice would not be deemed free in this instance because of Ku Klux Klan bombings of those who chose to exercise their freedom. *Coppedge* v. *Franklin County Board of Education,* 394 F. 2d 410 (4th Cir. 1968). Short of a bombing, I know of no case where Judge Haynsworth has abandoned the so-called "freedom of choice" system to this day.

The most recent civil rights opinion Judge Haynsworth wrote was this year in *Felder* v. *Harnett County School Board,* 409 F. 2d 1070 (4th Cir. 1969)—15 years after the Supreme Court decision—in which Judge Haynsworth wrote a concurring opinion again—as he had in the Bell case—supporting the denial of counsel fees; Judges Sobeloff and Winter dissented. We do not know as yet what will happen to that case if it is taken up on appeal.

Those are the civil rights opinions of Judge Haynsworth—all of them, as far as I can tell. Their common thread, which is there for all to see, is an insensitivity to the real meaning of "equal protection" when it comes to racial segregation.

The $64 question, then, is whether that is a proper ground upon which to vote against confirmation of the nomination.

II. THE PROPRIETY OF CONSIDERING A NOMINEE'S JUDICIAL PHILOSOPHY

Mr. President, I will discuss that point because it will be hotly contested.

Many Senators seem to feel that the President has the right to appoint whomever he wants to the Supreme Court and that the only reason we ought to have for refusing to confirm is some overt breach of conduct or violation of ethics or other unlawful conduct or the fact that we do not feel the nominee has the intellectual capacity or the judicial temperament to be a judge.

This expressly excludes, and it has been excluded time and again in the argument, any conception of what a judge represents and what he would bring to the United States Supreme Court as a basic philosophy.

Mr. President, this is the point which I think is a very difficult one for me as a lawyer. I have voted for judges who are much more conservative than I am. And I will do so again.

I voted for Chief Justice Burger and for other justices in various of the courts. These men have a far different philosophy than mine.

I think there is a qualitative limit to this and that the qualitative limit has been reached in this particular case by what I would call the doctrine of "persistence in error."

I do not believe it is my duty to send a man as a judge to the U.S. Supreme Court bench who will make it his fundamental life philosophy to try to bring the Court back to a time which history has passed by for close to 2 decades now. I believe that my duty to advise and consent encompasses the consideration of an issue of that quality.

I do not vote to put a man on the Supreme Court bench—who may be a very facile and very clever and able man—if he is a man possessed of a philosophy so antipathetic to everything that history has established as correct that he would be nothing but a constant threat to drag the Court back to a period preceding that point in history.

I make a distinction in this respect between a judge holding office for life and a Member of the President's Cabinet or another high official of the Federal Government. Let us remember that the latter officials serve at the pleasure of the President, and if the President feels that he would like to have them serve, he ought to be allowed to choose his own agents. They are constantly questioned here. They are subject to being turned out with the President if the people turn out that President. The degree to which we can affect their decision by appropriations, by legislative oversight, and in many other ways is very direct. But when it comes to the Justices of the Supreme Court, very different considerations apply.

A Supreme Court Justice is not an agent of the President. He serves not at the pleasure of the President—indeed, not at the pleasure of Congress. And he serves for life. He is completely independent of both the executive and the legislative branches; and he has authority, as one of nine, to overrule us and to nullify our acts, notwithstanding that we may solemnly pass them. If the prevailing philosophy or the majority view of the people of the United States changes, or if the occupant of the White House or of any seat in Congress changes, the Supreme Court Justice's tenure will remain undisturbed.

You might just as well ask the people of my State not to pass on my philosophy as ask me to be blind to the legal concepts which a Justice of the U.S. Supreme Court has shown by his whole life's work.

In that context, it seems to me that the Senate has the right—and, indeed, the

obligation—to satisfy itself not only that the technical qualifications of the nominee merit confirmation but also that his views and philosophy, without regard to conservative or liberal, but nonetheless his views of philosophy, merit confirmation.

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

Mr. JAVITS. Let me just finish this thought.

Notwithstanding the opposite view expressed in many quarters, there is a long and consistent history of considering the views of Supreme Court nominees and in fact of rejecting nominees whose views were not acceptable to the Senate.

I yield to the Senator from Indiana.

Mr. BAYH. I apologize for interrupting the Senator's trend of thought.

He has just been dealing with a matter which has been tugging at my thoughts ever since this matter came before us. Perhaps confession is good for the soul. I have on previous occasions—the Burger nomination was one example—felt that, under most circumstances, it would not be wise for me to deal with a nominee on the basis of philosophy.

I think the Senator makes a good distinction between a judicial appointment and an appointment to the executive branch. A member of the executive branch is an active member of the team of the administration.

I wonder if the Senator would care to comment on the fact that the degree of relevance of a given philosophical issue might change with the times. I recall very well a telling speech that Whitney Young made during the meeting this summer of the Urban League. He pointed out that there were a number of people in the black community, who were beginning to wonder if they could find redress for their grievances within the system, and this concerned him. If the nomination to the Court of a man who is less than enthusiastic in seeing that this system responds to the legitimate rights of Negroes is going to cause these citizens to try to solve their problems outside the system, I wonder if this does not give us not only the right but also the obligation to consider this whole problem of philosophy in the area of civil rights more seriously today than we might have, say, 10 years ago.

Mr. JAVITS. My opinion is that that is correct. But I am speaking of it in terms of quality. I think it has to be a really historic difference. I do not think I could have made this argument 10 years ago or that it would have been legitimate 10 years ago. But here we have an historic turn in the whole outlook of the Nation, as depicted by what has happened in the field of segregation since 1954; and we have such a landmark of history that Justices of such completely diverse opinions in all these years, in a continuous stream, are acting unanimously in the Supreme Court on a given question; and yet we have in this instance a consistent persistence in this error by an individual, notwithstanding this historic change which year by year has become more deeply imbedded in our system and accepted unanimously by the Supreme Court. Nonetheless, here is an irreconcilable judicial voice constantly reiterating a doctrine of the past. It seems to me that I do not have to vote to make a new center on the Supreme Court which will seek to reverse history.

If the President has the right to appoint whom he pleases, chosing whom he thinks he ought to choose, what does the right of advice and consent of the Senate mean? You might just as well send out a credit reporting agency or the FBI and get the evaluation of a highly professional group of the American Bar Association that this man knows the law and that he has studied the law, and let it go at that. What do they need us for? We are a hundred high-powered men who are supposed to have some brains and judiciousness. We often vote for things and do things which we may not like, such as appropriations for the Vietnam war. We do that all the time. But this is not limitless. There is a point; some question of degree is involved. That is an item which has been overlooked in the whole question of confirming the nomination of Judge Haynsworth.

I noted that, in the dissenting views, really only the Senator from Michigan (Mr. HART) picked up this point. I am not afraid to face it.

This is perhaps a new approach to this question, but I think it is high time; because, frankly, I think the other question of conflict of interest and ethics is pretty confused, and many of the parts of it are not big enough to warrant such a thing as turning down a President. But I do not think there is any question about this, if that is the way the Senator from Indiana thinks, and I, as an individual Senator, have a deep feeling that way; and I will not accept the rule of judgment that I can only turn down a Supreme Court nominee if I can prove he is guilty of some breach of ethics or if he is just a very bad lawyer or if he does not have judicial temperament and gets angry at lawyers on the bench. I do not feel that I want to be limited by this standard.

Mr. BAYH. I agree with the Senator's views. As the Senator knows, I have been concerned with the other aspect, but I am glad the Senator has made his position on this area of civil rights available for our consideration.

Mr. JAVITS. Mr. President (Mr. HUGHES in the chair), I yield to the Senator from Oregon.

Mr. HATFIELD. Mr. President, I wish to comment on the address of the Senator from New York up to this point and ask him a few questions because I feel his presentation this morning on these particular cases brings into very clear focus a point that has been made frequently to me when I am asked to support this confirmation of Judge Haynsworth.

Not being an attorney, I find some of these matters become a little confusing. I feel that this morning the Senator from New York has probably done much to clarify this point, but I do want to make sure I understand the matter clearly and therefore I wish to ask a series of questions.

As the Senator from New York knows, the statement has been made frequently that in the rulings on civil rights cases Judge Haynsworth was merely upholding the established precedent and that, therefore, when the Supreme Court reversed the rulings of Judge Haynsworth, they were, in effect, setting new precedent. As I understand the recitation of these cases this morning and the briefs presented pertaining to them, this argument seems to fall apart. As I understand it, starting on page 2, the cases cited in the first section of the presentation today indicate Judge Haynsworth was actually dissenting and, therefore, the words in his dissenting opinion were not so much against the established precedent but were trying to reverse established precedent. Is that correct?

Mr. JAVITS. The Senator is correct. The judge was really persisting in a judicial position—not a personal position, but a judicial position—which sought to reverse the Supreme Court. I could even accommodate that and still vote for a Judge. When a question is still in the area of debate and discussion I could, but when it is so deeply rooted in the history of the country then, it seems to me, it becomes an article of faith. That is the impression I got from Judge Haynsworth's opinion—he dissented and the circuit court was sustaining, and he wrote for the Court and was reversed.

It is an article of faith with him and I, as a Senator, have to decide if I want to send a man to the Supreme Court who has an article of faith to take the court back to the days before 1954 and to reinstate the separate but equal doctrine which obtained from the latter part of the 19th century until 1954.

It may be argued that there may have been other judges who had that kind of reservation in all those years. I would have a right to evaluate that if they came before us, just as we make an evaluation in this situation. I do not say I am denuded of any discretion except name, rank, and serial number, which is practically what the proponents of Judge Haynsworth are telling me. Hence, I am trying to use my head on this issue. I have voted for judges of a conservative nature and I am sure I will do so again, but this seems more to me than conservatism and liberalism. There is involved an article of faith which he seems to have clung to in all these 15 years. On the basis of that, I do not feel I can vote for the confirmation of the nomination.

Mr. HATFIELD. Mr. President, will the Senator agree that the then-established precedent, to which many of these comments have been addressed, related to Judge Haynsworth merely upholding the established precedent; that really the established precedent was in the Brown case—the landmark case of the Supreme Court—and that he really was going against the Supreme Court in these decisions he rendered.

Mr. JAVITS. The Senator is correct. As the Supreme Court strikes down "freedom of choice" and segregation by zoning ordinances, and so forth, he still persists in his view this was right, not wrong. I feel if he is a zealot on this subject—I am not trying to assail his convictions, his belief, or his character—I do not have to vote for confirmation.

Mr. HATFIELD. On page 4 the Senator cites the Hawkins case and others

where he was on the right side of these cases. It was more on the basis, as I understand it, that he had been twice reversed on similar points of law and did not want to make it three times.

Mr. JAVITS. In the Hawkins case the dentist could not practice unless he was in the society. One would have to be blind not to decide the case as he did.

Mr. HATFIELD. In the Brown case, which is just ahead of that case, was it primarily a procedural matter?

Mr. JAVITS. There was a stipulation between the lawyers. I have analyzed every case because I do not want to omit a case. If anyone can show that I have omitted a case I would be glad to acknowledge it. We have tried to show every case in which he expressed himself.

Mr. HATFIELD. Does the Senator from New York agree with the general comment that has been used in the informal as well as the formal debate up to this point that, with regard to whether Judge Haynsworth was upheld in the Supreme Court was not an argument at all; that his dissenting opinions and other opinions that he rendered later showed a differing viewpoint and that the precedent, which was contrary to the Supreme Court, was because of the Brown case in 1954?

Mr. JAVITS. The Senator is correct.

Mr. HATFIELD. This has been very helpful to me as a nonlawyer. I commend the Senator from New York for placing this material in the debate. The presentation is in language which is most understandable. This has been one of the problems confronting me with respect to rulings he may have made at times upholding Supreme Court precedent.

The statement this morning by the Senator from New York (Mr. JAVITS) has certainly dispelled and crushed that kind of argument which has been injected into this debate at this point.

Mr. JAVITS. I am very grateful to my colleague.

Mr. BYRD of West Virginia. Mr. President, will the Senator from New York yield without losing his right to the floor?

Mr. JAVITS. I am happy to yield to the Senator from West Virginia.

Mr. BYRD of West Virginia. I want to commend the Senator from New York on the statement he has made this morning. He has been very frank in stating that his opposition to the nomination is based upon what he considers to be the philosophy of the nominee.

I think that Senators certainly have a duty to consider the philosophy of the nominee in arriving at their decisions. There are those Senators who have indicated that it is not the prerogative of a Senator to make a decision on that basis. I disagree. While I voted for the confirmation of the nomination of Justice Abe Fortas in the first instance, I was opposed to his elevation to the role of Chief Justice, solely on the basis of his philosophy as I interpreted it from his record as an Associate Justice. Never at any time did I seek to cast any aspersions on his character a a man, his integrity as a Justice, or his ability as a lawyer, and I think I made that amply clear at the time in stating my opposition to his confirmation as Chief Justice.

Thus, here today, the Senator from New York is taking a forthright position in basing his decision in this matter on what he considers to be the philosophy of Judge Haynsworth as he interprets it from the record—the decisions, the opinions, and the rulings in which Judge Haynsworth has participated.

I do not say at this point exactly what my position will be. I am inclined to support the nomination. But I just want to say again that I admire the Senator from New York for making no bones about what his position is and how it was arrived at.

I wish that everyone would be as frank and candid in their approach as has been the Senator from New York.

I have no right to impute any motives to any Senator, but I have the feeling that much of the opposition to this nomination comes from groups and blocs who, like the Senator from New York, are opposed to the philosophy of Judge Haynsworth, so that the matter of conflict of interest, at least, may be considered a smokescreen by some groups and people.

Again, I thank the Senator for being so candid, and for yielding to me at this time.

Mr. JAVITS. Mr. President, I appreciate the Senator's comments. I point out to him that what I am saying today relieves anyone who wants to vote against Judge Haynsworth from the worry that he will destroy him, that he will make a finding against Judge Haynsworth that he is an immoral and an unethical man. We do not have to do that. I do not see any reason why any Senator should be placed in that spot. There is nothing discreditable about being rejected by the electorate—to wit, the Senate—for nomination to the Supreme Court. It depends on the grounds on which it is done.

The other thing I wish to comment on is that I hope the Senator appreciates the fact that the word "philosophy" alone is not the only reason to cause me to vote against confirmation; but I actually read the cases, thinking about them carefully. Mr. Cummings, my administrative assistant, an extremely competent lawyer, analyzed them even further and in greater depth, because I think it is a qualitative judgment for myself, and I would not allow myself the privilege of voting no just because I am a liberal and Judge Haynsworth is a conservative or even an ultraconservative.

But I did feel that this attitude on this particular, major constitutional question, was deeply rooted in Judge Haynsworth, as I said, as an article of faith, and that, I think, is something on order of magnitude beyond what people ordinarily understand when we say "philosophy."

Mr. BYRD of West Virginia. If the Senator will yield briefly further, I have no doubt that the Senator would vote against Judge Haynsworth, or any other nominee, if in the judgment of the Senator there was a real conflict of interest, a clear violation of the statutes, or of the canons of judicial ethics.

So would I. But in this case, as the Senator has so ably stated, the accusations are pretty confused, so that the Senator takes his stand on the basis of the record of Judge Haynsworth, and the opinions, rulings, decisions, and philosophy, if I may again use that word.

I intend to take my stand precisely on the same record and on the judicial philosophy of Judge Haynsworth as I interpret it.

I admire the Senator's candidness.

Mr. JAVITS. I would not wish to have the Senator characterize my views as being confined to ethical questions or other questions.

Mr. BYRD of West Virginia. I thought the Senator used the word "confused" earlier when he spoke. I believe the RECORD will show that.

Mr. JAVITS. I doubt the RECORD will show that. I should like to read to the Senator what I said. It is in writing, fortunately. I said:

> I do not pass on the questions of ethics—they have been studied by other Senators who are divided in their views—

Let me interject here that we heard presentations this morning from the Senator from Indiana (Mr. BAYH), the Senator from Kentucky (Mr. COOK), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from North Carolina (Mr. ERVIN)—

> and as this determination is not necessary to my decision, I do not make it here.

We often see courts do this. "It is unnecessary to decide it." That is how I feel about this question of ethics. I have made my decision on other grounds. I do not have to find reasonable doubt or anything else in respect to these other questions.

Mr. BYRD of West Virginia. If the Senator will yield further, I assure the Senator that I certainly did not intend to characterize him wrongly. I thought I heard him use the word "confused" when he spoke about accusations concerning ethics. I am having the transcript brought in, because if I am wrong, I am going to be ready to admit it, but I thought the Senator used the word "confused." If he did, I meant no offense in repeating it; and, if he did not, I shall be ready to stand corrected.

Anyhow, I was merely trying to say that the Senator is making a statement that is candid, frank, forthright, and that he is going directly to the point as to judicial philosophy, if I may again use the word "philosophy" as my own choice of verbiage. I admire him for it.

Mr. BYRD of West Virginia subsequently said: Mr. President, a little earlier today a question arose during a colloquy between the able senior Senator from New York and me as to whether he had used the word "confused" in an earlier statement. It was my feeling that he had used the word "confused." He was under the impression that he had not. He was speaking ad libitum of course, at the time.

Accordingly, I sent for the transcript. I will read into the RECORD the following sentence spoken by the Senator from New York, and I do not feel that I am taking an advantage of him in doing so:

This is perhaps a new approach to the question, but I think it is high time; because, frankly, I think the other question of conflict of interest and ethics is pretty confused, and many of the parts of it are not big enough to warrant such a thing as turning down a President.

I realize that the Senator did not seek to impute to me an intention to characterize him wrongly. But I just want the RECORD to show that I did not misunderstand or misrepresent the Senator when I said he had used the word "confused."

Mr. JAVITS. Mr. President, notwithstanding the opposite view expressed in some quarters, there is a long and consistent history of considering the views of Supreme Court nominees, and in fact of rejecting nominees whose views are not acceptable to the Senate.

Senator THURMOND, a year ago, asked Justice Fortas when he testified before the Judiciary Committee:

Don't you think the members of the Senate, of this Judiciary Committee, are entitled to know what your philosophy is if they are going to consider you for Chief Justice?

And Justice Fortas replied:

Absolutely.

(The colloquy appears on page 182 of Part I of the 1968 Fortas hearings).

Senator ERVIN, on page 107 of the same volume, stated at the Fortas hearings:

I think it is so important for Senators to know something about the constitutional philosophy of a Supreme Court Justice, particularly a Chief Justice.

And Senator STENNIS reviewed the history of the problem and stated in 1955 on the Senate floor:

Here in the Senate there has been a rather well established practice to the effect that if a President nominates a person of character, honor and ability for appointment, then there is no sound basis for withholding Senate confirmation. So far as appointments in the Executive Branch of the Government are concerned, this is certainly the general rule, and is one that I ordinarily follow. *However, as to judicial appointments, especially at the very top, it has no application whatsoever; and, further, it is dangerous to the Judiciary as an independent branch of the Government.* (101 Cong. Rec. 2830 (1955).)

The massive three-volume work by Charles Warren, "The Supreme Court in United States History," is replete with examples of Senate rejection of Supreme Court nominees, beginning with President Washington's first appointment of a Chief Justice to succeed John Jay—the rejection of John Rutledge in 1795—down through Lincoln's time and later. A classic example is Warren's account of President Tyler's nominee in 1844:

Finally, on March 13, 1844, Tyler sent to the Senate the name of Reuben H. Walworth, then Chancellor of the State of New York. The new appointee, though unquestionably of the highest legal ability, was not only personally unpopular but politically disliked by the Whigs . . . (Warren, *The Supreme Court in United States History*, vol. 2, p. 389).

In consequence, Walworth's confirmation was postponed on a rollcall vote, and ultimately withdrawn.

As Senator Norris put it when he successfully opposed confirmation of Judge Parker in 1930 solely on the ground of judicial philosophy:

So we are down to this one thing. When we are passing on a Judge, therefore, we not only ought to know whether he is a good lawyer, not only whether he is honest—and I admit that this nominee possesses both these qualifications—but we ought to know how he approaches these great questions of human liberty. (The full analysis appears in Joseph P. Harris, *The Advice and Consent of the Senate* (1953)).

I cite this example, not to compare the present nominee with any other, but simply to show that the Senate has generally gone beyond mere consideration of a Supreme Court nominee's legal ability and qualifications.

The whole matter is reviewed in more current context by an extensive article in volume 78 of the Yale Law Journal published this year. I will not recite the additional precedents now, but I ask unanimous consent that a brief article published in the New York Times on October 19 of this year, written by Anthony Lewis, a former Nieman fellow at Harvard Law School who for years covered the Supreme Court for the New York Times, be printed at this point in the RECORD.

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

THE SENATE AND THE SUPREME COURT

(By Anthony Lewis)

WASHINGTON.—In their irritation at the opponents of Clement Haynsworth, some Administration officials are now saying that the issue in the confirmation fight is nothing less than the President's right to appoint Supreme Court Justices. The Senate, they argue, is trying to undermine that prerogative; Senators should support a President's choice for the Court unless he can be shown to be corrupt or incompetent.

But history contradicts that narrow view of the Senate's role. In fact, over the years, the Senate in considering nominations to the Supreme Court has rejected "a proportion far higher than for any other Federal office." So says a leading study, Joseph P. Harris's "The Advice and Consent of the Senate."

In the nineteenth century, when senatorial scrutiny was at its most rigorous, 72 men were nominated to the Supreme Court and eighteen of them—one quarter—failed of confirmation. The eighteen does not include a few others who declined the honor.

Nominees were rejected for a variety of reasons, because of ability or temperament. Some lost in formal votes of the Senate; other nominations were withdrawn in the face of opposition.

President Madison, for example, nominated a Connecticut Collector of Customs, Alexander Wolcott, in 1811. Charles Warren, the great Supreme Court historian, said the general feeling was that Wolcott was a man of "somewhat mediocre legal ability." For that reason a Senate overwhelmingly of Madison's party rejected the nomination, 24 to 9.

GRANT'S NOMINATION

Grant tried three times before he could get a Chief Justice confirmed. His first choice—George H. Williams, his Attorney General—was criticized as a "second-rate" lawyer. His second, Caleb Cushing, a former Judge of the Supreme Judicial Court of Massachusetts, was eminently qualified. But Senators were uneasy at the fact that he had been successively a Whig, Democrat and Republican. The opposition eventually found that he had written an innocent letter to Jefferson Davis during the Civil War and used that to rally opinion against him. Both nominations were withdrawn.

Other nominees in the last century were defeated because they were partisan Whigs in Democratic times, or because they had offended Senators, or because in other offices they had followed objectionable policies. No one could read the record without concluding that Senators in those days felt quite free to make their own appraisal of any man chosen to say the last word in our constitutional system.

Today, most Senators would be more sophisticated and more restrained in the use of their confirmation power. Ironic exceptions are Senators Thurmond of South Carolina and Eastland of Mississippi, two of Judge Haynsworth's principal backers, who have not hesitated to oppose anyone suspected of liberal tendencies. They voted against the only three nominees to the Warren Court who were put to a record vote in the Senate, Justices Harlan, Stewart and Marshall.

The question for most members of the Senate in 1969 is not one dimensional. For example, the fact that a nominee is a so-called strict constructionist in constitutional matters would not necessarily make Senators of a different outlook oppose him; it is easy to think of judicial conservatives whose high intellectual qualifications would have smothered the thought of opposition on philosophical grounds.

The point about Judge Haynsworth is that he does not have such high intellectual or legal qualifications. Few could call it a distinguished appointment.

POLICY AND ETHICS

Along with that basic ground for opposition are doubts about policy and ethics. Those who feel the doubts might say that Judge Haynsworth is a man from a narrow background who has not altogether surmounted it in his view of life and the law, and that in his commercial dealings while on the bench he has at best shown insensitivity to the appearance demanded of judges.

In short, the argument against Clement Haynsworth is not that he is an evil man, or a corrupt one, or one consciously biased. It is that he is an inadequate man for a lifetime position of immense power and responsibility in our structure of government. And any Senator who reaches that conclusion is quite entitled, in precedent and in reason, to oppose his confirmation.

Mr. GRIFFIN. Mr. President, will the Senator yield to me, before he goes on to another point?

Mr. JAVITS. I yield.

Mr. GRIFFIN. I commend the Senator for the contribution he has just made concerning the appropriate role of the Senate in confirmation of appointments to the Supreme Court. I, too, have studied this important work of Mr. Warren concerning the Supreme Court, and I am familiar with the examples that he points out.

Would the Senator from New York agree with me that, although the language in the Constitution is the same with respect to both classes of nominations, the Senate's attitude toward a nomination, say, for appointment to a Cabinet post or position in the executive branch may well be different from its approach and attitude toward appointments to an independent, third branch of the Government, the judiciary?

Mr. JAVITS. Absolutely. I think the distinction is very basic and very real.

Mr. GRIFFIN. I thank the Senator.

Mr. JAVITS. I thank my colleague.

III. THE QUESTIONS STILL IN LITIGATION, AND THE IMPORTANCE OF THIS NOMINATION

To conclude, I have tried to explain why I believe this nominee's views as to the Constitution, particularly in segregation cases, are outside the framework of our time in history, and why I believe we, as Senators, have the right and obligation to base our decision also on this factor.

But need we decide on this basis, after the Supreme Court only a few weeks ago spoke unanimously and unequivocally on the subject of further delay in school desegregation? I ask myself: Will one man make that much difference?

This is my answer: In my judgment, the blight of segregation is still very much alive and of critical importance. Despite the unanimous 8–0 decision ending "all deliberate speed" and requiring immediate school desegregation, the litigation goes on, and there are questions in these cases which are of paramount importance and yet to be decided.

I am told that there are 14 cases now pending in the fifth circuit raising questions of school construction site selection and the breaking up of school administrative units, in each case involving an allegation that the action of the school board involves a device to avoid the Court's desegregation requirements.

What of these cases?

And what of the infinite variety of litigable stalling devices which have already delayed so much school desegregation for 15 years?

And what of the question of award of counsel fees for frivolous appeals for the purpose of delay—a question in which Judge Haynsworth has been unwilling to penalize the offending public authority, and has thereby forced black families to continue to bear the awesome financial burdens of unending litigation costs—as in Judge Haynsworth's Felder and Bell opinions?

That may be unwitting, but it results in black families having to bear the costs of litigation. I saw, myself, how the bar of Mississippi got lawyers in difficulty because of champerty, soliciting law cases, and so forth. So these families just do not have the means to prosecute the cases.

These are important cases yet to come because efforts to "skin" a law one does not like will go on ad infinitum.

And there are doubtless other types of cases in the context of fact situations we cannot now anticipate or even imagine.

In my judgment, the introduction of a judge into the Supreme Court not committed to applying the 14th amendment to the swift elimination of all vestiges of legal discrimination would be a staggering blow to the cause of civil rights The delicate process of achieving unanimous per curiam decisions in the landmark civil rights cases—begun by Chief Justice Warren in 1954 and followed this year by Chief Justice Burger—would be made much more difficult if not impossible. Under Supreme Court Rules 18, 27, 50, and 51, each Justice of the Supreme Court, moreover, has individual jurisdiction to grant interim relief pending appeal to the Supreme Court in cases coming up from the circuit to which that justice is assigned; and so Judge Haynsworth would be in control, alone, of such relief in his circuit—a matter so often of critical importance in civil rights cases.

These are not minor matters—even for one justice among nine.

So, having reviewed the record and having analyzed the cases, I conclude by stating that I cannot vote to confirm this nomination.

I yield the floor.

U.S. AIR FORCE

Mr. MANSFIELD. Mr. President, there is a nomination at the desk, which was reported earlier today. I understand it has been cleared on both sides. There is a need for prompt action. I ask unanimous consent that the nomination be called up.

The PRESIDING OFFICER. The nomination will be stated.

The LEGISLATIVE CLERK. Maj. Gen. Royal B. Allison to be promoted to the grade of lieutenant general.

Mr. MANSFIELD. Mr. President, will the clerk read the explanation at the top of the sheet, so that the Senate will be aware of the need for action?

The legislative clerk read as follows:

General Allison will be the senior U.S Military Representative at the United States-U.S.S.R. disarmament negotiations in Helsinki to begin this coming Monday, November 17. His Russian counterpart holds the rank of lieutenant general and General Allison's appointment as a lieutenant general will serve to place him in a more advantageous position if he were in the higher rank at the beginning of the negotiations.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to this nomination?

The nomination was confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination.

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

What is the pleasure of the Senate?

Mr. MANSFIELD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess subject to the call of the Chair.

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

The motion was agreed to.

(At 12 o'clock and 56 minutes p.m., the Senate took a recess subject to the call of the Chair.)

(At 1 o'clock and 8 minutes p.m., the Senate reassembled, when called to order by the Presiding Officer (Mr. BYRD of West Virginia in the chair).)

(By order of the Senate, the following proceedings occurred as in legislative session.)

PEACE DEMONSTRATIONS

Mr. McGOVERN Mr. President, this week, tens of thousands of people from all parts of the country, young and old alike, are in Washington for the purpose of expressing their concern and their views with reference to our policy in Vietnam and with reference to other issues that are of concern to them—especially to the young people who comprise this large crowd of visitors in the Nation's Capital.

Mr. President, I wish to say how pleased I am that the first news reports on the activities of last night and again today indicate that these Americans who are visiting here in the Capital are conducting themselves as I fully expected they would, in a climate of dignity, good taste, and genuine conviction. These people come in an atmosphere of peace. They come here for the purpose of expressing their opposition to violence, not to perpetuate it.

I wish to read just a few of the observations that were made to newsmen last night and during the afternoon by young people visiting the Capital. For example, in today's Washington Post Mr. Tom Schiele, of Haverford College, is quoted as follows:

If this comes off poorly it's going to have a very bad effect for the peace movement.

So it is my responsibility to try and make it come off peacefully—and to try to keep the kind of dignity the October demonstrations had. And I really think the U.S. has no business being in Vietnam, and that's why I'm involved in the peace movement

He went on to say:

I suppose this may be the largest demonstration ever assembled in Washington. It's sort of the climax of everything that's been going on in the peace movement the last three years

Mr. President, to me that represents the tone, not only of the young man dedicated to peace, but of a mature and dignified citizen who is entitled to the respect and confidence of all of us; and beyond that he is entitled to be heard in what he has to say about the policies of our country.

Mr. David Hawk, whose name is known to us as one of the four principal directors of the October moratorium as well as the November moratorium, who is participating now as a member of the steering committee of the mobilization, referred in his conversations with the Washington Post reporter to what he called a new youth culture. He calls it a youth culture, a culture that believes in love, peace, joy, not war, death, and destruction.

Then, another young man, Mr Albert Winn, of Philadelphia, is quoted as saying·

credit that he has been chosen as the latest victim for the Vice President's vituperation.

The fact is that while Ambassador Harriman was patiently negotiating the Limited Nuclear Test Ban Treaty, the now Vice President of the United States was serving as county executive of Baltimore County, Md.

Those dim-witted, unscrupulous, reckless speechwriters in the White House presented the Vice President with a vicious, irresponsible, and untruthful assault on Averell Harriman which he recited perfectly. Averell Harriman as Ambassador at Large for the late President John F. Kennedy achieved the Limited Nuclear Test Ban Treaty with the Soviet Union, which ambassadors for preceding Presidents had been unable to accomplish.

Incidentally, in passing, may I mention that since that achievement, neither the Soviet Union nor the United States has violated any part of that treaty.

It was a grave mistake on the part of President Nixon at the outset of his administration to replace him—and with whom? Of all Republican leaders, Henry Cabot Lodge was the worst choice.

Those White House speechwriters making contemptible reference to Averell Harriman should be challenged to name even one accomplishment of negotiator Henry Cabot Lodge during the more than 10 months that have elapsed with him as chief negotiator in Paris.

The President made a bad appointment if for no other reason than that Henry Cabot Lodge has stated on numerous occasions his affection for Vice President Ky, the flamboyant Air Marshal who fought against his own fellow countrymen seeking national liberation from the French. This fact is well known to representatives of North Vietnam and of the National Liberation Front and is a roadblock toward any possible effectiveness of Lodge as a negotiator.

The fact is well known to representatives of North Vietnam and the National Liberation Front that Henry Cabot Lodge said he regarded Vice President Ky with the affection of a father toward a son. That was the statement of our present Ambassador at the Paris conference, and there has been no accomplishment forthcoming from him.

The Vice President compared network analyses of President Nixon's November 3 speech with reaction of news media to Winston Churchill's efforts to rally his countrymen against Nazi Germany and the efforts of the late, great President John F. Kennedy to rally Americans in the Cuban crises. The fact is that there was criticism by high public officials and press and in media analyses at that time of the positions taken by both of these great leaders, unjustified as it might have been.

Furthermore, Winston Churchill was rallying the British people against the most ruthless aggressor of all time, not in support of a tinhorn corrupt militarist regime such as we are supporting in Saigon—a regime to which the administration has now given a blank check for the lives of thousands of young Americans and for a great part of our national resources. This regime was formed first by 10 generals, nine of whom, including Thieu and Ky, came from North Vietnam. Most of them, including Ky, fought with the French against the forces of liberation at the time the French Government was seeking to reimpose its lush Indo-Chinese empire upon the Vietnamese people.

Reference has been made by me to our late great President Kennedy, when he was rallying the Nation in support of his efforts to protect the Republic from the threat of nuclear weapons positioned less than 90 miles from our shores. That is a far cry indeed from our fighting an immoral, undeclared war in a little faraway country 10,000 miles distant from our shores and of no strategic or economic importance whatever to the defense of the United States.

On the day that President John F. Kennedy was assassinated, the United States did not have one combat soldier fighting in Vietnam. It is true we had approximately 16,000 to 20,000 military advisers, but it was after his assassination that we intervened with hundreds of thousands of our troops in that civil war.

It is obvious that this administration is even more uncomfortable with criticism than preceding ones. Although all of us in public life are subjected to criticism, we had better learn to take it, and not do what was perpetrated Thursday night in the speech of the Vice President.

Rather than to attack the ills afflicting our society that are reported to the people through the radio and television, the administration chooses to attack the media themselves.

Now, more than ever before, there is a need for a reawakening of sound judgment and courageous action to preserve American institutions and American ideals. If the President is sincere in his desire to unite Americans, to bring us together—and I hope he is; he is, after all, my President—he should immediately and forcefully repudiate the divisive remarks of his Vice President.

(This marks the end of the proceedings which, by order of the Senate, were conducted as in legislative session.)

SUPREME COURT OF THE UNITED STATES

The Senate, in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. JORDAN of Idaho. Mr. President, it has never been a policy of mine to speak ill of any man, and I have no wish now to indict Judge Haynsworth. I have concluded, however, that he does not in my judgment meet the high standards the American people have a right to expect of a Justice of the U.S. Supreme Court.

Many charges have been made against Judge Haynsworth, some of questionable validity and some of no validity whatever. I should like to say at the outset that I have no quarrel with Judge Haynsworth's judicial philosophy, which has been labeled by many as that of a strict constructionist. I believe that a balance of judicial philosophies on the Supreme Court is highly desirable, and on the basis of that belief I was particularly pleased to support the nomination of Warren Burger to be Chief Justice. However, after carefully studying the Judiciary Committee hearings on the nomination, grave doubts arose in my mind as to the wisdom of elevating Judge Haynsworth to the Supreme Court. These doubts are based on my belief in the importance of maintaining public confidence in our judiciary, and my judgment that Judge Haynsworth has failed to appreciate how easily this confidence can be undermined by even the appearance of impropriety on the part of our judges.

Much of the criticism of Judge Haynsworth has centered around his connections with Carolina Vend-A-Matic, a vending machine corporation that he and other members of his law firm founded in 1950. Upon assuming the bench in 1957, Judge Haynsworth resigned from most of the corporate directorships he held, but chose to continue his active participation in this vending firm because, he explained in September to the Judiciary Committee, his connection with this company was not public knowledge. He reasoned that by keeping his involvement with Vend-A-Matic secret, no outside party would be tempted to play upon it in order to improperly affect the outcome of a decision. I believe that this decision is an example of the poor judgment Judge Haynsworth has shown in the handling of his business activities since he went on the bench. He failed to realize that while secrecy might seem to preclude impropriety, it would ultimately make the appearance of impropriety all the more likely.

On June 2, 1969, before his nomination to the Supreme Court, Judge Haynsworth testified before a Senate Subcommittee on Judicial Ethics. He said then:

> Of course, when I went on the bench I resigned from all such business associations I had, directorships and things of that sort.

The President announced the nomination of Judge Haynsworth to the Supreme Court in August. Then in September, this time under oath at his nomination hearings, Judge Haynsworth tells quite a different story about his business activities while on the bench. Some committee members were surprised to hear him admit freely that after going on the bench in 1957, Judge Haynsworth continued to serve as a vice president and director of Carolina Vend-A-Matic until 1963, regularly attending weekly meetings of the board of directors and voting for slates of officers through the years. He received director's fees in amounts as high as $2,600 per year, and his wife served as secretary of the corporation for 2 years while he was on the bench. From an original investment of less than $3,000 in 1950 Judge Haynsworth realized $437,000 in 1963 as his share of the sale proceeds. It may be sheer coincidence that Vend-A-Matic sales showed a sharp acceleration each year that he was serving in the dual

role as vice president and director of Vend-A-Matic and as chief judge of the fourth circuit. This combination of business and judicial duties continued for nearly 7 years.

It is hard to believe that Judge Haynsworth could have forgotten in June the weekly board meetings, the fees he received, and the duties he performed as director of this unusually successful business which had been more lucrative for him than his judge's salary. By this discrepancy in his testimony, Judge Haynsworth set up, in my opinion, his own credibility gap. I do not claim that he deliberately lied to the committee for some ulterior motive. But I believe we have a right to expect of those we elevate to the highest tribunal in the country a forthrightness and mental acuity that would preclude such a discrepancy, even as the result of a lapse of memory.

Judge Haynsworth participated in decisions involving customers of Carolina Vend-A-Matic with no apparent recognition of the doubts his connections could raise in litigants' minds as to the fairness of the decision being handed down. In addition, he sat on several cases in which he had a small, but direct, stock interest. He acknowledges that his participation in one of these cases, involving the Brunswick Corp. was an error, due to a lapse of memory on his part in purchasing Brunswick stock while the case was before his court. He has defended his action in the other cases on the grounds that his interest was not substantial. In all these instances I believe Judge Haynsworth showed poor judgment in not taking the utmost precaution to insure that no connection between his judicial duties and his business activities could be construed.

I have given this matter more than ordinary attention. On October 10 I wrote to the Attorney General stating my belief that this nomination was not a wise one; however, the administration did not see fit to reconsider the choice. On October 20, with great reluctance I reached the conclusion that I could not in good conscience vote to confirm the nomination of Judge Haynsworth. I thought it only fair to notify the administration of my decision, and I did so in a letter of that date to the Attorney General.

I have made no public statement on this matter up to now because I do not intend to try to influence the vote of any other Senator. Each Senator should resolve this issue by his own research of the record and then follow the dictates of his own conscience.

This is not a responsibility a Senator can shrug off lightly. The Constitution divides the responsibility for selecting Justices of the Supreme Court between the executive and legislative branches, and I regard each of these responsibilities as having equal weight. Justices of the Supreme Court serve for life. Thus it is imperative that Senators exercise their constitutional responsibility to investigate and scrutinize the record of Presidential nominees in order to prevent the elevation of unworthy men to the highest judicial tribunal in the world.

Nor do I believe a Senator should be bound by party loyalty on an issue of this magnitude. The selection of Supreme Court Justices should transcend politics. If we fail in this, we shall fail to restore the Court to the position of public esteem which it lost somewhat in recent years.

During my more than 7 years of service in the U.S. Senate few issues have generated more pressure on my office than has the confirmation of Judge Haynsworth's nomination. Support of the President is urged as if it were a personal matter rather than an issue of grave constitutional importance. The only way I can account for this unprecedented wave of interest is the fact that I decided that I could not support Haynsworth and so notified the Attorney General. This notification was sent by letter on October 20.

Since that date administration calls to my State have been legion. Some of my friends have been persuaded to call me even though they have not been provided copies of the hearing record from which they might make an independent judgment as I have done.

I have supported President Nixon on nearly every issue of note thus far in his administration, and I expect that I shall continue to do so. It is most difficult, therefore, to conclude that I would be doing my country a disservice if I concurred in this nomination, against the dictates of my conscience, simply on the grounds of party loyalty. The responsibility of all Senators on this issue is too great to simply make the easy choice of supporting whatever nominee the administration puts forward. So, with a heavy heart, but with a clear conscience, I shall oppose this nomination.

Mr. BAYH. Mr. President, will the Senator from Idaho yield briefly?

Mr. JORDAN of Idaho. I yield.

Mr. BAYH. I have read and listened to the statement of the Senator from Idaho with more than passing interest and with a real feeling of understanding of what he must have gone through over the past few weeks.

Mr. President, I found several of the thoughts expressed in the statement of the Senator are similar to the thoughts I have had over the past 5 or 6 weeks.

I joined the Senator from Idaho and most other Senators in supporting Chief Justice Warren Burger, although there may have been philosophical differences here and there between Judge Burger and me. I share the assessment of this matter made by the Senator in his statement.

I suggest also that I concur in the Senator's assessment that some of the charges made against Judge Haynsworth were questionable and had no validity. I deeply regret that during the hearings a mistake was made, to which I was a party. Two instances that were erroneous regarding the judge's connections were disclosed. I have publicly apologized for that and regret the mistake very deeply.

We are dealing with a sensitive matter, a man's qualifications to sit on the Supreme Court. One might differ as to whether the facts stated in the minority report are grievous enough to disqualify the judge. However, the statements are accurate as I know them.

I salute the distinguished Senator from Idaho. I feel a great deal of camaraderie with him. We do not agree on all issues, but, I think I have some idea of the turmoil the Senator has gone through in reaching this decision.

In the last sentence of the Senator's statement, the Senator spoke for most, if not all of us, who join him in opposition to the nominee when he said:

> The responsibility of all Senators on this issue is too great to simply make the easy choice of supporting whatever nominee the administration puts forward.

This has not been an easy choice for me. I have the feeling that perhaps it has been an even more difficult choice for my friend, the Senator from Idaho. I salute the Senator for the courage he has demonstrated.

Mr. JORDAN of Idaho. Mr. President, I thank my friend, the Senator from Indiana.

Mr. President, I yield the floor.

Mr. BAKER. Mr. President, recently a privately commissioned poll with regard to the attitude of the American people on the nomination of Judge Clement Haynsworth has been brought to my attention. This poll was conducted by the Chilton Research Center, a division of the Chilton Co. of Philadelphia, Pa., a highly reputable organization.

The results of this poll indicate that the American people favor confirmation of this nomination by a vote of approximately 2 to 1. While I do not advocate government by poll, I do believe that it is most important, in fact imperative, that the Senate be aware of the feelings of the American people on this issue.

I ask unanimous consent that the results of this poll be printed in the RECORD.

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

CHILTON POLL

1. Are you aware that Judge Clement Haynsworth has been nominated by President Nixon to be a Justice of the U.S. Supreme Court?

There were a total of 1,063 interviews, 704 or 66% were aware of the Haynsworth nomination.

2. As you know, President Nixon has strongly defended this nomination. Do you believe the Senate should approve or disapprove President Nixon's nomination of Judge Clement Haynsworth to the U.S. Supreme Court?

[In percent]

	Approve	Disapprove	No opinion
Total	44	24	32
Male	46	31	23
Female	42	18	39
Republican	60	13	27
Democrat	33	35	32
Independent	35	24	41
White	46	22	32
Negro	21	44	35
Under $5,000	43	18	39
$5,000 to $15,000	44	25	31
$15,000 and above	49	35	16
East	43	28	29
Midwest	37	29	34
South	51	21	28
West	50	16	34

RECESS UNTIL 2:30 P.M.

Mr. BYRD of West Virginia. Mr. President, if no Senator wishes to speak at the present time, I move that the Senate stand in recess until 2:30 p.m. today.

The motion was agreed to; and (at 1

o'clock and 53 minutes p.m.) the Senate took a recess until 2:30 p.m. the same day.

On the expiration of the recess, the Senate reconvened, when called to order by the Presiding Officer (Mr. HANSEN in the chair).

CONTINUATION OF AUTHORITY FOR REGULATION OF EXPORTS—CONFERENCE REPORT

Mr. MONDALE. Mr. President, as in legislative session, 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. 4293) to provide for continuation of authority for regulation of exports. 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 bill clerk read the report, as follows:

CONFERENCE REPORT

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4293) to provide for continuation of authority for regulation of exports, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows.

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration Act of 1969"

FINDINGS

SEC. 2. The Congress finds that—

(1) the availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States;

(2) the unrestricted export of materials, information, and technology without regard to whether they make a significant contribution to the military potential of any other nation or nations may adversely affect the national security of the United States;

(3) the unwarranted restriction of exports from the United States has a serious adverse effect on our balance of payments; and

(4) the uncertainty of policy toward certain categories of exports has curtailed the efforts of American business in those categories to the detriment of the overall attempt to improve the trade balance of the United States.

DECLARATION OF POLICY

SEC. 3. The Congress makes the following declarations:

(1) It is the policy of the United States both (A) to encourage trade with all countries with which we have diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest, and (B) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other nation or nations which would prove detrimental to the national security of the United States.

(2) It is the policy of the United States to use export controls (A) to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of abnormal foreign demand, (B) to the extent necessary to further significantly the foreign policy of the United States and to fulfill its international responsibilities, and (C) to the extent necessary to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States

(3) It is the policy of the United States (A) to formulate, reformulate, and apply any necessary controls to the maximum extent possible in cooperation with all nations with which the United States has defense treaty commitments, and (B) to formulate a unified trade control policy to be observed by all such nations.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, and (B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information of the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States

AUTHORITY

SEC. 4. (a) (1) The Secretary of Commerce shall institute such organizational and procedural changes in any office or division of the Department of Commerce which has heretofore exercised functions relating to the control of exports and continues to exercise such controls under this Act as he determines are necessary to facilitate and effectuate the fullest implementation of the policy set forth in this Act with a view to promoting trade with all nations with which the United States is engaged in trade, including trade with (A) those countries or groups of countries with which other countries or groups of countries having defense treaty commitments with the United States have a significantly larger percentage of volume of trade than does the United States, and (B) other countries eligible for trade with the United States but not significantly engaged in trade with the United States. In addition, the Secretary shall review any list of articles, materials, or supplies, including technical data or other information, the exportation of which from the United States, its territories and possessions, was heretofore prohibited or curtailed with a view to making promptly such changes and revisions in such list as may be necessary or desirable in furtherance of the policy, purposes, and provisions of this Act. The Secretary shall include a detailed statement with respect to actions taken in compliance with the provisions of this paragraph in the second quarterly report (and in any subsequent report with respect to actions taken during the preceding quarters) made by him to the Congress after the date of enactment of this Act pursuant to section 10.

(2) The Secretary of Commerce shall use all practicable means available to him to keep the business sector of the Nation fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging the widest possible trade.

(b) To effectuate the policies set forth in section 3, the President may prohibit or curtail the exportation from the United States, its territories and possessions, of any articles, materials, or supplies, including technical data or other information, except under such rules and regulations as he shall prescribe. To the extent necessary to achieve effective enforcement of this Act, such rules and regulations may apply to the financing, transporting, and other servicing of exports and the participation therein by any person. Rules and regulations prescribed in the interest of the national security shall provide that express permission and authority must be sought and obtained to export articles, materials, or supplies, including technical data or other information, from the United States, its territories and possessions, to any nation or combination of nations, if the President determines that (1) such articles, materials, supplies, data, or information would make a significant contribution to the military potential of such nation or nations which would prove detrimental to the national security of the United States, and (2) articles, materials, supplies, data, or information of comparable quality and technology to that sought to be exported are not readily available to such nation or nations from other sources: *Provided*, That express permission and authority shall be required to be sought and obtained, in accordance with such rules and regulations, in order to export to any nation or nations articles, materials, supplies, data, or information with respect to which the President has not made the determination referred to in clause (2), if the President (A) determines such action to be necessary in the interest of national security, and (B) includes in the first quarterly report submitted, pursuant to section 10, after taking such action a full and detailed statement with respect to such action setting forth the pertinent articles, materials, supplies, data, or information; the nation or nations affected thereby; and the reasons therefor. Rules and regulations prescribed under this subsection shall implement the provisions of section 3(5) of this Act and shall require that all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in such section must report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purposes of such section

(c) Nothing in this Act, or in the rules and regulations authorized by it, shall in any way be construed to require authority and permission to export articles, materials, supplies, data, or information except where the national security, the foreign policy of the United States, or the need to protect the domestic economy from the excessive drain of scarce materials makes such requirement necessary.

(d) The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may deem appropriate.

(e) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils, during any period for which the supply of such commodity is determined by the Secretary of Agriculture to bs in excess of tbe requirements of the domestic economy, except to the extent required to effectuate the policies set forth in clause (B) or (C) of paragraph (2) of section 3 of this Act.

CONSULTATION AND STANDARDS

SEC. 5. (a) In determining what shall be controlled hereunder, and in determining the extent to which exports shall be limi ed, any department, agency, or official making these determinations shall seek information and advice from the several executive departments and independent agencies concerned with aspects of our domestic and foreign policies and operations having an important bearing on exports. Consistent with considerations of national security, the President shall from time to time seek information and advice from various segments of private industry in connection with the making of these determinations.

(b) In authorizing exports, full utilization of private competitive trade channels shall

for the Smithsonian Astrophysical Observatory for the purpose of furthering scientific knowledge, and for other purposes; to the Committee on House Administration.

By Mr. ECKHARDT (for himself, Mr. BOLAND, Mr. HALPERN, Mr. HARRINGTON, Mr. HATHAWAY, and Mr. ROYBAL):

H.J. Res. 985. Joint resolution to create a joint congressional committee to review, and recommend changes in, national priorities and resource allocation; to the Committee on Rules.

By Mr. KAZEN:

H. Con. Res. 450. Concurrent resolution urging the adoption of policies to offset the adverse effects of governmental monetary restrictions upon the housing industry; to the Comimttee on Ways and Means.

By Mr. WATSON:

H. Res. 709. Resolution to express the sense of the House of Representatives that the United States maintain its sovereignty and jurisdiction over the Panama Canal Zone; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 and rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BLANTON:

H.R. 14838. A bill for the relief of Dr. Pio Albert Pol y Zapata and his wife, Dolores S. Alvarez de Pol; to the Committee on the Judiciary.

By Mr. NEDZI:

H.R. 14839. A bill for the relief of Vito Serra; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

329. By the SPEAKER: Petition of Henry Stoner, York, Pa., relative to foreign policy; to the Committee on Foreign Affairs.

330. Also, petition of the City Council, Springfield, Ill., relative to preservation of the Lincoln Homesite within the National Park System; to the Committee on Interior and Insular Affairs.

331. Also, petition of the Palau Legislature, Koror, Palau, Western Caroline Islands, Trust Territory of the Pacific Islands, relative to the use of land in the Palau District by the U.S. Government for military purposes; to the Committee on Interior and Insular Affairs.

332. Also, petition of Mrs. H. L. Jordan, Bellevue, Wash., et al., relative to appointments to the U.S. Supreme Court; to the Committee on the Judiciary.

333. Also, petition of the Board of Supervisors, Kalamazoo County, Mich., relative to Federal revenue sharing; to the Committee on Ways and Means.

SENATE—*Monday, November 17, 1969*

The Senate met in executive session at 10:30 a.m., and was called to order by the Acting President pro tempore (Mr. METCALF).

The Reverend Dr. Julius Mark, rabbi emeritus of Temple Emanu-El, New York City, N.Y., offered the following prayer:

"Give me understanding and I shall live," cried the ancient psalmist.

Most fervently do we echo this prayer, O our Heavenly Father. We live in a time of turbulence, confusion, and violence. Our hearts yearn for peace, but there will be no peace unless there is first understanding, firmly founded on justice, in our cities and in the world.

We pray that Thou mayest inspire us, O Master of the universe, that we may be guided by the wisdom of the prophet who declared more than 2,500 years ago that "the work of righteousness shall be peace and the effect of righteousness quietness and confidence forever."

We ask Thy blessing upon the President of our country who bears the awesome burdens of the high office to which his fellow citizens have elected him, upon the Vice President who presides over this great legislative body, the Senate of the United States, and all who have been entrusted with the guardianship of our rights and liberties.

Give all of us understanding that our Nation and all nations may live in peace and tranquillity. Amen.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from West Virginia (Mr. BYRD) is recognized.

Mr. MANSFIELD. Mr. President, will the Senator from West Virginia yield to me, without losing his right to the floor or having his time impinged upon?

Mr. BYRD of West Virginia. I yield.

THE JOURNAL

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, November 14, 1969, be dispensed with.

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

WAIVER OF CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the call of the calendar of unobjected to bills, under rule VIII, be waived.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that, after the remarks of the distinguished senior Senator from West Virginia, there be a period for the transaction of routine morning business, not to extend beyond 12 o'clock noon, unless asked for, with statements therein limited to 3 minutes.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

Mr. MANSFIELD. I thank the distinguished Senator from West Virginia for yielding.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

SUPREME COURT OF THE UNITED STATES

The Senate, as in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. BYRD of West Virginia. Mr. President, the Senate is now considering one of the most important matters that will come before it during this Congress. As Senators, we are charged with the responsibility of deciding whether the Senate should advise and consent to the nomination of Judge Clement F. Haynsworth, Jr., to be an Associate Justice of of the United States.

The decision we make may have profound effect upon our Federal judicial system and upon the Nation.

I have reviewed the record compiled by the Senate Judiciary Committee, of which I am a member, and I am persuaded that this nomination should be confirmed.

In my considered judgment, the opposition to this nomination does not rest on a sound basis.

Each Senator has the obligation to exercise his responsibility of deciding whether to advise and consent to this nomination according to his own best lights. I do not question or impugn the motives of any of the opponents of this nomination.

However, it is obvious to me that the real motive forces behind the opposition to this nomination are certain powerful economic and bloc pressure groups, and, in saying this, I do not speak critically of them. Specifically, I refer to the NAACP, certain organized labor groups, and the so-called liberal establishment which controls much of the news media of this Nation and which cannot reconcile itself to the resuits of the last presidential election.

The truly paramount issue involved in this nomination is whether these groups will be able to exercise a veto power over the appointments to the Supreme Court made by the President of the United States.

I hope that the Senate will consent to this nomination and let the people of the country and these groups know that the Supreme Court is not the privileged preserve of those of a certain ideological bent which was repudiated at the ballot box last fall.

Most of the public opposition to this nomination expressed by various Senators seems to be connected with charges

that Judge Haynsworth is guilty of a breach of judicial ethics and conflict of interest, and that he has not been candid with the Judiciary Committee.

The facts are all set out in the record compiled by the Judiciary Committee on this nomination. I urge my colleagues to judge these issues on the basis of the established facts—not rumors, innuendos, and insinuations.

Let us look at the record. If we do so, and if we will exercise an independent judgment—not influenced by pressure groups—I am satisfied that a majority of this body will share my conclusion that these charges, that these accusations, are without substance. To the contrary, they are merely being used to confuse the people. The real opposition is based on judicial philosophy, nothing more, nothing less; judicial philosophy, pure and simple.

Before we consider these charges and determine what the facts and the applicable law are as to each. I think it pertinent to make one further observation. It is quite easy for one person to demand that the conduct of another be above reproach. It is easy to determine that the one of whom this high standard is demanded does not measure up.

But I would remind my colleagues that the demanding of rigorous standards of conduct and the imputation of bad motives do not constitute a one-way street.

Before proceeding to consider each of the charges involving alleged improprieties or conflicts of interest made against Judge Haynsworth, we should first briefly consider the applicable statute, the applicable Canons of Ethics, and court decisions interpreting them.

Title 28, United States Code 455 provides:

Any justice or judge of the United States shall disqualify himself in any case in which he has a *substantial* interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceedings therein.

Canon 29 of the Code of Judicial Ethics of the American Bar Association states:

A judge should abstain from performing or taking part in any judicial act in which his *personal* interests are involved. If he has personal litigation in the court of which he is a judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

Under the statute, the question is quite clearly whether Judge Haynsworth had a "substantial" interest in the outcome of any litigation before him. Under canon 29, the question is whether Judge Haynsworth's "personal interests" were involved in any such litigation.

There is no escape from a careful analysis of each fact situation. The "substantial interest" referred to in the statute and the "personal interest" referred to the canon are in regard to a pecuniary, material interest in the outcome of the litigation.

In undertaking to determine the kind and degree of the "substantial interest" referred to in the statute and the "personal interest" referred to in the canon almost all of the decisions speak in terms of a "direct" or "immediate" interest, as opposed to a "remote" or "contingent" interest in the outcome of the litigation. A decision of a New York appellate court made this point as follows:

The interest which will disqualify a judge to sit in a case need not be large, but it must be real. It must be certain, and not merely possible or contingent; it must be one which is visible, demonstrable, and capable of precise proof. *People* v. *Whitridge*, 129 in N.Y Supp. 300, 304.

The Federal courts of appeals have consistently stated the rule that a Federal judge is under as great a duty to participate in and decide a case when he is not disqualified by the provisions of 28 U.S.C. 455 as he is to rescue himself when he is disqualified by the provisions of that statute.

For instance, the First Circuit Court of Appeals stated in 1961, in the case of *In re Union Leader Corp.*, 292 F. 2d 381, 391:

There is as much obligation upon a judge not to recuse himself when there is no occasion as there is for him to do so when there is.

The above statement was quoted with approval by the Second Circuit Court of Appeals in 1968 in the case of *Wolfson* v. *Palmieri*, 396 F. 2d 121.

Applying these principles of law to the various facts of the cases, let us first consider the case which the opponents of this nomination consider as a principal charge against Judge Haynsworth. This, of course, is the case of *Darlington Manufacturing Co.* v. *National Labor Relations Board*, 325 F. 2d 682.

The facts of this case are well known. At the time Judge Haynsworth participated in the decision of this case he owned a one-seventh interest in Carolina Vend-A-Matic Co., Inc. This was a small closely held corporation engaged in the vending machine business which he and others had established in 1951. During 1963, the year in which the judge participated in the Darlington case, approximately 3 percent of Carolina Vend-A-Matic's business was with textile mills owned by Deering Milliken Corp., which owned the controlling stock interest in Darlington Manufacturing Co. During that year, Carolina Vend-A-Matic submitted bids on three contracts with textile mills owned by Deering Milliken, and was successful in obtaining only one contract. One of the two unsuccessful bids involved a contract much more lucrative than the one which was awarded.

It was firmly established by expert testimony given to the Judiciary Committee that it is not, and never has been, the rule that a judge should disqualify himself because he owns stock in a company which does business with a party litigant. Accordingly, it was clearly established that Judge Haynsworth not only did not act improperly in participating in the decision of the Darlington case, but that he was under a legal duty to sit as a judge on the case.

The Judiciary Committee was privileged to receive the testimony of the Honorable Lawrence E. Walsh, chairman of the American Bar Association's Standing Committee on the Federal Judiciary, concerning this precise matter. The distinguished lawyers who were members of the ABA committee exhaustively and painstakingly studied the detailed facts of Judge Haynsworth's participation in the Darlington case.

The findings of the ABA committee are summarized by the following quotation, at pages 138 and 139 of the hearings, from the testimony of Mr. Walsh, chairman of the ABA Standing Committee on the Federal Judiciary. He said:

The Committee also considered the suggestion which has been circulated that Judge Haynsworth had, on one occasion, failed to disqualify himself in a case in which he was alleged to have had a conflict of interest. Our examination into that case (*Darlington Manufacturing Company* v. *NLRB*, 325 F. 2d. 682) satisfied us that there was no conflict of interest and that Judge Haynsworth acted properly in sitting as a judge participating in its decision

Briefly stated, Judge Haynsworth held a one-seventh interest in Carolina Vend-A-Matic Company, an automatic vending machine company which had installed machines in a substantial number of industrial plants in South Carolina. Among the plants which it served were three of twenty-seven owned in whole or in part by the Deering-Milliken Company which was a party to the proceeding before Judge Haynsworth's court. The annual gross revenues from the sales in the Deering-Milliken plants were less than 3% of the total sales of Carolina Vend-A-Matic. The plant involved in the case before the court was not one serviced by Carolina Vend-A-Matic.

Continuing to quote from the testimony of Lawrence Walsh, representing the viewpoint of the ABA Standing Committee on the Federal Judiciary:

Judge Haynsworth had no interest, direct or indirect, in the outcome of the case before his court. There was no basis for any claim of disqualification and it was his duty to sit as a member of his court.

Having found no impropriety in his conduct, and being unanimously of the opinion that Judge Haynsworth is qualified professionally, our Committee has authorized me to express these views in support of his nomination as Associate Justice of the Supreme Court of the United States.

Of course the standing committee, at a later date, met to reconsider the accusations against Judge Haynsworth, and again it endorsed his nomination. That endorsement however, was not unanimous.

The committee also heard the testimony of Mr. John P. Frank, who is recognized as the leading authority on the subject of judicial disqualification. In addressing himself to the issues raised by the Darlington case, Mr. Frank testified:

In the light of the overwhelming body of American law on this subject and indeed I think without exception law on this subject and indeed I think without exception, I have reviewed the cases comprehensively for this appearance, being aware of its gravity and have worked on the matter previously, and I cannot find a reported case in the United States in which any Federal judge has ever disqualified in circumstances in the remotest degree like those here. There was no legal ground for disqualification.

I remind Senators that the witness whose testimony is being quoted, John P. Frank, is one of the outstanding authorities on judicial disqualification. He said:

It follows that under the standard Federal rule Judge Haynsworth had no alternative whatsoever. He was bound by the principle

of the cases. It is a judge's duty to refuse to sit when he was disqualified, but it is equally his duty to sit when there is no valid reason not to. It is possible that your committee may wish to change the rules of disqualification. It is possible that one of the committees, Senator Bayh's committee or another, may wish to make recommmendations for altering of 28 U.S.C., section 455. But under the law as it has clearly existed to this minute and as it existed on a given day in the fall of 1963, I do think that it is perfectly clear under the authorities that there was literally no choice whatsoever for Judge Haynsworth except to participate in that case and do his job as well as he could. (Hearings, pages 115–116).

This persuasive and compelling testimony should lay to rest the question of the propriety of the participation of Judge Haynsworth in the Darlington case.

In addition, on September 2, Senator HRUSKA requested the U.S. Attorney General to review the Darlington matter, and in response to that request, the Honorable William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, wrote a letter to the Senator which is a part of the record. Mr. Rehnquist came to the same conclusion as did Mr. Walsh and Mr. Frank, and advised that it was perfectly proper for Judge Haynsworth to sit on that case, and that, indeed, it would have been improper for him to fail to do so.

So, Mr. President, the American Bar Association's Standing Committee on the Federal Judiciary, as well as leading authorities on the subject of judicial disqualification, found no impropriety in Judge Haynsworth's conduct, and they supported his nomination.

However, there are those who fault the Rehnquist memorandum because it did not mention a decision of the Supreme Court of the United States entitled *Commonwealth Coatings Corp.* v. *Continental Casualty Co.*, 393 U.S. 145. The opposition to Judge Haynsworth says that the omission of any discussion of this case is a fatal flaw of the Rehnquist memorandum and renders it worthless. The opposition also claims that the decision of the Supreme Court in the Commonwealth Coatings case conclusively establishes that Judge Haynsworth was guilty of conflict of interest and other improprieties in the Darlington case and many other cases.

It is time for this contention to be thoroughly exploded.

In the first place, this decision overruled the decision below in the First Circuit Court of Appeals and gave a new interpretation of section 10 of the Arbitration Act, 9 United States Code, section 10. The decision was rendered by the Supreme Court on November 10, 1968. Any new principle of law which it announced was not in effect in 1963 when Judge Haynsworth participated in the Darlington decision. As a matter of fact the decision in Commonwealth Corporation was rendered after the decisions of each and every one of the cases as to which complaint is made about Judge Haynsworth.

How any judge could be expected to divine prior to November 18, 1968, what new rule the Supreme Court might announce and be guided thereby is beyond my comprehension or any other Senator's comprehension.

Elemental due process demands that the conduct of an ordinary citizen be judged by what is right and proper at the time of the commission of the act. Judges have a right to expect equally fair treatment.

The framers of our Constitution inserted the ex post facto clause in the Constitution to assure that no one be punished by operation of retroactive law. Unfortunately, this does not seem to deter those who indulge themselves in a lynching bee. And the Haynsworth nomination has become a lynching bee.

Second, even if it were given a retroactive application, the decision in Commonwealth Coatings does not condemn the conduct of Judge Haynsworth.

The Supreme Court was there discussing the duties of an arbitrator under the provisions of a specific act of Congress. The Court did not have before it the question of proper conduct of judges in our Federal judicial system. Any comparisons made by the Court between the proper conduct of arbitrators and the proper conduct of judges should only be given the weight of dicta. Dicta should never be construed as being the holding of the Court. Let us look at the facts of Commonwealth Coatings and see exactly what was there involved.

In the words of the Court:

> The petitioner, Commonwealth Coatings Corporation, a subcontractor, sued the sureties on the prime contractor's bond to recover money alleged to be due for a painting job. The contract for painting contained an agreement to arbitrate such controversies. Pursuant to this agreement petitioner appointed one arbitrator, the prime contractor appointed a second, and these two together selected the third arbitrator. This third arbitrator, the supposedly neutral member of the panel, conducted a large business in Puerto Rico, in which he served as an engineering consultant for various people in connection with building construction projects. One of his regular customers in this business was the prime contractor that petitioner sued in this case. This relationship with the prime contractor was in a sense sporadic in that the arbitrator's services were used only from time to time at irregular intervals, and there had been no dealings between them for about a year immediately preceding the arbitration. Nevertheless, the prime contractor's patronage was repeated and significant, involving fees of about $12,000 over a period of four or five years, and the relationship even went so far as to include the rendering of services on the very projects involved in this lawsuit.

The conduct described in Justice Black's opinion would be analogous to Judge Haynsworth's receiving fees from Darlington Manufacturing Co. or Deering Milliken during the pendency of the Darlington litigation. Of course, it is not even charged that anything of the sort happened. The financial relationship between the party and the arbitrator was direct and substantial. Neither of these conditions existed as to Judge Haynsworth.

We are talking about apples and oranges when we try to compare the conduct of this nominee to that of the arbitrator under scrutiny in Commonwealth.

The Supreme Court shed further light on just what it was talking about when it made this statement in the Commonwealth opinion:

> We have no doubt that if a litigant could show that a foreman of a jury or a judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would be subject to challenge. This is shown beyond doubt by *Tumey* v. *Ohio*, 273 U.S. 510 (1927), where this Court held that a conviction could not stand because a small part of the judge's income consisted of court fees collected from convicted defendants. Although in *Tumey* it appeared the amount of the judge's compensation actually depended on whether he decided for one side or the other, that is too small a distinction to allow this manifest violation of the strict morality and fairness Congress would have expected on the part of the arbitrator and the other party in this case.

The decision in the case of Tumey against Ohio cited in the above quotation held that it was unconstitutional for a judge to decide a case in which he would receive a fee if he held in favor of one party and no fee if he decided in favor of the other. Here, again, the judge had a direct financial interest in the outcome of the litigation.

The opponents of this nomination also charge that Judge Haynsworth sat on six other cases involving customers of Carolina Vend-A-Matic. These cases are:

Homelite v. *Trywilk Realty Co., Inc.*, 272 F. 2d 688 (1959);

Kent Mfg. Corp. v. *Commissioner of Internal Revenue* 288 F. 2d 812 (1961);

Textile Workers Union of America v. *Cone Mills Corporation* 268 F. 2d 920 (1959);

Leesona Corp. v. *Cotwool Mfg. Corp., Deering Milliken Research Corp. and Whitin Machine Works* 315 F. 2d 895 (1963);

Leesona Corp. v. *Cotwool Mfg. Corp., Deering Milliken Research Corp. and Whitin Machine Works* 308 F. 2d 895 (1962);

Textile Workers Union of America v. *Cone Mills* 290 F. 2d 921 (1961).

Insofar as these cases are concerned, it is clear that Judge Haynsworth was equally under a duty to participate in the decision of them as he was in the decision of the case involving Darlington Corp.

It is worthy of note that those who have made these charges now admit that the inclusion of the Kent Manufacturing Corp. case was an error. There is no connection between Kent Manufacturing Corp., a Maryland corporation which manufactures fireworks, and also the litigant in this case, and the Kent Manufacturing Co., a woolens manufacturer in Pennsylvania which operates the Runnymeade plant in Pickens, S.C.

The same principle of law, which holds that a judge is not disqualified from hearing a case involving a corporation which does business with a corporation in which he owns stock, applies to these six cases as well as to the Darlington case.

The opponents of the nomination claim that Judge Haynsworth participated in the decison of six other cases in which he held a financial interest in one of the litigants substantial enough to require disqualification under 28 U.S.C. 455. These cases are:

Brunswick Corp. v. *Long* 392 F. 2d 348 (1967);

Farrow v. *Grace Lines, Inc.* 381 F. 2d 380 (1967);

Merck v. *Olin Mathieson Chemical Corp.* 253 F. 2d 156 (1958);

Darter v. *Greenville Community Hotel Corp.* 301 F. 2d 70 (1962);

Donohue v. *Maryland Casualty* Co. 363 F. 2d 442 (1966);

Maryland Casualty Co. v. *Baldwin* 357 F. 2d 338 (1968).

In considering these charges we must be very careful to understand exactly what the Federal disqualification statute, section 455 of the Judicial Code, states. I have previously quoted from this statute in this speech, but I emphasize here that the law provides, in essence, that a judge shall disqualify himself "in any case in which he has a substantial—s-u-b-s-t-a-n-t-i-a-l—interest."

We must carefully examine the facts of each case in order to determine whether Judge Haynsworth had a substantial interest in the outcome of the case. If he did have such an interest, then he acted contrarily to the law, and this would call for the rejection of his nomination. On the other hand, if a careful examination of the facts shows that he did not have a substantial interest in the outcome of any of these cases, then he was under a legal duty to participate as a judge in their decision.

It would be an error for a judge to attempt to avoid hearing a case merely by pointing to some remote or insubstantial interest. If this were allowed, it would not only snarl the procedures of the courts, but it would also unfairly burden the other members of the judiciary.

In my judgment, a close study of the facts, divorced from innuendos and insinuations, demonstrates beyond a shadow of a doubt that Judge Haynsworth did not have a substantial interest in the outcome of any of these cases. His taking part in their decision was completely proper. These cases afford no legitimate reason for voting against the confirmation of the nominee.

We will first examine the facts of the Brunswick case. Judge Haynsworth was a member of the panel of the Fourth Circuit which heard arguments in the Brunswick case on November 10, 1967. At that time he owned no stock or other interests in Brunswick Corp. Immediately after the oral argument, the panel of judges, which consisted of Judge Haynsworth, Judge Harrison L. Winter, and District Judge Woodrow Wilson Jones, met in chambers to discuss the case. All three of the judges agreed that the case did not present any problem, and that the decision of the U.S. district court holding in favor of Brunswick Corp. should be affirmed. So, the decision was unanimous that the district court holding should be affirmed. It was agreed that Judge Winter would write the opinion for the court, and on December 27, 1967, he circulated his opinion to Judge Haynsworth and Judge Jones for their approval.

On December 26, prior to Judge Winter's circulation of his opinion, Judge Haynsworth's stock broker purchased for the Judge's account 1,000 shares of stock of Brunswick. This was one out of every 18,000 shares, or one eighteen-thousandth of the entire stock. This stock was purchased at the suggestion and recommendation of Mr. Arthur McCall, Judge Haynsworth's broker. Mr. McCall had previously recommended the stock for purchase to a large number of his other customers, and a number of them actually purchased the stock.

The opinion of the Fourth Circuit Court of Appeals was filed with the clerk of the court in Richmond on February 1, 1968, and was released to the public on the following day.

In his testimony to the committee, Judge Haynsworth freely acknowledged that his purchase of the Brunswick stock prior to the publication of the opinion was an error caused by his lapse of memory. He had put the Brunswick case out of his mind because as far as he was concerned the case had already been decided by the panel of judges. Judge Haynsworth stated to the committee that he would make certain that no such transaction would occur in the future as a result of a lapse of memory.

The question is, Does this one inadvertent error justify the Senate in rejecting this nomination? I do not think so. We should demand very high standards of nominees for judicial office and other public offices. However, perfectability is an impossible standard for any human to meet, even those who would make the Senate a playground for moral arrogance.

In considering whether Judge Haynsworth would have had a substantial interest in the outcome of the Brunswick case had he owned the stock at the time he rendered his decision thereon, it is significant that even if the other party had been granted the entire total judgment of $90,000 sought against Brunswick, the amount of this judgment would have been less than ½ cent per share on Brunswick's 18,479,969 shares of outstanding stock. The economic impact on Judge Haynsworth's 1,000 shares—out of 18½ million shares—would have been less than $5. Think of it. Less than $5. I suggest that this amount of money is de minimus. It certainly does not meet the substantial interest test for disqualification.

In the Grace Lines case, Judge Haynsworth did own 300 shares of stock of the parent corporation, W. R. Grace & Co. Grace Lines, Inc., was one of 53 subsidiary companies owned by W. R. Grace & Co., and it accounted for less than 7 percent of the parent company's 1967 revenue of $1,567,000,000. In the same year, W. R Grace & Co. had outstanding over 18 million shares of common stock. Judge Haynsworth's 300 shares gave him a .00001-percent interest in the common stock of this company. Even if Farrow's claim of $30,000 against Grace Lines, Inc., had been awarded, the effect of that judgment on a company with an annual revenue of over a billion and a half dollars would have been miniscule. The amount that a $30,000 judgment against Grace Lines could have reduced the value of Judge Haynsworth's W. R. Grace & Co. stock would have been about 48 cents—the price of a couple of fairly good cigars.

Likewise, Judge Haynsworth had no direct interest in either of the litigants in the Maryland Casualty Co. cases. He did own 67 shares of common stock and 200 shares of preferred stock in American General Insurance Co., a corporation in which Maryland Casualty was one of at least 12 subsidiaries. It is, of course, extremely difficult to measure the impact of a judgment against a subsidiary of a corporation such as American General Insurance Co., which has total assets of over $888,000,000, total income of over $356,000,000, and consolidated net profits of $26,672,196.

There is doubt if an adverse judgment could have had any significant effect on Judge Haynsworth's fractional interest in such a corporation. The judge owned 200 shares of preferred stock out of 3,279,559 shares of preferred stock; in other words, he owned six-thousandths of 1 percent—.006 percent. And he owned fifteen ten-thousandths of 1 percent—.0015 percent—of the 4½ million shares of common stock. As to the Olin Mathieson Chemical Corp. case, concerning which some of the opponents of this nomination have charged that Judge Haynsworth acted unethically in taking part in a case in which he had a "substantial interest" in one of the litigants, the fact is that Judge Haynsworth never owned any Merck stock and never owned any Olin Mathieson stock.

This charge, along with some of the others, is utterly baseless.

The last great conflict of interest case which the opponents charge Judge Haynsworth with participating in is the Greenville Community Hotel Corp. case. Judge Haynsworth owned no stock or other interests in that corporation in 1962 when he heard a case involving it.

On April 26, 1956, before the judge was on the court of appeals, one share of stock of the Greenville Community Hotel Corp. worth $21 was transferred to him so that he could be a director of that corporation. He held that position until he went on the bench in 1957. On January 1, 1958, he received a check for 15 cents for the 1957 dividend. Thinking that he no longer owned the one share of stock, Judge Haynsworth sent the check to Alester G. Furman, Jr., who had transferred the share of stock to him 2 years earlier. Furman then returned the $.15 check to Judge Haynsworth and the judge listed that $.15 dividend—think of it, 15 cents—as income on his tax return. That share was later transferred to Furman who sold it on August 1, 1959.

These are all of the cases which have been dug up in a frenetic effort to convince the public through the news media that Judge Haynsworth has been guilty of unethical or illegal conduct. Upon examination, the accusations amount to nothing.

In weighing our responsibilities in this matter, we should deeply ponder our duty to the nominee, our duty to the Federal judicial system, our duty to the American people, and our duty under the Constitution as Members of this body. To reject this nomination on the basis of such unproved and unprovable charges and such distortions would mean that in the eyes of his fellow citizens Judge Clement F. Haynsworth, Jr., has been weighed in

the scales by the Senate and found ethically wanting. The wholly unfounded stigma that would be thus unjustly placed upon Judge Haynsworth would last for his lifetime.

In such a situation as this, Shakespeare might have said:

Who steals my purse steals trash; 'tis something, nothing;
'Twas mine, 'tis his, and has been slave to thousands
But he that filches from me my good name
Robs me of that which not enriches him
And makes me poor indeed.

That would not be the greatest tragedy to result from such an action by the Senate, because in so acting the Senate would not dishonor Judge Haynsworth; it would dishonor itself.

Any nominee who might be chosen in the future to hold high judicial office would realize that he, too, might unjustly be subjected to a campaign of rumor, misrepresentation, distortion, and fabrication fueled by those political power blocs and pressure groups which cannot bear the thought that their stranglehold on the Federal judiciary might be broken. I think it fair to state that few eminently qualified men would, in the future, want to run the risk of vilification and abuse in having their names placed in nomination to fill a U.S. Supreme Court vacancy.

Each of us will have to decide this issue on the basis of his own judgment and conscience.

A classic example of the sort of distortions and misrepresentations which have been made concerning Judge Haynsworth's relationship with Carolina Vend-A-Matic and other instances of alleged unethical conduct and conflict of interest is afforded by the testimony of Mr. Stephen I. Schlossberg, general counsel, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America. Mr. Schlossberg is opposed to the nomination of Judge Haynsworth. Senator HRUSKA questioned Mr. Schlossberg about his contentions as to Judge Haynsworth's relationships with Carolina Vend-A-Matic and Deering-Milliken Co. The following testimony is found on pages 367–68 of the hearings:

Senator HRUSKA. What is this weekly board meeting?

Mr. SCHLOSSBERG. He said that they had weekly board meetings at lunch, and that he attended many more after he came to the bench than before he was on the bench. I am talking about the vending machine company. Indeed he told us that during the year 1963, which was not a full year with the vending machine company, he drew $2,600 in directors' fees. That is insubstantial to a millionaire southern judge like Judge Haynsworth, but very substantial to me, a union lawyer: $2,600, from the casual board of directors' meetings.

Are we to believe that the salesmen who went to these various textile industries and tried to place these vending machines in their places did not say to these textile industries, "This is Judge Haynsworth's company"?

I can hear it right now just like the cowboy on television says when he rides over the horizon, "This is Marlboro country."

Yes, we are to believe that the Vend-A-Matic salesmen did not tell representatives of the textile companies that "this is Judge Haynsworth's company." Judge Haynsworth gave sworn testimony in the hearings that he instructed Mr. Wade Dennis, the general manager of Carolina Vend-A-Matic, not to permit his name to be used in any connection with getting business for the company.

There is not one scintilla of evidence in the hearing record to contradict or bring into question the truthfulness of this testimony.

It is valid to assume that the organization Mr. Schlossberg represents and many other powerful and wealthy groups have sent investigators all over South Carolina in an effort to try to prove just such an allegation. The fact that we have not heard from them leads me to the conclusion that they were unsuccessful.

The testimony resumes as follows:

Senator HRUSKA. And then there were two others. Now, if he had the position of dominance that you describe, why didn't he get more than $100,000 worth of gross sales in those companies?

Mr. SCHLOSSBERG. Senator, it is hard for me to speculate, and this is a terrible thing to say and I do not make it as a charge, but if I have to speculate I am going to speculate. Maybe Deering, Milliken decided that there comes a point when you draw the line, and that $100,000 is all we can afford to give this guy while he is sitting judge hearing our cases. Now, I am speculating, Senator.

Senator HRUSKA. You take it that Deering, Milliken gave him $100,000?

Mr. SCHLOSSBERG. I did not say that.

Senator HRUSKA. You just said so.

Mr. SCHLOSSBERG. No, I did not, Senator.

Senator HRUSKRA. Do you change that language?

Mr. SCHLOSSBERG. I said maybe they said, "This is all the business we can give this guy's company while he is a sitting judge." I did not want to speculate, but you forced me into it.

Senator HRUSKA. I did not force you into it, and if you were here sitting at these hearings and considered the record, which is sworn testimony——

Mr. SCHLOSSBERG. Right.

Senator HRUSKA. And if you had had any desire to inform yourself you would not have to speculate, and when facts are available under sworn testimony, speculation is out of order in my judgment. The record will show that whatever contracts they got were acquired by reason of competition bids; and in three instances, the last three times, they were not the prevailing party. I just cannot quite square that result with an officer who has such an omnipotence that he can say anything and he gets paid off. Isn't that what you are saying?

Mr. SCHLOSSBERG. You do not understand. I am going to try once more to make myself clear and then I am really at a loss about how to do it. No. 1, I do not make the charge that Deerling-Milliken paid off Judge Haynsworth.

Senator HRUSKA. That is good.

Mr. SCHLOSSBERG. I do not make that charge.

Senator HRUSKA. That is good.

Likewise, there is absolutely no evidence in the record that Wade Dennis bragged or otherwise told anyone that Judge Haynsworth was the first vice president of the company. If that is the interpretation that Mr. Schlossberg wants to place upon the fact that the Dun & Bradstreet report, which counsel for the Textile Workers Union received, reflects that Judge Haynsworth was carried on the books of the company as first vice president, then he is skating on thin ice.

This testimony is a classic because interwoven throughout it are the two fraudulently intellectual gimmicks of those who attack Judge Haynsworth on the basis of unethical conduct and conflict of interest; that is, the disclaimer of the making of scurrilous, libelous, and preposterous charges against Judge Haynsworth in conjunction with the making of direct charges which are totally false.

There are a number of persons, including Senators, who frankly base their opposition to this nomination on the fact that, in their judgment, the philosophy of Judge Haynsworth as evidenced by his opinions as a judge of the U.S. Court of Appeals for the Fourth Circuit would be harmful if adopted by the U.S. Supreme Court.

I want to make it very clear that although I disagree with the judgment of Senators who take that position, I applaud their forthrightness, candor, and frankness. They do not use the issue of ethics to hide the real reason for their opposition. I think every Senator has a perfect right to object to any nomination to the Supreme Court on a philosophical basis. I admire those Senators who plainly state, and make no bones about it, that their opposition to this nominee is based on his judicial philosophy. At the same time, I reserve the right to support the nominee on the basis of his judicial philosophy as I interpret it.

My support for the nomination of Judge Haynsworth is based in large measure upon my approval of his judicial philosophy as embodied in his opinions as a judge. I do not necessarily agree with all of his decisions or opinions—and I doubt that any of us has been able to read them all—but I believe that the main body of his judicial philosophy is that which is desired by, and is desirable for, the vast majority of the American people.

The most objective, dispassionate, and concise analysis of the opinions of Judge Haynsworth was set out in the hearings during the testimony of Judge Walsh, chairman of the American Bar Association's Standing Committee on the Federal Judiciary.

I have already quoted Judge Walsh's testimony with respect to the accusations. Judge Walsh's committee made a survey of all of the opinions written by Judge Haynsworth. Judge Walsh summed up the opinions in this testimony found on pages 138–141, and 145–146 of the hearings:

I think I can summarize the investigation this way. As far as Judge Haynsworth's opinions are concerned, he has written more than 300. Probably 90 percent of them are not controversial in any way. He has participated in many, many more, probably well over 1,000, but looking to the 10 percent of his opinions which were in areas which inevitably would invite controversy, we can see that in those areas where the Supreme Court is perhaps moving the most rapidly in breaking new ground he has tended to favor allowing time to pass in following up or in any way expanding these new precedents.

The areas in which you might notice this would be in the areas of civil rights but also in the areas perhaps of labor law and in the areas of rights of, for example, seamen and longshoremen. The Supreme Court has greatly expanded the old definitions of sea-

worthiness and things like that. In all of these areas, whether they are politically sensitive or not, you see the same intellectual approach.

It was our conclusion—

Said Judge Walsh, speaking on behalf of the American Bar Association's Standing Committee on the Federal Judiciary—

after looking through these cases, that this was in no way a reflection of bias. This was a reflection of a man who had a concept of deliberateness in the judicial process and that his opinions were scholarly, well written, and that he was, therefore, professionally qualified for this post for which he is being considered.

* * * * *

Now, I do not mean in any way to suggest that I thought Judge Haynsworth was running against the stream of the law. I think he was punctilious in following that stream as the Supreme Court laid it out and in some fields he has run ahead and broken new grounds. For example, in the expansion of the doctrine of the utility of habeas corpus, he broke away from an old restraint in earlier Supreme Court opinions and was complimented by the present Supreme Court for doing so. He has moved over into, as I recall it, more modern tests on insanity, things like that. So, he is in no sense running against the stream of the law. If I were going to characterize it, I would say where new ground is being broken by the Supreme Court, he believes in moving deliberately rather than rapidly, and particularly where an interpretation of the Constitution which has stood for many years is reversed or turned around he would perhaps give more time than other judges to adjust to the new state of affairs."

In other words, the chief attribute of Judge Haynsworth as a Federal judge has been judicial self-restraint. As to Judge Haynsworth's record on civil rights, he has voted to enforce the 1954 school desegregation decision. Yet, he has also supported freedom-of-choice attendance plans. In other words, he is against State-enforced segregation, but he is also against forced integration. I subscribe to the same principle. Freedom of choice is all that any fair-minded interpreter of the Federal Constitution could possibly require. Perhaps Judge Haynsworth believes, as I do, that no integration can ever be meaningful and lasting unless it is purely voluntary, and the sooner the courts, the Government bureaucrats, the politicians, and the ultraliberal "establishment" realize this the sooner the Nation's schoolchildren—black and white—will be relieved of their role as guinea pigs in a senseless social experiment and as pawns in a political chess game played by politicians and judges who vote for forced integration while sending their own children and grandchildren to all-white private schools or to public schools in white suburbia.

Mr. President, at this point I ask unanimous consent to have printed in the RECORD a news story entitled "Parents Hit Prince Georges School Plan," published in the Washington Post on Sunday, November 16, 1969, which was written by Douglas Watson, Washington Post staff writer.

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

PARENTS HIT PRINCE GEORGES SCHOOL PLAN

(By Douglas Watson)

A group of white parents from the Bladensburg area opened fire yesterday on the Prince Georges County Board of Education and the school desegregation plan it adopted Tuesday by a bare majority.

In the first group reaction to the controversial desegregation action, the Citizens for Action, Inc. (CFA), called it "a tragic subversion of the rights and will of the people" and urged that the appointed school board be replaced by an elected one.

The recently organized group has only about 100 members but claims it represents the feeling of a majority of county residents.

In a prepared statement released by its directors, it charged that the school board's action has "given erroneous dignity and acceptance" to a Department of Health, Education and Welfare "accusation of a dual school system." It said it agreed with W. Carroll Beatty, school board president, in favoring a court test of the HEW directive.

ALL-NEGRO SCHOOLS

Confronted with a federal order to desegregate all-Negro Fairmont Heights Senior High and Bethune Junior High or lose $12 million in federal aid, the board approved a plan to divide 4,500 of the county's secondary students next fall among 18 schools. Fairmont Heights and Bethune would become half white and racial proportions would be altered in many of the other schools.

Citizens for Action said the adopted plan fails to consider "the economic differences of the communities involved and the safety of the children being forcibly assigned to areas foreign to their environment without due consideration of police protection needs."

The group charged the desegregation plan is "very poorly constructed" and tries to offset segregated housing patterns through busing. "Are we to accept a major upheaval of our children and communities each time a housing pattern within a defined school district creates the illusion of segregation?" the group asked.

Mr. BYRD of West Virginia. Mr. President, I have inserted this news story in the RECORD because it indicates some of the problems that have been visited upon children, their parents, and communities as a result of regulations and policies enunciated and promulgated largely by Government bureaucrats—in an effort to bring about a certain salt and pepper mix, a certain racial mix—which force students to go to schools not of their own choice, and I am speaking of both black students and white students. I think the article is pertinent to the whole problem we are discussing.

Judge Haynsworth's decisions and opinions reflect an acute feeling that the proper function of the Federal judiciary is to interpret the laws and that it is outside the scope of constitutional authority for the members of the Federal judiciary to substitute their notion of public policy for those of Congress and the State legislatures. He clearly believes that the courts should be the interpreters of the law not lawmakers.

Unfortunately, a number of recent decisions of the Warren Supreme Court and some of the lower Federal courts show a complete disregard for this fundamental constitutional principle. The Warren Court and some of the lower Federal courts rendered judgments that were legislative, not judicial, in character in such areas as criminal law and procedure, residency requirements for welfare, civil rights, and pornography.

The American people have had enough of this misuse and abuse of judicial authority. It would be a reassurance to these millions of concerned citizens to place on the Supreme Court a judge who has evidenced proper respect for the virtue of judicial self-restraint and for the constitutional line of demarcation between legislative and judicial functions.

Some opponents of Judge Haynsworth maintain that the Senate should reject this nomination in order to restore confidence in the Supreme Court.

Do these opponents not know that public disrespect for the Court has been brought about by the Court itself, largely through certain doctrinaire, activist decisions in recent years favoring Communists, criminals, atheists, and civil rights demonstrators?

For too long, the people have had to put up with an activist, libertarian court which has arrogated to itself the power to rewrite the Constitution and usurp the functions of the legislative branch.

The appointment to the Court of conservative judges—judges who will exercise judicial restraint and respect for constitutional construction, so as to restore a philosophical balance—will do more than anything else to bring about a recrudescence of public faith in and respect for the Court.

Public confidence in the Court will not be restored until the Court is reconstructed to reflect judicial restraint and strict constitutional construction.

Confirmation of Judge Haynsworth will be a step in that direction, and this is precisely why I shall vote for him.

The nomination of Judge Haynsworth to be an Associate Justice of the Supreme Court merely reflects the election returns of last November. The trend of decisions of the Supreme Court was a paramount issue in the presidential election campaign of last year. The more than 57 percent of the American voters who supported President Nixon and Governor Wallace certainly did not vote to continue the course of decisions for which the Warren Court was justly criticized.

To be brutally frank, President Nixon was elected because his political position appeared to be less liberal than that of the candidate of my own party, a fact which apparently is not yet fully understood even by some Members of the President's own party here in the Senate. Now Mr. Nixon is apparently expected to adopt the political ideology of the losers in appointing Supreme Court judges. Haynsworth has a conservative image, admittedly, but that, after all, is what our Nation voted for.

President Nixon won the election, and he is entitled to nominate persons to the Supreme Court to reflect this change in national philosophy.

I did not vote for Mr. Nixon but he won the election, and in appointing Judge Haynsworth he is reflecting the judgment of the American people as they expressed it at the polls last November.

Yet, many people who enthusiastically supported the nominations of Supreme Court judges with a distinctly ultraliberal, leftwing philosophy in the past two administrations now want to block

this appointment on the basis, really, of judicial philosophy but under the camouflage of a conflict-of-interest smokescreen. These opponents are being less than candid.

These persons should fault the American people—not Judge Haynsworth, President Nixon, or Attorney General Mitchell—for a trend toward conservatism in the appointment of judges.

Many persons who supported the evaluation of Associate Justice Abe Fortas to the role of Chief Justice of the United States, did so on the basis of their approval of his judicial philosophy as reflected by his opinions and decisions while serving as an Associate Justice. These persons were certainly entitled to their views. I voted for the confirmation originally of Mr. Fortas to serve on the Court. But I frankly opposed the nomination of Justice Fortas subsequently, for the office of Chief Justice on the basis of his judicial philosophy, and on that basis alone.

In a Senate floor speech on September 30, 1968, I stated, on page S11656 of the CONGRESSIONAL RECORD, as follows:

I voted for Mr. Fortas when he was appointed to the Court in 1965, but the words and votes of Mr. Fortas put him among the judicial activists, who toy with the Constitution as though it were their personal plaything instead of the organic law which is the priceless legacy of all Americans. . . .

Moreover, Justice Fortas has, in some of his public utterances, enthusiastically endorsed the doctrine of mass civil disobedience. I cannot, in compliance with my constitutional duty, reward the utterer of these dangerous sophistries, by elevating him to the role of Chief Justice of the United States. . . .

I have no objections to Mr. Fortas, personally, or to his qualifications as an able lawyer. I have heard nothing which would reflect against his good character and conduct as a citizen. My objections go solely to his judicial philosophy as manifested by his words and actions while serving on the Court.

So, Mr. President, to repeat for emphasis, I voted to confirm the original appointment of Mr. Fortas to serve on the U.S. Supreme Court, but I was opposed to elevating him to the role of Chief Justice, and my opposition was based entirely and solely on his judicial philosophy as manifested by his public record while serving as an Associate Justice on the Court. I was not influenced by the rumors and insinuations against him. Many of those persons who today object to the decisions and opinions of Judge Haynsworth expressed support for those of Justice Fortas.

There is certainly considerable difference in the judicial philosophies of the two nominees. Generally speaking, I think that Justice Fortas could be fairly characterized as a "judicial activist" and that he frequently did not use judicial self-restraint, which I think is a most important quality of a Federal judge. On the other hand, I would classify Judge Haynsworth as a conservative jurist, a "strict constructionist" of the Constitution.

One of the areas of difference in their philosophies is in the field of pornography and obscenity. One of the reasons I opposed the nomination of Justice Fortas was that he consistently voted to overturn the criminal convictions of the peddlers of filth and slime who are preying on the American people, especially our youth. It was documented that Justice Fortas voted for these pornographers in 34 out of 38 cases while he was an Associate Justice. Supporters of his nomination made the argument that one could not draw any conclusion from these decisions because the legal and constitutional issues in many of those cases were complex. However, I felt that the fact that he had consistently followed a course of decisions in favor of the purveyors of filth clearly indicated where his feelings and sympathies lay.

In sharp contrast to the stand of Justice Fortas on the issue of pornography, Judge Haynsworth has shown that he is willing to find that obscene and pornographic material is actually obscene and pornographic. Furthermore, he is able and willing to permit the competent law enforcement authorities to suppress this evil traffic.

I would like to see more judges of Judge Haynsworth's judicial and constitutional philosophy on our Supreme Court. If he and others of his philosophy were on the Court, it would have a much better grasp of the issue of obscenity and pornography. I know that millions of average American citizens are deeply concerned and troubled about this awful problem. I have received hundreds and perhaps thousands of letters on this subject. The people are demanding that our courts permit the law enforcement agencies to suppress and destroy this vicious and insidious material which is debasing and destroying our people, especially our young people. This cancer must be cut out of our society. It cannot be done with an extremist, permissive, libertarian Supreme Court.

Those who were able to enthusiastically support the Fortas nomination to the office of Chief Justice in light of his record in the area of obscenity should carefully consider the message they will be giving the American people by opposing Judge Haynsworth.

Justice Fortas did not voluntarily furnish to the Judiciary Committee any papers, documents, or other materials pertaining to his personal financial condition and transactions.

He was not requested to furnish any such information even though, as we all remember, the testimony of Mr. B. J. Tennery, dean of the American University School of Law, revealed that in the summer of 1968, while he was serving as an Associate Justice of the Supreme Court, Justice Fortas received the sum of $15,000 for giving eight lectures at the Law School on the subject of "Law and Social Environment." Mr. Tennery further testified that this money was raised by Mr. Paul Porter, a former law partner of Justice Fortas, and that the donors to the fund were five wealthy individuals, at least one of whom was involved in litigation in the lower Federal courts which might have come before the Supreme Court for decision.

Conversely, Judge Haynsworth was available at all times to the Judiciary Committee for the purpose of answering any questions that anyone might have. He manifested a willingness to do so when called upon. When Senator EASTLAND, the chairman of the Judiciary Committee, closed the Haynsworth hearings, the last statement he made, found on page 591 of the hearings, was: "Gentlemen, this closes the hearings unless Judge Haynsworth is called back."

Senator EASTLAND made a statement to the press at that time he would ask Judge Haynsworth to return to testify if any member of the Judiciary Committee so requested. This statement was widely printed in the public press, and Senator EASTLAND notified the members of the committee of his position.

No member of the committee asked that Judge Haynsworth be recalled.

As a result, in sharp contrast to the allegations made about the conduct of Justice Fortas from the standpoint of ethics, candor with the committee, and conflict of interest, there was absolutely nothing withheld regarding the facts in the Haynsworth matter. Judge Haynsworth placed the whole record in full view on top of the table. The only dispute is as to the meaning or significance to be given those facts.

After all of the witnesses had testified at the hearings on the Fortas nomination, the Judiciary Committee invited the Associate Justice to reappear before it in order to give answers or clarifications to the testimony concerning the American University lecture fee.

There were also those on the committee who desired that Justice Fortas clarify testimony he had previously given that the only occasions upon which he had given advice to the executive branch of the Government subsequent to his appointment as Associate Justice pertained to the Vietnam war and the Detroit riots.

After Justice Fortas gave this testimony, Senator ALLOTT appeared before the committee and testified that Mr. Joseph W. Barr, then Under Secretary of the Treasury, had advised him that Mr. Fortas had been at the White House and had approved certain draft language of a proposed amendment to the law concerning the protection of presidential candidates.

Senator ALLOTT's testimony cast serious doubt upon the candor of Justice Fortas.

However, for reasons best known to himself, the Justice declined to reappear before the committee in order to clear up these and other questions.

As a result, the Judiciary Committee and the Senate and the American people were left to speculate upon the facts.

On the Haynsworth nomination, there is no speculation about the facts. They have been thoroughly presented by the nominee and developed and discussed.

Still another great difference between the Fortas nomination and this nomination is that the unresolved facts in the Fortas case previously mentioned gave rise to an inference that Justice Fortas might have been guilty of criminal conduct.

When I state that the unresolved facts in the Fortas case gave rise to a possible inference that he had been guilty of criminal conduct, I want to emphasize that this is not based on his alleged

dealings with the Wolfson Foundation which caused the resignation of Justice Fortas from the Supreme Court. These facts were not developed until several months after his nomination as Chief Justice had been withdrawn. The facts pertaining to the Wolfson Foundation were not before the Senate when his nomination was considered.

But the opponents of the Haynsworth nomination have gone to great pains to emphasize that they do not even remotely hint or insinuate that the judge has done anything dishonest or illegal. Even though these opponents usually make this disclaimer as a predicate for the unfounded charge that Judge Haynsworth has committed acts which are improper or unethical or at least give the appearance of being improper or unethical, we must take them at their word in offering this disclaimer.

In light of all of these differences and distinctions between the two nominations, it is simply unfair and unrealistic to compare the Fortas and Haynsworth nominations. There is virtually no comparison between the two.

Some representatives of organized labor appeared as witnesses at the hearing in opposition to the nomination of Judge Haynsworth. They expressed their opinion that the decisions and opinions of Judge Haynsworth indicated that he was an "antilabor" judge. For that reason, among others, they opposed his elevation to the Supreme Court.

However, a careful study of Judge Haynsworth's record shows that it is not fair or accurate to characterize him as either an "antilabor judge" or a prolabor judge." He seems to decide each case on the basis of the law and the facts, and not on the basis of his personal views or notions. I wish we could say the same for all other judges.

Some of the witnesses from certain organized labor groups made distorted and unrealistic appraisals of Judge Haynsworth's record on labor relations. For instance, they chose to completely overlook the fact that Judge Haynsworth wrote at least eight opinions for his court deciding cases favorably to organized labor. These were:

NLRB v. *Electro Motive Manufacturing Company,* 389 F2d 61 (1968); *United Steel Workers of America* v. *Bagwell,* 338 F2d 492 (1967); *Chatham Mfg. Co.* v. *NLRB,* 404 F2d 1116 (1968); *Intertype* v. *NLRB,* 371 F2d (1967).

NLRB v. *Carter Towing,* 307 F2d 835 (1962); *NLRB* v. *Community Motor Bus Co.,* 335 F2d 120 (1964); *NLRB* v. *Empire Mfg. Co.,* 260 F2d 528 (1958); *NLRB* v. *Webb Furniture Corp.,* 366 F2d 314 (1966).

Judge Haynsworth also voted with other members of his court in at least 37 other prolabor decisions. These cases are:

Rosedale Coal Co. v. *Director U.S. Bur. Mines,* 247 F2d 299 (1957); *Textile Workers v. Cone Mills,* 268 F2d 920 (1959) *Wirtz v. Charleston Coca Cola Bottling Co.,* 346 F2d 428 (1966).

Wirtz v. *DuMont,* 309 F2d 152 (1962); *Williams* v. *United Mine Workers,* 316 F2d 475 (1963); *NLRB* v. *Edinburg Mfg. Co.* 394 F2d 1 (1968); *NLRB* v. *Marion Mfg. Co.* 388 F2d 306 (1968); *NLRB* v. *Baldwin Supply Co.,* 384 F2d 999 (1967).

NLRB v. *Weston Brocker Co.* 373 F2d 741 (1967); *Don Swart Trucking Co.* v. *NLRB,* 359 F2d 528 (1966); *Galis Electric & Machine Co.* v. *NLRB,* 323 F2d 588 (1963); *NLRB* v. *Marvel Poultry Co.,* 292 F2d 454 (1961); *NLRB* v. *Threads, Inc.,* 289 F2d 483 (1961).

NLRB v. *Roadway Express, Inc.* 257 F2d 948 (1958); *NLRB* v. *Superior Cable Corp.,* 246 F2d 539 (1957); *NLRB* v. *Kotarides Baking Co.,* 340 F2d 587 (1965); *Dubin-Haskell Lining Corp.* v. *NLRB,* 386 F2d 306 (1967); *Florence Printing Co.* v. *NLRB,* 333 F2d 289 (1964).

General Instrument Corp. v. *NLRB,* 319 F2d 420 (1963); *Great Lakes Carbon Corp.* v. *NLRB,* 360 F2d 19 (1966); *Greensboro Hosiery Mills, Inc.* v. *Johnson,* 377 F2d 38 (1967); *Henderson* v. *Eastern Gas & Fuel Associates,* 290 F2d 677 (1961); *JNO McCall Coal Co.* v. *U.S.,* 374 F2d 689 (1967).

Link v. *NLRB,* 330 F2d 437 (1964); *Mitchell* v. *Emala & Associates, Inc.,* 274 F2d 781 (1960); *Mitchell* v. *Sherry Corine Corp.,* 264 F2d 831 (1959); *NLRB* v. *Atkinson Dredging Co.,* 329 F2d 158 (1964); *NLRB* v. *Baltimore Paint & Chemical,* 308 F2d 75 (1962).

NLRB v. *Cross,* 346 F2d 165 (1965); *NLRB* v. *Haynes Hosiery Div.,* 384 F2d 188 (1967); *NLRB* v. *Jesse Jones Sausage Co.,* 309 F2d 664 (1962); *NLRB* v. *Jones Sausage Co.,* 257 F2d 878 (1958); *NLRB* v. *Lester Bros., Inc.,* 301 F2d 62 (1962).

NLRB v. *Randolph Electric Membership Corp.,* 343 F2d (1965); *NLRB* v. *Winn-Dixie Greenville, Inc.,* 379 F2d 958 (1967); *Ostrofsky* v. *United Steelworkers of America,* 273 F2d (1960); *Overnite Transportation Co.* v. *NLRB,* 327 F2d 36 (1963).

Some of the cases cited by hostile witnesses indicating an antilabor bias on the part of Judge Haynsworth turn out not to support that charge. For instance, three of the prime cases cited by these opponents of the nomination are the three cases involving Darlington Mills.

These cases involved the basic question of whether the owners of the mill had a right to close it down and permanently go out of business, even though the motive for so doing was to chill union activity.

In Darlington I, which is cited as *Deering Milliken* v. *Johnson,* 295 F2d 856 (1961) the question before the court of appeals was the issuance of an injunction by the U.S. District Court for the Middle District of North Carolina against agents of the NLRB prohibiting them from taking new evidence in a case involving a labor dispute. Judge Haynsworth wrote the opinion for the fourth circuit which practically reversed a decision of the district court and held that the Labor Board could take new evidence pertaining to certain matters. The new evidence which was subsequently received by the NLRB was crucial to the subsequent victory of the Textile Workers Union of America.

I do not see how anyone can complain that this decision was antilabor.

Darlington II, which is cited as *Darlington Manufacturing Company* v. *N.L.R.B.,* 325 F2d 682 (1963) involved the direct question of whether the company had the right to permanently go out of business for antiunion reasons. Judge Haynsworth joined in the majority opinion, written by Judge Bryan, which held that under the circumstances of the case, the company had such a right. This decision was in harmony with decisions of other Courts of Appeals dealing with this subject. For instance, the Sixth Circuit Court of Appeals had recently stated in the case of *N.L.R.B.* v. *R. C. Mahon Company,* 269 F2d 44, 47 (1959):

> We find nothing in the National Labor Relations Act which forbids a company, in line with its plans for operation, to eliminate some division of its work.

The Fifth Circuit Court of Appeals had held in *N.L.R.B.* v. *Tupelo Garment Company,* 122 F2d 603, 696 (1941):

> The stockholders of Tupelo Garment Company (the employer) had the absolute right to dissolve their corporation and the Board was without authority to prevent this.

The Seventh and Eighth Circuits had rendered similar decisions.

So, the decision of Judge Bryan in which Judge Haynsworth joined was in accordance of the law.

When Darlington II was appealed to the Supreme Court, the case was reversed and sent back to the Labor Board for further hearing as to the question of whether Deering Milliken was a single integrated employer. The Supreme Court, speaking through Justice Harlan, indicated strong agreement with the principles of law enunciated by the court of appeals, but held that more facts were needed in order to properly resolve the issue. The Supreme Court stated:

> We hold that so far as the Labor Relations Act is concerned, an employer has the absolute right to terminate his entire business for any reason he pleases, but disagree with the Court of Appeals that such right included the ability to close part of a business no matter what the reason. We conclude that the case must be remanded to the Board for further proceedings.

Darlington III, which is cited as *Darlington Manufacturing Company* v. *N.L.R.B.,* 397 F2d 760 (1968), involved an appeal from the proceedings of the Labor Board after the remand of Darlington II. The Labor Board found that the persons controlling Darlington Manufacturing Co. had such interests and relationships with Deering Milliken and other affiliated corporations as would establish a single enterprise, and that Darlington's closing was accomplished under circumstances that established the factors of "purpose" and "effect" with respect to chilling unionism in other mills of the Deering Milliken group. Consequently, the Board held that the closing of the Darlington Manufacturing Co. was a partial closing of a business in violation of the laws and ordered Darlington and Deering and Milliken to pay back wages to some of their employees. The court of appeals, in an en banc hearing participated in by all seven of its judges, affirmed the order of the Labor Board. Judge Haynsworth voted with the majority of the court in this case and wrote a concurring opinion in which he expressed concern over the financial bur-

den which might be placed on the individual owners of the Darlington Manufacturing Co. who were in no way connected or affiliated with Darlington Manufacturing or its president, Roger Milliken. Judge Bryan issued a strong dissenting opinion which was joined in by Judge Boreman, which held that the court should completely reverse and overturn the order entered by the Labor Board, and that the evidence showed that those in control of the Darlington Manufacturing Co. had a perfect right to close it. Judge Haynsworth's vote in Darlington III certainly seems to be prolabor. If one wishes to categorize votes in such a fashion, it is reasonable to say that the votes of Judges Bryan and Boreman were the only antilabor votes on the court. I assume they would be even more objectionable to the witnesses who testified against Judge Haynsworth than Judge Haynsworth himself. I hope that Judge Haynsworth's mere expression of concern about the economic impact on the individual minority stockholders of Darlington Manufacturing, who had no relationship whatever to the so-called wrongdoer in the case, Roger Milliken, does not make Judge Haynsworth an "antilabor" judge.

The only other opinion written by Judge Haynsworth on labor relations which was subsequently reversed by the Supreme Court was in the case of *N.L.R.B.* v. *Giessel Packing Company,* 398 F. 2d 336 (1968). This case involved the use of union authorization cards in recognition proceedings. The Fourth Circuit held, in an opinion written by Judge Haynsworth, that under the circumstances involved in that case the use of such authorization cards, rather than an election by secret ballot, was not authorized by the law. This decision was in accordance with decisions by the Fourth Circuit as well as decisions of the First, Second, Fifth, Sixth, Seventh, Tenth, and District of Columbia Courts.

In reversing the *Giessel Packing Company* case, 89 S. Ct. 1918 (1969), the Supreme Court indicated that its view of the law was not much different from that expressed by Judge Haynsworth in his opinion for the Fourth Circuit. The Supreme Court said:

> The actual area of disagreement between our position here and that of the Fourth Circuit is not large as a practical matter.

The opponents complain of Judge Haynsworth's vote in *N.L.R.B.* v. *United Rubber, Linoleum and Plastic Workers,* 269 F. 2d 694 (1959) which was reversed by the Supreme Court at 362 U.S. 329. Judge Haynsworth did not write the opinion in this case, but only voted to adopt the opinion written by Judge Soper. Judge Soper accepted the position urged by NLRB, which held that picketing which does not represent a majority of the employees is an unfair labor practice. The objective of this opinion was to protect employees in their right to refrain from bargaining through representatives without coercion. The question presented to the Fourth Circuit in the United Rubber case had never been decided by the Supreme Court, and the circuits were divided on the issue. The Ninth Circuit had previously decided the issue in accordance with Judge Soper's opinion, but the District of Columbia Circuit had resolved the question the other way is a divided opinion.

Judge Haynsworth's vote in the United Rubber case was certainly not contrary to the then existing law, and cannot be construed as being antilabor.

When one examines these and the other cases involving labor relations, the conclusion is inescapable that the charge that Judge Haynsworth has been antilabor in his decisions is without foundation.

There are some who say it would be bad for us to confirm Judge Haynsworth by a close vote. These persons seem to feel that such an action would in some way impair his effectiveness as an Associate Justice of the Supreme Court. I do not subscribe to the theory that a nomination which engenders public controversy and which results in a confirmation by a close vote is a reason for voting against confirmation. The same argument was advanced in the ABM controversy. The ABM won by a cliff-hanger vote. But how many people today remember the closeness of that vote or even care to remember it?

Louis D. Brandeis served ably and brilliantly as an Associate Justice of the Supreme Court; yet, when his name was submitted by President Wilson, a storm of public controversy broke. Powerful elements of American society representing great financial wealth fiercely fought that nomination. The Judiciary Committee favorably reported his nomination by the close vote of 10 to 8. When it was finally brought to a vote on June 1, 1916, the Senate voted 47 to 22 to confirm. However, there were 27 abstentions on that vote. Ergo, less than half of the Membership of the Senate voted to confirm Mr. Brandeis. Yet, this circumstance did not operate to diminish his stature in the history of the judiciary, nor did it operate to disable him from being a great Justice.

The same happy results could follow from our confirmation of Judge Haynsworth, regardless of the margin of the vote.

After all, the late John F. Kennedy was elected President by a scant margin of 118,000 votes in 1960. But who bothered to remember this. He was fully as much a President as if his majority had been a hundredfold.

As I have already stated, a distinguishing feature between the cases of Judge Haynsworth and Associate Justice Fortas is evidenced by the fact that Judge Haynsworth has been completely cooperative with the committee and its members in agreeing to appear to testify. Mr. Justice Fortas was not. Judge Haynsworth has made a complete disclosure of his financial affairs to the committee. Mr. Justice Fortas made no such complete disclosure.

So far as I know, no nominee for judicial office has voluntarily made such sweeping disclosures about his personal financial condition and transactions as has Judge Haynsworth. He has been completely forthright and candid with the committee. He responded to all reasonable requests made of him to produce documents.

For example, even prior to the beginning of the hearings of the Judiciary Committee, Judge Haynsworth made available to the committee copies of income tax returns for himself and his wife from the year he went on the Federal bench, 1957 to date. He also made available a complete financial statement at that time. Judge Haynsworth voluntarily requested that the entire Justice Department file on the charges made against him by the attorneys for the Textile Workers Union regarding his participation in the Darlington case be made available to the committee and the public.

After the hearings were commenced, Judge Haynsworth furnished to the committee certified copies of all real estate transactions with which he was involved from 1957 to date. He also furnished copies of all deeds involving real estate transactions concerning the Carolina Vend-A-Matic Co. and the Carolina Vend-A-Matic profit-sharing and retirement plan.

He also supplied to the committee a listing of all of the Carolina Vend-A-Matic's major customers as of December 1963, and all other information in his possession or knowledge pertaining to his investments in Carolina Vend-A-Matic Co.

Judge Haynsworth also furnished a chronological listing of all his stock transactions from 1957 to date which set out his complete stock holdings during that time.

Automatic Retailers of America, Inc., the company into which Carolina Vend-A-Matic was merged in 1964, gave the committee unprecedented cooperation in furnishing information pertaining to Carolina Vend-A-Matic Co. For instance, immediately upon request of the committee, ARA had the minutes book of Carolina Vend-A-Matic flown to Washington at its own expense. In addition, they had all of their records pertaining to sales and customers of Carolina Vend-A-Matic, as well as copies of all tax returns and audited statements in their possession flown to Washington and made available to the committee.

The records pertaining to the sales and customers of Carolina Vend-A-Matic covered the period from the date of its incorporation to the date of its merger with ARA. From these records a list of customers and income of each customer from Carolina Vend-A-Matic during its entire existence can be computed.

ARA also furnished to the committee copies of its audited statements for Carolina Vend-A-Matic Co. and its subsidiaries for the years ending December 31, 1961, 1962, and 1963. These were the only annual reports ever prepared for the Carolina Vend-A-Matic Co.

Furthermore, ARA supplied all of the Carolina Vend-A-Matic records, including tax returns pertaining to the Carolina Vend-A-Matic profit-sharing and retirement plan.

I believe that ARA, Inc., and its officers and employees should be given a vote of thanks by the Senate for voluntarily furnishing voluminous papers and documents constituting its private busi-

ness records to the committee. I certainly do not think it is fair or just to characterize ARA or any of its officers or employees as having been obstructive in this matter or of hiding anything.

Sometimes when one does not find what one seeks, one makes charges about concealment and suppression of the facts.

As I indicated earlier, the facts and circumstances of this nomination are somewhat similar to those surrounding the nomination of Louis D. Brandeis to be an Associate Justice of the Supreme Court in 1916. It might be enlightening and instructive to recall the facts and issues of the Brandeis nomination.

As is the case with the Haynsworth nomination, many powerful forces in society vigorously opposed the nomination of Brandeis. We all know that certain elements of organized labor and the NAACP are the central forces opposing this nomination. In the Brandeis case, six former presidents of the American Bar Association, William H. Taft, Simeon E. Baldwin, Francis Rawle, Joseph H. Choate, Elihu Root, and Moorfield Storey, signed the following letter which was sent to the Senate Judiciary Committee:

The undersigned feel under the painful duty to say to you that, in their opinion, taking into view the reputation, character, and professional career of Mr. Louis D. Brandeis, he is not a fit person to be a member of the Supreme Court of the United States.

Mr. President, how different is the testimony submitted by representatives of the American Bar Association in the two cases. In the case 50 years ago, involving Louis Brandeis, six former presidents of the American Bar Association jointly signed a letter charging that Brandeis was not a fit person to be a member of the Supreme Court of the United States. However, the American Bar Association's standing committee on judiciary selection has in the instant case found no impropriety and has endorsed the nomination.

In the Brandeis case, as in the instant case, the powerful interests opposing the nomination camouflaged their true reasons for opposition by raising the question of ethics. The hearings held by the subcommittee of the Judiciary Committee to which the Brandeis nomination was referred are filled with testimony concerning Mr. Brandeis' alleged unethical conduct and violations of the code of ethics. In the minority report of the Judiciary Committee on the Brandeis nomination, submitted by Senator Clarence D. Clark of Wyoming, there were listed 12 alleged acts of unethical conduct charged against the nominee. There was the Glavis-Ballinger case, the Illinois Central Railroad case, the New England Railroad case, the Equitable Life Assurance Society case, the United Drug Co. case, and a number of others. This sounds very familiar to us today in light of the Vend-A-Matic case, the Brunswick case, the W. R. Grace Co. case, and alleged association with Bobby Baker.

As in the case of this nomination, both sides agreed there was very little dispute as to the facts involved. There was great disagreement as to the interpretation of the facts. Both sides agreed that there was no evidence that Mr. Brandeis was corrupt or dishonest, just as in the case of the Haynsworth nomination.

The opponents of the Brandeis nomination took the position that, even if the charges against him were not true, he should not be confirmed because to do so would damage the reputation of the Supreme Court. We hear the same argument against Haynsworth. The friends of the nomination of Brandeis refuted this notion.

In order to demonstrate how history does indeed repeat itself, it is in order to quote from the various views of the members of the Subcommittee of the Senate Judiciary Committee which considered the Brandeis nomination.

First, here is what the opponents of the nomination of speaking through Senator John D. Works of California had to say:

He has resorted to concealments and deception when a frank and open course would have been much better and have saved him and his profession from suspicion and criticism.

How much like what is being said today against Judge Haynsworth.

He has defied the plain ethics of the profession and in some instances has violated the rights of his clients and abused their confidence. There is nothing in the evidence that leads me to think he has done these things corruptly or with the hope of reward. His course may have been the result of a desire to make large fees, but even this is not clear. He seems to like to do startling things and to work under cover. He has disregarded or defied the proprieties. It has been such courses as he has pursued that have given him the reputation that has been testified to, and it is not undeserved. It is just such a reputation as his course of dealing and conduct would establish in the minds of men. This reputation must stand as a strong barrier against his confirmation.

Mr. President, had the ABA's standing committee, or had the opponents of Haynsworth, spoken today in those terms, the Haynsworth nomination would have been defeated a long time ago.

Quoting further from the opponents of Mr. Brandeis:

If it were Mr. Brandeis alone that is to be concerned, and it should be believed that this reputation is undeserved and unjust, it should have no weight; but the effect of such an appointment on the court is of much greater importance.

Have we heard that before?

To place a man on the Supreme Court Bench who rests under a cloud would be a grievous mistake. As I said in the beginning, a man to be appointed to the exalted and responsible position of Justice of the Supreme Court should be free from suspicion and above reproach. Whether suspicion rests upon him unjustly or not his confirmation would be a mistake.

Speaking further about the confirmation of the appointment of Justice Brandeis, Senator Works said:

It is argued against him that he is not possessed of the judicial temperament. There is just ground for this objection. As some of his friends said, he is radical, and for that reason he has offended the conservatives. That may be no cause of reproach; but the temperament that has made him many enemies and brought him under condemnation in the minds of so many people would detract from his usefulness as a judge.

The friends of the nomination strongly disagreed with the views expressed by Senator Works. The following are excerpts from the views of Senator Thomas J. Walsh:

The testimony taken by the committee is voluminous. In the infinite multiplicity of the duties devolving upon Senators it is quite vain to hope that any considerable number, except those upon whom the burden of investigation has been directly imposed, will read it all or read any of it.

Outside of the Senate, opinion will be based in very small part upon anything more trustworthy than a résumé of the evidence collected by the committee.

"It is not charged," said Senator Walsh, "that he," Mr. Brandeis, "is corrupt, at least by anyone not moved by wreckless valevolence."

He continued:

The accusations, if they may be so called, relate entirely to alleged disregard of ethical standards in his professional relations. Singularly enough, there is very little opportunity for dispute in respect to the facts constituting the incidents which the committee deemed worthy of its notice.

There is wide divergence of view touching the significance of the facts disclosed. Interpreted by those bent on finding something to criticize or ready by repossession to attribute discreditable motives to Mr. Brandeis, they assume a sinister aspect. Men of the highest character, frank admirers of that gentleman, who participated in the transactions in respect to which he is denounced, insist that his conduct was either irreproachable or altogether honorable. It is particularly important in this quite curious situation, in order to form a just estimate of the conduct and character of the nominee, to guard against the insidious influence of detraction and calumny.

* * * * *

It is said that it is to be regretted that any such controversy as this in which we are involved should arise over a nomination of a justice of the Supreme Court. So it is. But when it is said further that one might better be chosen over which no such bitter contention would arise, I decline to follow. It is easy for a brilliant lawyer so to conduct himself as to escape calumny and vilification. All he needs to do is to drift with the tide.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I be permitted to proceed for an additional 15 minutes.

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

Mr. BYRD of West Virginia. Mr. President, the chairman of the committee, Senator W. E. Chilton of West Virginia, made the following statement:

It is suggested in the brief of counsel of the protestants that if a doubt shall be raised concerning the ethical conduct of the nominee, he should not be placed upon the Supreme Court. If that theory shall obtain, then it is possible, by a campaign of slander, to bar the best men and the best lawyers in the country from the judicial office. I am not willing to indorse a campaign of slander, whether it was intended to be slander or not, when promulgated.

If after full investigation I find, as I do, that Mr. Brandeis is not guilty of the things charged against him by his enemies, then it is my duty to say so and to give him the benefit of a pure life and his upright conduct, regardless of the slander.

Mr. President, those words of a distinguished U.S. Senator from the State

of West Virginia uttered 50 years ago in respect to the nomination of Judge Brandeis, have been worthy of respecting here, and I should like to adopt the words in my own behalf today with respect to the nomination of Judge Haynsworth to serve as an Associate Justice on the Supreme Court of the United States.

Last but not least, the nominations of Brandeis and Haynsworth are similar because many of the opponents purported then and now purport to base their attacks on alleged lack of ethics, although the real factors generating the opposition then had and now have less merit.

Let us put the cards on the table—faces up. The real reasons for the bitter fight a half century ago against the confirmation of Mr. Brandeis were his social and economic ideas and the fact that he was a Jew. The real reasons today for the high pressure campaign to defeat the Haynsworth nomination are his judicial philosophy and the fact that he is a white, conservative southerner.

During the struggle over the Brandeis nomination the real reasons for the opposition lay close to the surface. Sometimes the surface would crack and one could peek through at what was immediately below.

That is certainly true of the struggle over the Haynsworth nomination. We have heard it said that the issue is not whether Judge Haynsworth's actions and conduct meet the ethical standards of Greenville, S.C.; that, in fact, his conduct probably does meet those standards, but, rather, the question is, Does his conduct meet the standards of ethics of the United States as a whole? In my judgment, this is a measured insult to the people of Greenville, S.C., and the South. I do not represent a Southern State.

I represent a border State, a State which sent men, a little over 100 years ago, to fight both on the side of the Union and on the side of the Confederacy. But right is right and wrong is wrong whether we are talking of South Carolina or of West Virginia—North or South, or border State.

Incidentally, the attempt to link Judge Haynsworth with Bobby Baker in an effort to produce a verdict of guilt by association shows just how desperate and specious is the campaign against this nomination. On September 28, Mr. James Weighart, writing for the New York Daily News, stated that Judge Haynsworth and Bobby Baker were involved together in a business deal relating to the establishment of a cemetery in Greenville, S.C. Other portions of the news media published this story.

The facts about the alleged "cemetery deal" are these:

The Greenville Memorial Gardens Cemetery was organized by a person in Greenville, S.C., who was a friend of Judge Haynsworth. He contacted the judge in 1958 and asked him if he would like to participate in this venture. The judge agreed to invest $4,000 in it. There were approximately 25 other individuals and corporations who were coinvestors in this venture. Unknown to Judge Haynsworth, the organizer of the Greenville Memorial Gardens Cemetery also contacted Bobby Baker and asked him if he would like to invest money in the project, and Baker invested $10,000 in it.

There was never any discussion between Judge Haynsworth and Baker on this or any other business dealings. Their only connection was that of costockholders. At the time, of course, Baker was secretary to the majority of the Senate and enjoyed a position of esteem and respect with many persons.

The truth is that Judge Haynsworth and Bobby Baker have had three extremely casual contacts with each other. The first was in 1954, when Judge Haynsworth was in the private practice of law. His friend, the late Senator Charles Daniel, was then appointed to an interim term in the Senate and Judge Haynsworth and other friends of his came to Washington to see him administered the oath of office. On that occasion, while they were in a room in the Capitol, Baker came up and shook hands with the Senator and the judge and chatted for a few minutes.

The second occasion was Judge Haynsworth's hearing on his nomination to be a judge for the Fourth Circuit Court of Appeals in 1957. The judge was here for his confirmation hearing; on that occasion Bobby Baker came up and congratulated him on his appointment and they talked for approximately 5 minutes.

On the third and last occasion in September 1958, Judge Haynsworth and Mr. Charles Daniel went together in an automobile from Greenville to Pickens, S.C., to a picnic. Bobby Baker was in the same car with them going to Pickens and the three of them discussed politics and other matters, but discussed no business, during the course of the trip which took 30 or 40 minutes.

This is the sum and substance of the so-called Bobby Baker connection.

Perhaps an insight into the real motivations of many opponents of this nomination can be had by studying the testimony in the hearings on the Haynsworth nomination of Mr. William Pollock, general president, Textile Workers Union of America. It is fitting and appropriate that this testimony provides the clearest view of the motivations of some of the opposition, because it was a representative of this Union who made unfounded and untrue allegations concering the conduct of Judge Haynsworth as an aftermath of the Darlington Mills decision in December 1963. It is the theory of Mr. Pollock that Judge Haynsworth was and is part of a southern textile conspiracy to subjugate textile workers. The true basis for the resentment, as will be seen, is that since World War II many northern and eastern textile mills have moved to the South.

There are many people, some in high places, who do not like this, and I can understand how they would not.

Mr. Pollock was given a list of the customers of Carolina Vend-A-Matic Co. and was asked to discuss the textile mill customers of Vend-A-Matic. The following testimony, which may be found on page 505 of the printed hearings, ensued:

Mr. POLLOCK. Not having fully studied this list, because it has not been in our possession long enough, I might say that listed here are a number of mills that were formerly located in the north, which were under contract with our union and our relationship was excellent.

Since they liquidated their northern operations and moved into the south, these same companies have now been caught up in this web of conspiracy, and they are just as vicious toward their workers trying to organize as any other one of the big southern chains.

Senator HART. Would that characterization be applicable also, Senator Bayh inquires, with respect to the J. P. Stevens, Dan River, and Burlington?

Mr. POLLOCK. I see one, Delta Finishing Co., which was formerly located in my hometown, Philadelphia, where we had it organized back around 1937. It liquidated and went south. It is now part of the J. P. Stevens chain. We have attempted to organize it several times down there, but because of the coercion and intimidation of this company, we have been unable to help these workers when they seek our help to form a union.

The flavor of Mr. Pollock's testimony, and the quality of his reasoning, can be sampled by the following statement made by him found on page 487 of the hearings:

Finally, we believe that Judge Haynsworth operates within that conspiracy. When he went into the vending machine business, as one of the founders of the Carolina Vend-A-Matic Co., in 1950, his company recruited its general manager from the Deering, Milliken chain. Two other associates in that company came from the Daniels Construction Co., a nontextile participant in the conspiracy to violate the labor law.

The Haynsworth Vending Machine Co. did its primary business with the Southern textile industry. It made a great deal of money. Starting in 1950 with an authorized capital of only $20,000 it sold out 14 years later for $3,200,000.

One of the leading witnesses against this nomination—as could be expected—was Mr. Joseph L. Rauh, Jr., counsel, Leadership Conference on Civil Rights. Some of the questions asked of Mr. Rauh and the responses given thereto indicated that no ordinary southerner should be nominated to the Supreme Court. Mr. Rauh clarified the issue by emphasizing that there were very few southern judges who would meet his ideological litmus test and whose nomination to the High Court he would welcome. His testimony, found on page 469, is as follows in part:

This is not against southern judges, there are wonderful southern judges—Tuttle, Brown, Wisdom, Johnson—who would have been heroic additions to the Court.

The suggestion is sometimes kind of intimated that somebody is against southern judges. I could stand and cheer for one of the ones I have mentioned.

The Judge Brown referred to by Mr. Rauh in his testimony is the Honorable John R. Brown, chief judge of the U.S. Court of Appeals for the Fifth Circuit. He has been in the news very recently in connection with a tardy disqualification of himself to participate in a decision involving millions of dollars worth of rate increases for natural gas companies while he owned approximately $100,000 worth of stock in the affected companies.

One of the finest hours of the Senate was when it voted to confirm the nomi-

nation of Louis D. Brandeis to be an Associate Justice of the Supreme Court on June 1, 1916. By that vote, it showed that one would not be disqualified to sit on the Court because he was a Jew. By confirming Judge Haynsworth, the Senate can likewise show that a nominee will not be disqualified from service on the Supreme Court purely because he is a southern white man with an apparent conservative philosophy.

Mr. President, Mr. Brandeis, who had what appeared at that time to be a very liberal and almost a radical philosophy, became one of the truly great jurists in the history of the Supreme Court of the United States. His critics were wrong then, and the critics can be wrong now.

I urge the confirmation of Judge Haynsworth to the office of Associate Justice of the Supreme Court of the United States.

Mr. STENNIS. Mr. President, will the Senator yield briefly?

Mr. BYRD of West Virginia. I yield to the distinguished Senator from Mississippi.

Mr. STENNIS. Mr. President, I am glad that the distinguished Senator from West Virginia, as is always the case, has had a chance to really give his time to the preparation of his statement. I think this is one of the finest and best quality speeches on the general subject matter of the confirmation of nominees for any bench, much less the Supreme Court bench of the United States.

The statement has been very fine, fair, and impartial. It is very impressive.

The Senator's analysis of the contrast of the nomination of Justices 50 years ago recalls the incident to my mind. I remember that when I was a mere boy Woodrow Wilson, who was then President, made the nomination to which the Senator referred. I remember some of the controversy surrounding the confirmation. I was old enough to read the newspapers. I remember the vicious attack that was made.

The Senator has certainly given a correct analysis of it. His comparison of the principles that finally prevailed then with the situation today is just as fresh as the morning flowers.

I direct the Senator's attention particularly to his analysis which is known in this RECORD as the Brunswick case which involves the judge's purchase of the stock in the Brunswick Corp. I want to quickly relate the facts.

Mr. President, this was a case in which a three-judge court heard the matter. The case was relatively simple and easy to decide, as I see it. It involved a single question of the conflict between two statutes that gave a lien—one in favor of the seller of a product, the bowling alley equipment, and the other in favor of the landlord of the premises where the bowling alley was located.

The argument on the case was heard on one day, and these three Federal judges decided the case either that afternoon or the next morning. It was a quick, easy decision, and the writing of the opinion was assigned to some other judge, not to Judge Haynsworth. For some reason, the writing of that opinion was delayed for 3 or 4 months. However, the work of the court went right on.

In the interval of time between the argument of the case and the writing of the opinion, the stock in the Brunswick Corp. was purchased for Judge Haynsworth. It was an infinitesimal amount of stock by comparison. The judge said, in effect, that he had overlooked it—words substantially of that meaning.

As any other Senator, I do not like to make personal references to myself, and I think the RECORD shows very little references to my own personal experiences. But that rings a bell with me just as clearly as sound can be, of many experiences I had along this line. I was not a member of a court of appeals. I was not a member of the Supreme Court of my State. But for 10 years I did carry the responsibilities of being a trial judge in a court of unlimited jurisdiction, both civil and criminal cases. There was no limit on its jurisdiction. I refer to this only to give a background of experience, to show that I know what it is to dispose of these cases.

I would have 20, 30, 40, 50, or 60 people to sentence at the end of a term of court, for all kinds of crime; women included, sometimes. Unfortunately, some of those cases involved the death penalty. Many hundreds had their freedom taken away. I have had to sign decrees that took men's homes away from them—civil judgments.

Many times I have taken home, for further study—in recess, we call it, at the end of that term of court—10, 15, 20, or 25 motions, many of them for a new trial. The Presiding Officer, the present occupant of the chair is familiar with that. Those motions would bring in review perhaps the entire case or the major points involved.

What does a judge do in a situation such as that? He decides the easy cases first, and then he forgets them. They pass out of his mind. He concentrates on the hard ones; he remembers them. I have studied in my office some major cases, on a motion for a new trial, for 2 or even 3 weeks, being careful in trying to reach a sound conclusion. I remember them. I know how much was involved. But I have forgotten all the easy cases. The quicker the better. I have no doubt, with Judge Haynsworth's record and reputation, that this is exactly what happened, so far as the Brunswick case was concerned. It was a simple, easy case, quickly decided. Someone else had the responsibility of writing the opinion. Later, the stock matter came up. True, there was a motion after the judgment was rendered—to reconsider it, as we say here; a suggestion of error, we say in the State court at home. But it was an open and shut case. It was not considered serious. They cannot all be considered serious.

In my mind, it is clear as crystal that this is the only avenue of approach and basis for disposition of work that a judge can take.

I think that is exactly what happened here, and it lends a great deal of aid to me in understanding how this situation came about. I recite those facts for whatever value they might have to others. It is certainly a part of this record as much as is the printed page.

I commend the Senator from West Virginia for his broad, basic concept, for his fine analysis of the facts, and for his great philosophy of government as shown not only in this matter, but also in many others.

Mr. BYRD of West Virginia. I thank the Senator for his very fine remarks.

I yield the floor.

PRINTING ADDITIONAL COPIES OF SUMMARY OF THE TAX REFORM ACT OF 1969

Mr. ANDERSON. Mr. President, as in legislative session, I send a resolution to the desk and ask for its immediate consideration. The resolution has been approved for the Committee on Rules and Administration by its chairman, the Senator from North Carolina (Mr. JORDAN) and by the ranking minority member of that committee, the Senator from Nebraska (Mr. CURTIS).

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

There being no objection, the resolution (S. Res. 282) was considered and agreed to, as follows:

Resolved, That there be printed for the use of the Committee on Finance thirty-five hundred additional copies of its committee print of the current Congress entitled "Summary of H.R. 13270, The Tax Reform Act of 1969, as reported by the Committee on Finance".

Mr. ANDERSON. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

TRANSACTION OF ROUTINE MORNING BUSINESS AS IN LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of routine morning business, as in legislative session.

EXECUTIVE COMMUNICATIONS, ETC.

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

REPORT ON FACILITIES PROJECTS, NAVAL RESERVE

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on a proposed Naval Reserve facilities project and the cancellation of another; to the Committee on Armed Services.

REPORT OF THE EXPORT-IMPORT BANK OF THE UNITED STATES

A letter from the Secretary, Export-Import Bank of the United States, transmitting, pursuant to law, a report of the actions taken by the Bank during the quarter ending September 30, 1969 (with an accompanying report); to the Committee on Banking and Currency.

STATISTICS OF INTERSTATE NATURAL GAS PIPELINE COMPANIES, 1968

A letter from the Chairman, Federal Power Commission, transmitting, for the informa-

one of these approaches was the unilaterally initiated cease fire whereby if we said that on a certain day we intended to stop firing, if they did, and then we set the 31st of something rather than the English phrase "the 17th of never," rather set the 31st of somewhere and say that on that date we intend not to fire. Now, on that date the sun dawns and we watch the enemy's batteries. If they don't open up, that is the answer to us. It doesn't have to occur at Paris or Saigon. It can occur in Danang or some place when the enemy does not fire back, and then if it continues you have a cease fire. That is all I was proposing.

Mr. CLARK. Would you still like to see this?

Senator SCOTT. I would still like to see it, but it is not the official position and therefore, as the party's leader, I do support the official position, which is a mutually supervised cease fire in accordance with the President's proposal of May 14th. I was simply trying out trial balloons of my own and I do have to warn you that not every trial balloon that Scott tries out is necessarily a Nixon trial balloon, you see.

Mr. GILL. Senator, there is a great debate. We might even call it legitimately an acrimonious debate in the Senate, as to whether or not the U.S. Senate may legitimately debate the subject of a nominee's political philosophy in determining whether to confirm his nomination, that being Judge Haynsworth. I would like to know what your feelings are on this subject. Is this man's political philosophy a reasonable subject of debate?

Senator SCOTT. To be one of the nine Justices of the Supreme Court involves, in the use of the advise and consent power of the Senate, the most searching examination of character, integrity, judicial competence and point of view because the President is dead right when he says he has the right to appointment of men who agree with him and if Judge Haynsworth's nomination should fall—I say if it should fall—and the President fully expects it to be confirmed—if it should fall, I would hope the President would name a strict constructionist. I would rather like him to name a southerner like Judge Dawson, or Oren Lewis, or Congressman Poff, just to take one state, or Walter Hoffman, judges or congressmen who are southerners and conservatives, because the court needs balance and the court has had a balance and I am not a conservative and therefore I believe the point of view is a factor among others.

Another thing that is a factor is whether or not a justice of the Supreme Court would continue to dissent from the edicts and the precedents of the court or whether he would not and I think that is the point made by Senator Javits, which is not totally governing on me, but ought to be mentioned.

Another point is pressure.

Mr. CLARK. If we could just mention your reference to Javits, he said in announcing his decision on the Senate floor this week to vote against Judge Haynsworth, that a vote for confirmation, or confirmation would be a staggering blow to civil rights. Is this something you are concerned about?

Senator SCOTT. I don't buy that entirely either. I think what is more important to be considered are, first, questions of judicial ethics. I have resolved those in my own mind.

Second, when I said point of view, will a judge abide by the precedents of the court; not just civil rights, because I have told the civil rights people, I have told the union labor people, I have told the chamber of commerce, and I have told the pressure people for Haynsworth that I am going to make up my own vote. My vote is my vote and I will cast it.

Mr. CLARK. You have made up your mind, Senator.

Senator SCOTT. I have made up my mind subject to change in the event of some unexpected development.

Mr. CLARK. Would you like to tell us what side you are going to vote on?

Senator SCOTT. I would like to but I won't.

Mr. CLARK. The Judiciary Committee of which you are a member said in its majority report this week that Judge Haynsworth is not guilty of any faintest ethical violation. Do you agree with that?

Senator SCOTT. I am inclined to think that this is a difficult point to answer, but it is one where the opponents, in charging ethical violations, have had the laboring oar and I think they have had a very difficult time in proving any actual ethical violation, Bob. They have tended more to prove what they call a certain insensitivity. But I think their case toward ethical violation has not been strongly stated.

Mr. CLARK. Senator, I am sorry to stop you here, but we have run out of time. It has been a great pleasure having you with us on "Issues and Answers."

Senator SCOTT. Thank you.

SUPREME COURT OF THE UNITED STATES

The Senate as in executive session resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. METCALF. Mr. President, during the speech of the distinguished and able junior Senator from West Virginia (Mr. BYRD), he had a colloquy with the distinguished Senator from Mississippi (Mr. STENNIS). The Senator from Mississippi discussed his experience as a judge. I am going to begin my remarks with a similar personal experience because I once served as a judge on the appellate court of the State of Montana, the supreme court of the State. I am going to draw on my experience as a judge of that court in considering the nomination of Judge Haynsworth for another court.

When I first read of Judge Haynsworth's selection, I was pleased to learn that he had a greenhouse in which he grew flowers and propagated camellias. I was once a member of an appellate court in Montana and had a greenhouse to which I came home after the arguments and hearings and reading of decisions. I enjoyed the opportunity of making things grow from seeds and cuttings, although in that climate camellias were difficult. I felt I had an identity with Judge Haynsworth. Had I been required to vote immediately after his nomination, I would have voted for a circuit judge's elevation to the Supreme Court and for a fellow horticulturist.

When the nomination of Judge Haynsworth was first presented I read a few of the cases that he decided—the Logan case, *N.L.R.B.* v. *SS Logan Packing Co.*, 386 R 2d 562; the Deering Milliken case, *Deering Milliken, Inc.* v. *Johnston*, 295 F 2d 856; *Glendale Manufacturing Co.* v. *Local 520 ILGWU*, 283 F. 2d 936; *Sheppard* v. *Cornelius*, 302 F. 2d 89; and several others. I would not have come to the same conclusions that Judge Haynsworth reached, but the opinions were lawyer-like and well written. When I was a member of the Montana Supreme Court, I learned that two judges can take the same line on cases and come to different conclusions. I also learned that the judge who reached an opposite conclusion on one case was often the judge who cast the decisive vote to make your next opinion a majority one. After 6 years on an appellate court, I also learned that reversal of a lower court is not censure or disapprobation. As a former appellate judge, I approved the Haynsworth style—succinct, terse, and closely written opinions without the rhetoric or literary flourishes that constitute many decisions.

The people who are sponsoring Judge Haynsworth's confirmation are saying that he is a "lawyer's lawyer" and a "judge's judge." Nothing could be more absurd. Judge Haynsworth is obviously a competent lawyer and a pedestrian writer of opinions. But for innovative ideas, forward-looking concepts, there are opinions in every volume of the Federal Reporter that are better than Judge Haynsworth's.

However, not all of us can write as Learned Hand or Louis Brandeis do and for many of us on appellate courts a style that is not redundant and diffuse is welcome.

Therefore, I was prepared to vote to confirm Judge Haynsworth before the revelations of the hearings before the Judiciary Committee. I felt that here was a kindred soul who likes flowers and believes in short opinions and is lawyer-like in his analysis of the law. Despite disagreement with his conclusions I thought I should acquiesce in his appointment to the Supreme Court.

But when objections were raised and when revelations as to Judge Haynsworth's financial affairs began to appear in the press then I knew that in order to fulfill my own constitutional obligations I would have to await the results of the hearing and do some additional work and more careful consideration and analysis of his record.

I have never met Judge Haynsworth. I have based the following conclusions on the record just as he in his capacity as a judge of the Fourth Circuit based his decisions on the record of the case before him.

The duty of confirming the nomination of a Supreme Court Justice is different from that of advising and consenting to the appointment of a Member of the Cabinet, of Assistant and Under Secretaries, ambassadors, and others. The latter, whether they be Secretary of State or U.S. marshal, are only in office during the term of the President by whom they were appointed and the appointment is for a limited period.

Insofar as the judiciary is concerned the appointment is for the life of the judge. This is true at every level. Therefore, the oft repeated dictum that the President should have wide latitude in his appointments, and unless there is a showing of moral turpitude or lack of integrity the Senate should confirm, is not applicable to nominations to the judiciary. There is a higher standard for a judge. It is self-evident that Supreme Court Justices nominated by President Franklin D. Roosevelt more than 30 years ago are still sitting on the Court.

At age 56 Judge Haynsworth would be a member of the Court for 15 or more years. The concept that the President,

any President, should have the opportunity to appoint his advisers, and his bureau chiefs is not relevant to judicial appointments. Therefore, in carrying out this responsibility of ours, as Members of the Senate to advise and consent on the nomination to the judiciary, we have higher responsibilities and additional obligations in the case of a judicial nominee because the man we confirm may direct judicial trends for as many as the next three decades, long after the President who nominated him has left office.

This large responsibility is confirmed by a study of the origins of the constitutional provision for the advice and consent of the Senate in the approval of a Presidential nomination for Judges of the Supreme Court.

Article II, section 2 of the Constitution states that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Judges of the Supreme Court." The original understanding, the practice of the Senate, and the status of the judiciary as a separate branch of Government all support the conclusion of the Senate has both the right, and the positive duty, to play an active role when it passes on a nomination to the Supreme Court.

First, until the final drafts of the Constitution, the Senate was given the sole power over Supreme Court appointments, with the executive to have sole power over all other appointments. Successive attempts to transfer the power to appoint Supreme Court Justices to the President were defeated. After those defeats the compromise pursuant to which the President nominates, and with the advice and consent of the Senate appoints both judges and other officials, was adopted—see, "The Debates of the Federal Convention of 1787," pages 39–40, 56, G. Hunt & J. Brown, Editors, 1920. Thus, from the first the particular competence of the Senate as to the Supreme Court nominations has been recognized.

Second, consistent with the original understanding, the Senate has repeatedly exercised its prerogatives in dealing with Supreme Court nominations. Of the 121 Presidential nominations to the Court, 22 have been rejected—nine by vote, 10 by senatorial refusal to act, and three by withdrawal in the face of anticipated Senate rejection. Thus, as the leading study in the field notes, very nearly one-fifth of the nominations have failed, a far higher percentage than for any other office—see J. Harris, "The Advice and Consent of the Senate," 303, 1953.

Third, the original understanding and Senate practice are a reflection on the unique status of the judiciary. The judiciary is not a part of the executive; it is an independent and equal branch of Government. Thus, there is no reason in policy to allow the President a wide discretion to mold the Federal courts to his own design. To the contrary, in the situation in which the Chief Executive errs, it is the Senate's duty to safeguard the prestige and reputation of the courts.

In sum, as the Senator from Michigan (Mr. GRIFFIN) stated in June of this year:

> Under our Constitution the power of any President to nominate constitutes only half of the appointing process. The other half lies with the Senate.

The basic arguments against the confirmation of Judge Haynsworth's nomination are well known:

First, Judge Haynsworth has not shown the capacity to put aside the predispositions and prejudices derived from his private practice in order to render equal justice for all under law. His decisions show that he is insensitive to the legitimate interests of the black and working communities.

Second, Judge Haynsworth has not met the high standards of judicial ethics the Senate set as the first prerequisite for a potential Supreme Court Justice when it refused to confirm Abe Fortas as Chief Justice of the United States.

Third, Judge Haynsworth's testimony to the Judiciary Committee was shot through with ambiguity, evasion and misrepresentations. The picture that emerges from the record is a man with an abiding affinity for inaccuracy. His wholesale unwillingness or inability to deal accurately and straightforwardly with the various issues raised at the hearings is obviously a further disqualification for elevation to the Nation's highest court.

These deficiencies plainly call for the rejection of the nomination presently before us. However, rejection of the nomination in and of itself, as important as it is, is not enough. The Senate has a duty, to the Nation, to the Court, and to itself, to reaffirm two basic preconditions to the confirmation of a Supreme Court Justice.

There are indications that this nomination is not an isolated error. Reports emanating from the White House ascribe to the administration a determination to reshape the Supreme Court in its own image. In light of Judge Haynsworth's record, it is plain that this determination is premised on the view that the highest qualification for a seat on the Supreme Court is complete ideological identification with the reactionary tenets of the administration's southern strategy. Such a narrowly political viewpoint poisons the wellsprings of the nomination process and if allowed to succeed, will inevitably destroy public confidence in the integrity of our governmental processes.

The Supreme Court is the summit of our legal system. Its powers are of impressive proportions. The responsibilities placed upon the Justices are correspondingly weighty. It is meet and proper that only those who have demonstrated, and who have been generally recognized as having, truly extraordinary capacity should receive the highest honor that a member of the legal profession can attain. The country has the right to demand no less.

Thus, it is of the essence that only a nominee who is of the highest distinction—a man who has lived greatly in the law—be confirmed.

Excellence is always its own justification. But in this context, it is more—it is an absolute necessity if the Supreme Court is to remain above politics. From deToqueville on it has been recognized that our system of government entrusts greater responsibilities to the judiciary than any other. When the Court considers a constitutional question, or a question concerning the meaning of a major piece of legislation, it is faced with resolving vital conflicting interests and it is often guided by only the most general language or by statutory provisions that are subject to diverse readings. Those who have no faith in the judicial process take this to mean that the Justices are free to do as they please. On this basis they argue that ideology is everything. I do not share that view. There are objective truths to be discerned in answering the questions posed for decision in the cases, raising both constitutional and statutory issues, that come before the Federal Courts. The most revered of our judges, such as Cardozo, Brandeis, and Learned Hand, merit acclaim on the ground that their opinions are more faithful to the intent of the law than those of lesser judges, not on the ground that they were able to impose their prejudices on the law through the force of their office. The comparatively open texture of the law does mean, however, that ascertaining the true answer to the questions thus posed is a task of the most extreme difficulty and sensitivity. Great depth and breadth of knowledge, profound understanding, and complete self-discipline and detachment are required. For if a Justice does not possess these qualities, experience demonstrates that the results he reaches will tend to be an unmastered reflection of personal inclination rather than an attempt to capture the essence of right reason.

In light of the nature and importance of the Supreme Court's role, the only guarantee sufficient to safeguard the confidence of the people is a nominee of extraordinary stature. For the distinguishing feature of men of the highest caliber is that they are not of one piece. They cannot be captured in catch phrases such as "liberal" and "conservative." Their greatness as men, and as judges, lies in the fact that they see the complexity of vital questions and that they approach such questions as their own man, not as a champion of a narrow view, or of a sect, or interest group. In a true sense, it is their large-minded independence that insures that no group can capture the Court, and it is this assurance, and this assurance alone, which can save the nomination process from the corrosive effects of power politics.

It is true, of course, that several nominees of the highest caliber have been strongly attacked for their views, particularly Justice Brandeis, and Frankfurter and Chief Justice Hughes.

Let me add that I listened to the able speech of the Senator from West Virginia (Mr. BYRD). He quoted probably the greatest Member of the Senate who came from Montana prior to the elevation of our majority leader, Senator Walsh, who was defending the nomination of Justice Brandeis. In the Senate, I am one of the successors of Senator Walsh. I am in the line of succession. He was one of the outstanding lawyers to serve in the Senate. I concur in every-

thing he said and in everything that was quoted by the very able Senator from West Virginia. But he was defending Justice Brandeis, not Judge Haynsworth.

The important point is not the vehemence of these attacks, but that none of them had a substantial impact on the Senate. Its collective wisdom and restraint in passing upon distinguished appointments was demonstrated by the fact that these nominations were approved by wide margins.

The critical difference between those nominations and the present one is that on the record Judge Haynsworth is not a man of the highest stature.

Indeed, none of his adherents, from the President on down, claim that legal excellence was the reason for his nomination. Former Judge Lawrence E. Walsh, an ardent supporter of Judge Haynsworth, and a man who has served in this and the prior Republican administration, was able to state only that lawyers and judges in his area "will put him right at the top of those who would be eligible for consideration for this post from that circuit." Since there are only seven judges on the Fourth Circuit, this is hardly a sweeping endorsement. Moreover, even this faint praise is qualified to nothing by Judge Walsh's phrase "who would be eligible." Since all of these judges are eligible as a matter of law, it would appear that the committee whose findings Judge Walsh reported would have had to exclude the three members of the Fourth Circuit who are over 65 because of age, the two members of that court who have served less than 3 years for lack of experience, and perhaps the remaining judge, Judge Winter, who has compiled a forward-looking record, because of philosophy. For the President has stated that "age, experience, background, and philosophy" all enter into his calculations. The unfortunate but inescapable truth is that even among the members of the bar who share Judge Haynsworth's philosophy, his performance has aroused no enthusiasm for his craftsmanship, or his depth of vision. The consensus was well stated by Anthony Lewis, a respected student of the court:

> It is easy to think of judicial conservatives whose high intellectual qualifications would have smothered the thought of opposition on philosophical grounds. The point about Judge Haynsworth is that he does not have such high, intellectual or legal qualifications. Few would call it a distinguished appointment . . . Those who feel [policy and ethical] doubts might say that Judge Haynsworth is a man from a narrow background who has not altogether surmounted it in his view of life and the law . . . In short, the argument against Clement Haynsworth is not that he is an evil man or a corrupt man, or one consciously biased. It is that he is an inadequate man for a lifetime position of immense power and responsibility in our structure of government. Lewis, The Senate and the Supreme Court, N.Y. Times, Oct. 19, 1969, p. F–14

When a lawyer becomes a judge, his proper constituency is no longer the special interest group or groups he represented in private practice, but his constituency becomes the larger one of all people in every walk of life. He must put aside the predispositions and prejudices derived from his private practice, in order to render equal justice for all under law. Most judges do this successfully. We often see great growth in awareness of public problems and increased depth and breadth of vision on the part of judges who were identified with business, or other special interest groups, before appointment to the Bench. The history of the Court contains several notable instances of men of exceptional character, ability, and understanding who outgrew the more parochial concerns of their prior experience and brought to their tasks objectivity and disinterestedness.

In Judge Haynsworth's case, however, there is no reason to anticipate such growth. Not only has he failed to demonstrate the requisite technical skills of a great judge, but his record as a circuit judge reveals his inability to surmount the preconceptions which he brought to the bench. The most striking examples are in his decisions involving labor relations and civil rights. The law's basic policy in these areas was clarified well before Judge Haynsworth became a Federal judge. In 1935, in 1947, and again in 1959, Congress decided that peaceful concerted activity by working men and women, that it had not expressly declaimed illegal, should be protected by law. In 1954 the Supreme Court held that separate school systems divided along racial lines were unconstitutional. Thus, Judge Haynsworth was not required to anticipate new developments in these fields, all that was required was his acceptance of the authoritative commands of Congress and the Supreme Court. Yet, his labor decisions reflect partisan judicial activism curtailing the law's protection of concerted activity, and his civil rights decisions demonstrate a continuing refusal to follow either the spirit or the letter of the Supreme Court's decisions. Unlike the courageous courts of appeals judges in the South, who have enforced the law as set forth in Brown, and who have accommodated themselves to the national labor policy, despite the fact that neither are popular with that region's establishment, he has followed the path of convenience rather than the path of the law.

The only tenable conclusion is that the administration has chosen Judge Haynsworth precisely because of his demonstrated lack of growth while on the Fourth Circuit. It is zeal in the pursuit of its southern strategy is such that it appears unwilling to chance the appointment of a Justice who will decide vital issues of the day on the merits.

The recent controversy over the nomination of Abe Fortas to be Chief Justice of the United States established a second basic standard that every future nominee must meet. As the Senator from Michigan (Mr. GRIFFIN) has stated:

> The Senate's role has been clarified and strengthened. No longer is it limited merely to ascertaining whether a member of the Court is "qualified" in the sense that he possesses some minimum measure of academic background or experience . . . this solemn obligation includes ascertaining whether the nominee has sufficient sense of restraint and propriety. If the judiciary in general and the Supreme Court in particular are to remain secure against tyrannies of all persuasions, they retain the public's trust and confidence. The courts must not be scarred even by suspicions concerning the financial or political dealings of their members.

The ethics issue has been examined in depth during the hearings on Judge Haynsworth's nomination. The conclusion that Judge Haynsworth has not met the standards that the Senate set less than 2 years ago is inescapable. His failure to cut his financial ties to his professionable clients and to recognize the high standards of propriety required of judges, is part and parcel of his failure to achieve the detachment necessary to the proper effectiveness of the judicial function.

The documentation that Judge Haynsworth failed to respond to the black community, indeed that he was unaware of the legitimate demands has been made both prior to and after the decision in the Brown case.

I share the views that have been so ably presented in the committee and on the Senate floor as to Judge Haynsworth's failures in the civil rights cases. But so flagrant have been these failures that it is often overlooked that like failure to comprehend the social advancements and the national needs in labor law have been equally demonstrated. I shall try to document some of Judge Haynsworth's record of lack of recognition of the legitimate demands of America's working men and women.

The record of the Federal judiciary over the years in labor cases is one that significantly damaged the prestige of the Federal courts. It is set out in Frankfurter and Green, the Labor Injunction, 1930. The detrimental effects of generations of "government by injunction," of the misapplication of the Sherman Act, and of the overriding of the congressional will as embodied in section 6 of the Clayton Act, have not yet spent themselves. There is still widespread distrust of the courts among working people.

In light of this historical record, the majority report, and the memorandum prepared by Senators HRUSKA and COOK wisely avoids the position that a judge who has a record of hostility toward organized labor is fit to sit on the High Court. Instead, both Senators attempt to argue that Judge Haynsworth has not shown himself to be hostile toward labor. The record rebuts their position. It demonstrates that Judge Haynsworth's basic approach is characterized by an insensitivity to the needs and aspirations of workers, and to the plight of unorganized employees working for an antiunion employer in a local environment hostile to unionism. In marked contrast, he is instinctively overly sensitive to the views of employers, including rabidly antiunion ones.

Here, as in the critical areas of Judicial Ethics and Civil Rights, Judge Haynsworth has failed to demonstrate the highly developed sense of judgment and detachment which is of the essence for a nominee to the Supreme Court. He was an advocate for the textile industry before he went on the court of appeals, and he remained one after he got there.

I hope that the junior Senator from West Virginia, who has preceded me will analyze the following cases before he votes on Judge Haynsworth's confirmation, if he continues to hold his conten-

tion that Judge Haynsworth is not antilabor.

The statistical basis for the view that Judge Haynsworth is hostile to organized labor is overwhelming. First, during his 12 years on the bench, Judge Haynsworth sat on seven cases involving labor-management relations that were reviewed by the Supreme Court:

NLRB v. *Rubber Workers (O'Sullivan Rubber Co.)*, 269 F. 2d 694 (1959), reversed per curiam 362 U.S. 329 (1960).

United Steelworkers of America v. *Enterprise Wheel and Car Corp.*, 269 F. 2d 327 (1959), reversed 36 U.S. 593 (1960).

NLRB v. *Washington Aluminum Company*, 291 F. 2d 869 (1961), reversed 370 U.S. 9 (1962).

Darlington Mfg. Co. v. *NLRB*, 325 F. 2d 682 (1964), reversed sub nom.

Textile Workers Union v. *Darlington Mfg. Co.*, 380 U.S. 263 (1965).

NLRB v. *Gissel Packing Co.*, 398 F. 2d 336 (1968).

NLRB v. *Heck's, Inc.*, 398 F. 2d 337 (1968).

General Steel Products, Inc. v. *NLRB*, 398 F. 2d 339 (1968), reversed.

NLRB v. *Gissel Packing Co., et al.*, 395 U.S. 575 (1959).

In all seven cases that went to the Supreme Court, Judge Haynsworth voted against the labor position.

In all seven cases Judge Haynsworth was reversed by the Supreme Court.

In six of the cases, the Haynsworth position was unanimously rejected by all participating Supreme Court Justices. Judge Haynsworth's position was supported by only one Supreme Court Justice—Justice Whittaker—in one case. Thus, Judge Haynsworth's views in labor cases were rejected not only by those Supreme Court Justices considered liberals, but by such conservative or moderate Justices as Frankfurter, Harlan, Clark, Stewart, and White.

There are three additional decisions which could be regarded as labor cases in a broad sense, though not involving labor-management relations. In each of these cases, too, Judge Haynsworth voted in favor of the employer, and in each of them the Supreme Court reversed:

Walker v. *Southern Railroad Co.*, 354 F. 2d 950 (1965), reversed per curiam 385 U.S. 196 (1966).

Mitchell v. *Lublin, McGaughy and Associates*, 250 F. 2d 253 (1957), reversed 358 U.S. 207 (1959).

United States v. *Seaboard Airline Railroad*, 258 F. 2d 262 (1958), reversed 361 U.S. 78 (1959).

Thus, Judge Haynsworth's overall record in the Supreme Court in the labor field is 0 out of 10—no affirmances and 10 reversals.

Every advocate believes that his case is a critical one. But there is only one objective measure of the importance of a Federal lawsuit; whether the Supreme Court has agreed to exercise its discretionary power of review. Certainly the foregoing record conclusively establishes the proposition that as to vital labor questions, Judge Haynsworth's decisions reflect an antilabor bias as measured against the decisions of the Supreme Court.

Second, Judge Haynsworth sat on 17 labor-management cases in which there was a division of opinion among his fellow judges on the Fourth Circuit. It may be assumed that these were close cases. In addition to the divided cases that went to the Supreme Court, O'Sullivan Rubber, Washington Aluminum and Darlington, they are:

Textile Workers v. *American Thread Co.*, 291 F. 2d 894 (1961), Boreman and Haynsworth, JJ, Sobeloff, J, dissenting.

Lewis v. *Lowry*, 295 F. 2d 197 (1961), Haynsworth and soper, JJ; Sobeloff, J, dissenting.

NLRB v. *Quaker City Life Insurance Co.*, 319 F. 2d 690 (1963), Bell and Haynsworth, JJ, Boreman, J, dissenting.

Wellington Mill Division, West Point Mfg. Co. v. *NLRB*, 330 F. 2d 579 (1964) Boreman and Haynsworth, JJ, Bell, J, dissenting.

Radiator Specialty Co. v. *NLRB*, 336 F. 2d 495 (1964), Bryan and Haynsworth, JJ; Sobeloff, J, concurring and dissenting.

NLRB v. *Wix Corp.*, 336 F. 2d 824 (1964), Bryan and Haynsworth, JJ, Bell, J, dissenting.

NLRB v. *M & B Headwear Co.*, 349 F. 2d 170 (1964), Sobeloff and Haynsworth, JJ; Bryan, J, dissenting.

Taylor v. *Local 7, Horseshoers*, 353 F. 2d 593 (1965), Boreman, Haynsworth and Bryan, JJ; Sobeloff and Bell, JJ, dissenting.

NLRB v. *Lyman Printing & Finishing Co.*, 356 F. 2d 884 (1966), Bryan and Haynsworth, JJ; Bell, J, dissenting.

Dubin-Haskell Lining Corp. v. *NLRB*, 386 F. 2d 306 (1967), Winter, Sobeloff, Craven, Butzner, and Haynsworth, JJ; Boreman and Bryan, JJ, dissenting reversing 375 F. 2d 568 (1962), Boreman, Bryan, and Janes, JJ; Sobeloff and Craven, JJ, dissenting.

Westinghouse Electric Corp. v. *NLRB*, 387 F. 2d 542 (1966), Boreman, Haynsworth, Bryan, and Winter, JJ; Sobeloff and Craven, JJ, dissenting.

Schneider Mills, Inc. v. *NLRB*, 390 F. 2d 375 (1968), Winter, Haynsworth, Borman, Bryan, and Butzner, JJ; Sobeloff and Craven, JJ, dissenting.

Darlington Mfg. Co. v. *NLRB*, 397 F. 2d 760 (1968), Butzner, Sobeloff, Winter, and Craven, JJ; Haynsworth, J, dissenting.

Arguelles v. *U.S. Bulk Carrier, Inc.*, 408 F. 2d 1065 (1969), Boreman and Bryan, JJ; Haynesworth, J, dissenting.

If Judge Haynsworth had an open mind on labor matters one would expect to find a certain balance between his pro- and anti-labor votes in such cases. However, an examination of these cases discloses that Judge Haynsworth voted completely or substantially in favor of the employer 13 times, in favor of labor only 3 times—Quaker City Life, Dubin-Haskell Lining Corp. and M & B Headwear Co.—and took a middle position once—*Darlington*, 397 F. 2d 760.

A qualitative analysis of Judge Haynsworth's major labor cases, those that went to the Supreme Court, is equally damning. For such an analysis demonstrates: First, that Judge Haynsworth has not grasped a central feature of the labor policy Congress has constructed; namely, that the courts are not to interfere with the right to engage in peaceful concerted activity unless there is a clear and express statutory basis for doing so; second, that Judge Haynsworth has exhibited a faculty for stretching employer-oriented arguments far beyond the breaking point in order to disadvantage employees who have opted for unionization; and third, that Judge Haynsworth has not shown the slightest concern over the harsh consequences to employees of the tenuous legal positions he has espoused.

The basic lesson learned from the judicial performance in labor law prior to 1937 is that the courts are unable, on their own, and without detailed congressional direction to regulate labor-management relations, in a fair, effective and rational fashion. During that period, most courts treated the concerted action of employees as a tortuous and enjoinable conspiracy whenever they regarded the means or objectives as unlawful; the only standard of lawfulness was the judicial view of the desirability or undesirability of the activities in question. One of the objectives of Congress in guaranteeing the right to engage in concerted activities in section 7 of the NLRA was to deprive employers of the weapon of this conspiracy doctrine—see, *International Union, UAW* v. *Wisconsin Employment Relations Board*, 336 U.S. 245, 257–258 (1949). Prior to the fourth circuit decision in Washington Aluminum, the NLRB and the reviewing courts had given effect to labor history by avoiding approaching the interpretation of concerted activities in a manner which would invite scrutiny of the fairness or unfairness, the wisdom or unwisdom, or the desirability or undesirability of peaceful activities which are concerted in fact and do not violate a clear legal mandate.

Washington Aluminum presented the question of whether peaceful conduct, otherwise clearly protected by section 7 of the NLRA—in that case a strike to protest bitterly cold working conditions—risks the loss of that protection if the employees do not allow the employer an opportunity, sufficient in the eyes of the court, to correct their grievance. The fourth circuit held that that protection of section 7 is available only where the employees can convince the courts that they did provide their employers with such an opportunity. In doing so, the court of appeals went counter to the basic policy Congress embedded in section 7, and against a line of authority upholding the protected nature of spontaneous strikes to protest intolerable conditions—see for example, *NLRB* v. *Southern Silk Mills*, 209 F. 2d 155 (C.A. 6th Cir., 1953)—and it was, therefore, reversed unanimously by the Supreme Court.

Judge Haynsworth's failure to grasp the circumscribed nature of the permissible regulation of peaceful concerted activity was also exhibited in the O'Sullivan Rubber case. In O'Sullivan Rubber, the issue was whether section 8(b)(1)(A) of the NLRA, which prohibits "restraint and coercion," could be employed by the NLRB to prohibit peaceful picketing by

a union that had lost its majority status during a strike in which the company replaced the union's members. Prior to 1957, the NLRB had recognized that section 8(b)(1)(A) did not prohibit such picketing. In 1957 the board reversed itself in *Drivers Local 639 (Curtis Bros.)* 119 NLRB 232. The District of Columbia second, ninth, and fourth circuits reviewed the Curtis doctrine. The District of Columbia and second and the ninth circuits rejected it. Only the fourth circuit accepted it. The matter then went to the Supreme Court which affirmed the District of Columbia Circuit, *NLRB v. Drivers Local 639*, 362 U.S. 274 (1960)—three justices favoring a remand to the board for consideration of the effect of section 8(b)(7) which had been passed in 1959 and which dealt in specific terms with organizational picketing—and which reversed the fourth circuit unanimously.

In Curtis Bros. the Court made it plain that the fourth circuit had fallen into error by ignoring section 13 of the National Labor Relations Act which "is a command of Congress to the courts to resolve doubts and ambiguities in favor of an interpretation of section 8(b)(1)(A) which safeguards the right to strike as understood prior to the passage of the Taft-Hartley Act"—362 U.S. at 282—and by refusing to heed decisions such as *IBEW v. NLRB*, 341 U.S. 694, 701–3 (1957), which had emphasized the restricted nature of section 8(b)(1)(A). Thus the error made by Judge Haynsworth, in O'Sullivan as in Washington Aluminum, was to substitute his restricted view of the importance of the right to engage in concerted activities for the broader view of Congress.

While not a section 7 case, the Enterprise Wheel decision is a further illustration of Judge Haynsworth's penchant for partisan judicial activism. In that case, the fourth circuit reversed an award reinstating certain employees on the ground that the award was unenforceable after the underlying collective agreement had expired. The Supreme Court, with only Mr. Justice Whittaker dissenting, reversed, stating—363 U.S. at 598–599:

> The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards * * * plenary review by a court would make meaningless the position that an arbitration decision is final * * *. It is the arbitrators' construction which was bargained for; and so far as the arbitrators' decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.

Enterprise Wheel was one of three companies' cases in which the Supreme Court outlined the basic contours of the Federal labor policy on arbitration. Some of what the Supreme Court said in these cases was novel in terms of prior conventional learning. The interesting facet of Enterprise Wheel, however, is that the decision was in no way novel; it was merely the reaffirmation of a policy, sound in both the commercial and labor fields, announced in 1855 in a commercial arbitration case:

> Arbitrators are judges chosen by the parties to decide the matters submitted to them finally and without appeal. As a mode of settling disputes it should receive every encouragement from courts of equity. If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error either in law or in fact. A contrary course would be a substitution of the judgment of the Chancellor in place of the judges chosen by the parties, and would make an award the commencement, not the end, of litigation. *Burchell v. Marsh*, 17 How. 344, 349 (1855).

Indeed, as the Supreme Court recognized, the applicability of the principle of Burchell against Marsh, in the labor area was plain in light of section 203(d) of the Taft-Hartley Act which states:

> Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.

Judge Haynsworth's faculty for stretching employer-oriented arguments far beyond the breaking point to disadvantage employees who choose unionization is most strikingly illustrated in the Darlington case and in the card check cases—Gissel Packing, Heck's, and General Steel.

In the Darlington case the majority of the fourth circuit, sitting en bano, accepted the proposition that Deering-Milliken, which operated and controlled numerous textile companies, including the Darlington Co., had the status of a single employer which was responsible for the closing of Darlington as the answer to a representation election victory by the Textile Workers Union; the majority then held that the closing was not an unfair labor practice on the ground that "a company has the absolute right to close out a part of or all its business regardless of antiunion motives."

The question of whether a single employer should be allowed to close down entirely is an extremely difficult one. However, as the Supreme Court recognized—380 U.S. at 274–275—there is no policy argument at all for allowing a partial closure based on antiunion animus:

> A discriminatory partial closing may have repercussions on what remains of the business, affording employer leverage for discouraging the free exercise of §7 rights among remaining employees of much the same kind as that found to exist in the "runaway shop" and "temporary closing" cases . . . Moreover, a possible remedy open to the Board in such a case, like the remedies available in the "runaway shop" and "temporary closing" cases, is to order reinstatement of the discharged employees in the other parts of the business. No such remedy is available when an entire business has been terminated.

The question of the precise circumstances under which a bargaining order based on authorization cards should be issued is also complex. It has troubled the NLRB and the courts of appeals for a number of years. On the one hand, it is often stated that an election which is not marred by unfair labor practices is preferable to a card check. On the other hand, in 1947 Congress rejected a proposal to make elections mandatory, and both prior and subsequent to 1947 the Supreme Court has held that card checks are lawful, see, *Mine Workers v. Arkansas Oak Flooring*, 351 U.S. 62 (1956). Moreover, it is generally acknowledged that the Board's remedial sanctions are too weak; and depriving the Board of its power to issue bargaining orders when an employer commits substantial coercive unfair labor practices strips it of its most effective weapon.

Because of the balance of these considerations, the first, second, fifth, and sixth circuits, the appeals courts other than the fourth circuit which considered the matter, rejected the suggestion that it is beyond the board's power to issue bargaining orders, based on authorization cards, when an employer commits substantial unfair labor practices. Only the fourth circuit, speaking through Judge Haynsworth, accepted it. The extreme pro-employer bias of the fourth circuit's view was recognized by the Supreme Court when it stated (395 U.S. at 609):

> If the Board could enter only a cease-and-desist order and direct an election or a rerun, it would in effect be rewarding the employer and allowing him "to profit from [his] own wrongful refusal to bargain, . . . while at the same time severely curtailing the employees' right freely to determine whether they desire a representative. The employer could continue to delay or disrupt the election processes and put off indefinitely his obligation to bargain; and any election held under these circumstances would not be likely to demonstrate the employees' true, undistorted desires.

The foregoing demonstrates that in labor cases Judge Haynsworth's zeal to further employer interests has been such that he has been blind to the importance of judicial self-restraint, to the basic purposes of Congress in enacting the NLRA, and to the guidance furnished by the Supreme Court—blind, in other words, to all of the basic virtues supposedly associated with "strict constructionism." But these doctrinal points do not reflect the totality of Judge Haynsworth's failures in the field of labor-management relations. They do not capture the human portion of the legal equation, which demonstrates that the tenuous legal positions that Judge Haynsworth has espoused have had extraordinarily harsh consequences for the employees involved.

The formalistic rule of Washington Aluminum, of some relevance perhaps to common law code pleading, but not to modern labor relations, was devised to deprive employees of legal protection when they engage in peaceful self-help "for the purpose of trying to correct conditions which modern labor-management legislation treats as too bad to have to be tolerated in a humane and civilized society like ours," *Washington Aluminum*, 370 U.S. at 17.

In O'Sullivan Rubber, the legal rule approved by the fourth circuit deprived over 300 long-time employees of the company of the basic method of concerted action available to them in their fight to regain the jobs which they had lost to

strike replacements while trying to secure a decent first contact after the union had won an NLRB representation election 343 to 2.

In Darlington, Judge Haynsworth took the position that a partial shutdown in which over 500 employees lost their jobs for doing nothing more than expressing their desire for union representation in an NLRB election should not be considered an unfair labor practice. Apparently it was a matter of supreme indifference to him whether the remaining employees of the Deering-Milliken chain were allowed to make their decision on unionization free of the fear of the same type of retaliation.

In Gissel, the company engaged in coercive interrogation of its employees, threatened them with discharge and other economic harm, promised them economic benefits, and discharged two of the leading union supporters—all to destroy the majority position that the Meatcutter's Union had secured. Judge Haynsworth's response was to order the company to rehire the discriminatees and post notices saying that it would not violate the law again, but to excuse the company from immediate bargaining. Apparently the judge was unconcerned over the fact that the remedy he allowed was an invitation to violate the law, and that it did not afford any protection to employees who wanted immediate union representation, rather than respresentation many years hence.

The two main arguments put forward by Judge Haynsworth's supporters are that those opposed to the judge's nomination have not given adequate consideration to the unanimous decisions in which he participated, and that a number of the Supreme Court cases and split decisions analyzed above are mislabeled as antilabor. Neither of these arguments will bear inspection.

First, it is my view that where there is no division of opinion among Federal judges on a question of law or fact in a labor case, the presumption is that the decision is neither prolabor nor antilabor but rather is clearly dictated by law. Any other view is dangerously cynical as to the nature of the rule of law. It is only where the judiciary is split that it may fairly be said that there are decisional leeways which permit the exercise of a substantial measure of personal judgment.

Benjamin A. Cardozo stated as follows in his famous study of judicial decisionmaking, the nature of the judicial process. When I was a member of the Supreme Court of Montana, I read and reread this landmark document in order to continue to admonish myself to come to the rationale of judicial decisionmaking as referred to in Justice Cardozo's book. Justice Cardozo said:

> Of the cases that come before the court in which I sit, a majority, I think could not, with semblance of reason, be decided in any way but one. The law and its application alike are plain. Such cases are predestined, so to speak, to affirmance without opinion.

Parenthetically, that was probably the situation in the Brunswick case that has been discussed. In reading the Brunswick case, there was only one way the case could have been decided. Perhaps that is why Judge Haynsworth forgot the case was still pending before him.

I shall continue to read from Justice Cardozo's statement in the nature of the judicial process:

> In another and considerable percentage, the rule of law is certain, and the application alone doubtful. A complicated record must be dissected, the narratives of witnesses, more or less incoherent, and unintelligible, must be analyzed, to determine whether a given situation comes within one district or another upon the chart of rights and wrongs. . . . Finally there remains a percentage, not large indeed, and yet not so small as to be negligible, where a decision one way or the other, will count for the future, will advance or retard, sometimes much, sometimes little, the development of the law. These are the cases where the creative element in the judicial process finds its opportunity and power.

Moreover, the question before the Senate is not whether Judge Haynsworth should be impeached because he has shown an absolutely uncontrollable antiunion animus which has made it impossible for him to decide even the simplest case properly; it is whether the judge has shown the professional ability, the detachment, the insight, and the understanding necessary to decide the complex and important cases which continually come before the Supreme Court. The relatively simple cases that provoke no disagreement among courts of appeals judges do not provide guidance in answering the relevant question. They are not the cases that reach the Supreme Court.

Finally, it should be noted that the dynamics of labor litigation are such that it is only to be expected that the great majority of the cases in the fourth circuit quite literally compel a decision in favor of the union. It is for this reason that a mere tabulation of these decisions is of little or no significance. The two main sources of that court's labor work are section 301 arbitration matters, and NLRB matters. The former normally arise from an employer's refusal to arbitrate, a refusal that is rarely, if ever, justifiable under present law—see *United Steelworkers* v. *American Mfg. Co.*, 360 U.S. 564 (1960). The latter are typically factual cases involving discriminatory discharges or other coercive interference with concerted activity since unions in the fourth circuit area are not as strong or well organized as unions in other areas of the country, and employers in that area have shown a strong proclivity for engaging in such conduct. These cases are screened by the Board's general counsel, by a trial examiner, and by the Board itself, and under the law, the factual determinations that are reviewed must be accorded a large measure of respect by the courts. Indeed, the major reason these cases get to court at all is that Board orders are not self-enforcing. If a company refuses to comply, the Board must go to court to secure an enforceable order. Often the type of company that commits clear unfair labor practices is the type of company which recognizes that delay works in its favor, and that a judicial proceeding in a frivolous matter is preferable to voluntary compliance.

Under the circumstances it is clear that all but a small number of decisions should enforce the Board's order. To say that these factual cases cited in the Hruska-Cook letter are prolabor is ludicrous. Indeed, in another context, that letter itself appears to recognize the force of this point. Thus, while it labels unanimous opinion affirming the Board on substantial evidence grounds "prolabor" it dismisses split decisions decided on substantial evidence grounds as follows:

> Of the sixteen divided Fourth Circuit cases which the AFL–CIO lists, only one was written by Judge Haynsworth, *Lewis* v. *Lowry*, 295 F. 2d 197 (4th. Cir. 1961), and that was on *sufficiency of evidence* grounds. Three additional cases were on these grounds (rather than labor-management issues) and were thus not "anti-labor" decisions.

The Hruska-Cook letter's defense of Judge Haynsworth's performance in Supreme Court cases and in split decisions is equally unsound. It is not true that the reversals in O'Sulllvan Rubber, Walker against Southern Rail Road and Enterprise Wheel were "based upon fundamental policy changes by the Congress and the Supreme Court subsequent to the fourth circuit's decision." In Curtis Bros., three members of the Court, Justices Stewart, Frankfurter and Whittaker, took the position that the 1959 amendments to the NLRB had such a pervasive impact on the problem that the case should be remanded to the NLRB. The rest of the Court disagreed and decided the case on the basis of the law as it had been prior to 1959, stating that the amendments do not "relegate this litigation to the status of an unimportant authority over the meaning of a statute which has been significantly changed"—362 U.S. at 291. The opinion in Walker against Southern Railroad also demonstrates that the intervening change in the law which occurred was not critical to the decision, and as already stated, Enterprise Wheel is notable for the fact that it does not break new ground and is, in fact, a reaffirmation of a rule of law announced in an 1855 precedent.

Indeed, Walker is especially interesting for the light it shed on the proposition that Judge Haynsworth's civil rights' record is merely a reflection of his preference for a literal approach to Supreme Court precedents. For, in Walker, he went counter to Supreme Court authority squarely in point, which as a practical matter favored labor, on the ground that the reasoning in a more recent case, *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650 (1965) indicated a change in the Court's views. It would thus appear that Judge Haynsworth follows a literal approach where it suits his convenience and not as a matter of principle.

The Hruska-Cook letter is equally unsound when it argues that *Deering-Milliken* v. *Johnston*, 295 F. 2d 856 (4th Cir., 1961) and *United States* v. *Seaboard Air Line R.R. Co.*, 258 F. 2d 262 (4th Cir., 1958), reversed 361 U.S. 78 (1959) are not "labor cases." It is, of course, true that Johnston ralsed a procedural point,

whether the Federal Courts could enjoin a Labor Board hearing, but it is plain that the labor context was not irrelevant. Here again a comparison with Judge Haynsworth's civil rights' decisions is in order. The opinion in Johnston is notable for Judge Haynsworth's criticism of NLRB delays. While there was much justification for this criticism of the Board, the judge failed to note that the companies who were complaining of Board delays, had contributed mightily to them, or that the discharged employees, not the companies, were the principal victims of Board delay. Judge Haynsworth's stringent criticism of NLRB delays contrasts with his indulgence toward the Prince Edward County School Board in the famous school closing case. There the court of appeals ruled, in a 2 to 1 opinion by Judge Haynsworth, that the district court should not, even after years of litigation, have ruled on the school board's latest evasive maneuvers without giving the Supreme Court of Appeals of Virginia an opportunity to rule first, *Griffin* v. *Board of Supervisors,* 322 F. 2d 332 (1963). The Supreme Court disagreed, declaring:

> There has been entirely too much deliberation and not enough speed—*Griffin* v. *County School Board of Prince Edward County,* 377 U.S. 217, 229.

As to Seaboard Air Line, it is sufficient to say that there Judge Haynsworth was faced with a choice between reading the Safety Appliance Act broadly enough to serve its avowed purpose, the protection of the life and limb of railroad workers, even though that might cause some additional expense to the railroad, or very narrowly in order to save the railroad money. He chose the latter and was reversed by the Supreme Court.

Neither the majority report nor the letter attempt to justify Judge Haynsworth's opinions in Washington Aluminum or Darlington; and on the card check cases they merely relay the following passage from the Gissel opinion:

> Despite our reversal of the Fourth Circuit below . . . the actual area of disagreement between our position here and that of the Fourth Circuit is not large as a practical matter.

The difficulty with this position is that the deleted portion of that quotation states: "in Nos. 573 and 691 on all major issues." Normally, the Court goes out of its way to avoid the appearance of criticizing a lower court that it is reversing. The reversal, especially one that is unanimous, is normally sufficient to make the point. Thus, when the sentence from Gissel is read in its entirety, it is plain that the portion quoted by the majority was simply to soften the blow of a unanimous reversal "on all major points."

Finally, the Hruska-Cook letter takes the view that the decisions in the Wellington Mills case, the Radiator case, the Wix case and in Arguelles against U.S. Bulk Carriers are prolabor. This is incorrect.

Wellington Mills involved in a number of issues: the validity of certain notices posted by the company, of certain actions and statements of supervisory personnel, and certain discharges of union activists. Except for the validity of one statement, every one of these issues was decided in favor of the company by the fourth circuit, which in every instance reversed the NLRB. Thus, unless the rule is to be that any case that is decided in favor of employees, or of a union, in any respect is "prolabor" which is the rule apparently espoused by the majority, there can be no doubt that Wellington Mills is an antilabor decision. Indeed, despite the fact that the Supreme Court has repeatedly stated that it would review evidentary cases only in the most extreme situation, the NLRB considered the decision in Wellington Mills so destructive of employee rights that it secured the consent of the Solicitor General to the filing of a petition for certiorari. Wellington Mills was one of two petitions in an evidentiary case filed by the Board during the 1960's. The company, on the other hand, did not file a petition. Thus the parties had no doubt who had won the case and who had lost it.

In Radiator Specialties, the court upheld the Board's findings of restraint and coercion, a finding which led to a simple cease-and-desist order that cost the company nothing, but reversed the finding that there was an unfair labor practice strike, a finding which required reinstatement of 131 strikers and the payment of substantial back pay. In Wix, the court reversed six of seven Board findings of discriminatory discharges. Finally, in Arguelles, where the only parties were a seaman seeking back wages and his employer, there being no union involved in the suit, the fourth circuit held in favor of the seaman, and Judge Haynsworth, in dissent, voted against his securing a recovery on the ground that while neither party was seeking arbitration it was the preferable method to utilize in settling the dispute.

In supporting Judge Haynsworth at the hearings, Lawrence E. Walsh stated that the judge was "running with the stream of the law at a slower pace than perhaps some others." The record demonstrates that in labor law Judge Haynsworth is some 35 years behind the times. That is simply too slow a pace of advance for a prospective Justice of the Supreme Court.

A discussion of Judge Haynsworth's financial involvement is unnecessary at this time. It has been widely discussed in the press; it has been set forth in the hearings; it has been discussed on the floor. Suffice it to say I have read the evidence concerning the Carolina Vend-A-Matic case, the Brunswick case, and others.

The very able and dedicated Senator from South Carolina (Mr. HOLLINGS) has emphasized the testimony of John P. Frank, who has had several articles on legal ethics and judicial procedure published in the law reviews. Mr. Frank is a recognized authority. He states that in view of the facts confronting Judge Haynsworth, it was not a violation of judicial ethics for him to participate in the six or so cases where conflict of interest might have occurred. I have great respect for Mr. Frank and view his opinions and his articles as genuine contributions to the law and the ethics when a judge has a conflict of interest. It is well accepted that in an instance where there is universal interest such as in a taxation case, there are no grounds for disqualification. Everyone is a taxpayer. A special improvement tax or a corporation tax might be a different matter. I believe that the de minimis rule, that is, the law does not take notice of small or trifling matters, should apply to cases where a judge is a very minor shareholder in a large publicly held corporation. I am not personally concerned about the ethics involved in the Vend-A-Matic case or the Brunswick case insofar as they are applicable to Judge Haynsworth as a continuing member of the Circuit Court. I agree with Mr. Frank that here is no violation of statute and no grounds for impeachment.

But we are not here concerned with impeachment or criminal indictment. Certainly Judge Haynsworth on the evidence adduced has not violated any statute nor has his behavior been such that any valid attack can be made on his integrity as a citizen or a circuit judge.

However, in confirming Judge Haynsworth as an Associate Justice of the U.S. Supreme Court, the Senate is entitled to, and should utilize, higher standards than might be employed in an attack upon the integrity or the actions of a sitting judge.

We are entitled at this initial stage to inquire as to how the nominee has conformed to the standards of the Code of Judicial Ethics and how the citizens of America will accept his own ethical record as he hands down his decisions on the Nation's Highest Court.

The Canons of Ethics of the American Bar Association admonish a judge to not only be "free from impropriety" but to "avoid the appearance of impropriety."

Judge Haynsworth has not "avoided the appearance of impropriety." His Vend-A-Matic activities and his profit of $450,000 while a director and substantial stockholder in the firm constitutes an "appearance of impropriety." The purchase of the Brunswick stock while a case was still pending is another example of failure to avoid "an appearance of impropriety."

In voting on the advise-and-consent motion, I am going to observe the statutes, the Canons of Judicial Ethics of the American Bar Association, and the effect of the appointment on the American public in deciding on my vote for confirmation.

I have outlined the labor cases in which Judge Haynsworth has participated.

In the 10 cases in which Judge Haynsworth participated in labor problems that went to the Supreme Court, all of them were overturned.

Under the conditions I have previously outlined, how can we tell a laborer, a workingman, that Judge Haynsworth, who has decided wrong on labor cases 10 times and has been overruled by the Supreme Court 10 times, should be confirmed? As a lawyer and as a former appellate judge, perhaps I can rationalize his opinions. But looking into his record,

I can wonder if an American workingman can think that Judge Haynsworth would give him justice. At the circuit court level the cases were argued, decided, and appealed. But at least there was an appeal and the Supreme Court had the final decision. A Haynsworth opinion was subject to another judgment other than in the fourth circuit court. If Haynsworth is on the U.S. Supreme Court, his judgment is final and there is no further appeal.

One further comment—the question of the impeachment of Justice Douglas has been raised by the minority leader of the House. If any Member of the House of Representatives believes he has evidence justifying an impeachment resolution, he owes it to the Nation, to the Congress, and to his conscience to bring it now, this very day and not use it as trading stock to attempt to obtain votes on an irrelevant matter.

I am glad that the Senator from Kentucky (Mr. COOK) and other Senators who are vehement supporters of Judge Haynsworth's nomination were equally as vehement in protesting the equation of impeachment of Justice Douglas with a vote against Judge Haynsworth's nomination.

I assure the minority leader of the House if impeachment proceedings are brought, they will receive the same careful and reasoned response that I have given the case at hand.

In fact, there has been too much bartering for votes already in this case. The activities of employees on the President's staff are well known. Members of the Senate have been threatened, coerced, high pressured, and offered special project and appointments, all to secure votes for Judge Haynsworth's confirmation.

The vote for approval or disapproval of a contested nomination of a Supreme Court Justice may be the most important vote we cast in the Senate this session. The results of that vote have already been clouded by activity outside the Senate. I am convinced that every Senator is going to vote his own conscience in this very delicate but important issue.

For a strong Supreme Court, for a high regard of judicial ethics, for the protection of the modern concept of equal justice in civil rights and labor cases, I am going to vote against confirmation.

Mr. President, I yield the floor.

Mr. MANSFIELD. Mr. President, first, let me say I want to express agreement with my distinguished colleague in what he has said relative to impeachment proceedings against a sitting Justice and the coincidental statement or assumption that action on that matter would be tied to action in the Senate on the confirmation or lack of confirmation of the nomination of Judge Haynsworth. It appears to me, as my distinguished colleague has said, that if there is any evidence—and I understand there are those who have been searching for some time—they ought to produce it now, today——

Mr. METCALF. This very afternoon.

Mr. MANSFIELD. Yes, indeed; and it should have no connection—none whatsoever—with what the Senate will do insofar as the nomination of Judge Haynsworth is concerned.

Either they have enough for impeachment or they have not; and if they have, they ought to produce it and let the process for impeachment begin. It will have to be decided here, if they have sufficient evidence. If they have not, then they ought to observe the advice of their President and lower their voices.

ORDER FOR ADJOURNMENT—PROGRAM

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock noon tomorrow.

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

Mr. MANSFIELD. It is with regret that I cannot see my way clear to ask the Senate to come in earlier, but because of some important hearings, possibly decisions having to do with crime, pornography, and gun legislation in the Judiciary Committee tomorrow morning, I think it is advisable that the Senate meet at noon, to give that committee a chance to report some legislation, which it is very desirous of doing.

I would hope, also, that we would consider staying in session late this afternoon, and that it might be possible sometime to reach an agreement by which we could, at a time certain, vote on the pending nomination. As far as Senators who are opposed to the nomination of Judge Haynsworth are concerned, after inquiring around I find that they do not intend to make very many more speeches, and none, I am informed, of any length.

On last Friday we had three speeches, after coming in at 10 o'clock in the morning, and we were out of business, practically speaking, at 3 o'clock. We had to go into recess and wait around until a third speech was made available.

So I appeal both to Senators who are for and those who are against the nomination of Judge Haynsworth, as well as those who are undecided, to come to the floor, make their speeches, bring this matter to a head, and allow the Senate after a reasonable amount of time, to come to a decision one way or the other.

I make this plea because I would like to take up the amendment to the Draft Act, which is now on the calendar, and I would like to clear the path, as rapidly as possible, for bills which may be reported by the Judiciary Committee tomorrow, and also for consideration of the tax relief-tax reform bill, hopefully, next week.

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

Mr. MANSFIELD. Yes indeed.

Mr. HRUSKA. It was with gratification that I heard the majority leader suggest a noon meeting hour tomorrow instead of earlier. What he has said about the matter of reporting several bills from the Judiciary Committee is true. A committee meeting had been scheduled for tomorrow, and those bills will be considered—the crime bill, the narcotics bill, if possible, the pornography bill, and also gun legislation, of which I think the majority leader is the author.

Mr. MANSFIELD. Yes.

Mr. HRUSKA. So I am happy to learn that the committee will have an opportunity to meet. We are hopeful of reporting those bills as a result of a session tomorrow.

Mr. MANSFIELD. The Senator has been most consistent, because he has been one of the strongest advocates in all these areas. I made the statement I did with the knowledge that he was on the floor and would corroborate the Senator from Montana.

I was serious, and I am serious, about staying in late tonight.

Before I suggest the absence of a quorum, I raise the possibility that it may be a live quorum, and that it may not be the only live quorum today.

I have just been handed a list of Senators who may be ready to speak on this side; and, to the best of my knowledge, we have two, at the very most.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MESSAGE FROM THE HOUSE

As in legislative session, a message from the House of Representatives by Mr. Bartlett, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 12829) to provide an extension of the interest equalization tax, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. MILLS, Mr. BOGGS, Mr. WATTS, Mr. BYRNES of Wisconsin, and Mr. UTT were appointed managers on the part of the House at the conference.

SUPREME COURT OF THE UNITED STATES

The Senate, as in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. BAKER. Mr. President, the question is whether the Senate should advise and consent to the nomination of Judge Clement Haynsworth to the Supreme Court. I speak today in support of confirmation.

This is not a minor issue. A Supreme Court Justice serves for life, casting one vote of nine on the most powerful court in the world. The Court is a tribunal of awesome responsibility which influences the whole course of American jurisprudence. Therefore, I believe it is right and proper that the U.S. Senate carefully deliberate the nomination.

Judge Haynsworth was born 57 years ago in Greensville, S.C. He attended Furman University and Harvard Law School, joined his father's law firm and served in the Navy during World War II. In 1957 he was named by President Eisen-

hower to the Fourth Circuit Court of Appeals and he has now become the chief judge of that circuit. His nomination to the High Court has the support of 16 former presidents of the American Bar Association. They include Harold J. Gallagher, Cody Fowler, Robert G. Storey, Loyd Wright, E. Smythe Gambrell, David F. Maxwell, Charles S. Rhyne, Ross L. Malone, John D. Randall, Whitney North Seymour, John C. Satterfield, Sylvester C. Smith, Jr., Lewis F. Powell, Jr., Edward W. Kuhn, Orison S. Marden, and Earl F. Morris.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a telegram from the persons whose names I have read, addressed to the Honorable JAMES O. EASTLAND, chairman of the Senate Committee on the Judiciary, dated October 23, 1969.

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

(See exhibit 1.)

Mr. BAKER. The American Bar Association's Federal Judiciary Committee has approved the nomination of Judge Haynsworth, as have a majority of the members of the Senate Committee on the Judiciary.

It is against that background, Mr. President, that the Senate now turns to its constitutional responsibility to advise and consent on the nomination by the President of the United States of Clement Haynsworth to serve as an Associate Justice of our highest tribunal.

The opponents of this nomination apparently have centered their objections on two basic points, some contending that Judge Haynsworth has by his participation in several cases created "the appearance of impropriety," and others asserting that his decisions indicate that he is anti-civil rights and antilabor. In my judgment, the record compiled by the Senate Judiciary Committee clearly demonstrates that these characterizations of Judge Haynsworth are wholly unfounded.

Mr. President, in this respect, I allude to remarks which I made on a previous occasion about the nomination of Judge Haynsworth, and point out that my first reaction to those who allege and aver that Judge Haynsworth is anti-civil rights, or antilabor, or anti-anything else, should be careful in their scrutiny of this nominee or any other, to make sure that nominations for the highest court in the land are not made on the basis of an antiposition or a pro-position for any group within society. Rather, for my part at least, I would hope that our position on nominees for the Supreme Court would not be anti or pro anything, but would approach that responsibility and that privilege for service as nearly objectively and as free from previous judicial bias as it is possible for the frail, subjective human machine to be.

I shall not dwell in detail on the allegations of impropriety that have been raised. I have examined the record made by the Senate Judiciary Committee, have read the bill of particulars set forth by our distinguished colleague from Indiana (Mr. BAYH), and have listened carefully to the rebuttal by the Senator from Kentucky (Mr. COOK) and others in this debate before the Senate. I share the judgment of the President as to the honesty and integrity of this distinguished nominee. I believe that if any Senator examines in detail and depth, the so-called appearances of impropriety that have been raised, rather than taking a rigid position based on superficial reasoning determined by philosophy or ideological persuasion, he will reach a similar judgment. If that approach is used, then I am convinced that this nominee will be confirmed by this body by an overwhelming vote.

Some are now saying the President should withdraw this nomination because these appearances of impropriety have been created; but I ask, in all due deference: "Who created those appearances?" Clearly, in my view, not the distinguished nominee, for, as I have said, any objective analysis of the record will clearly indicate to the contrary. The so-called appearances of impropriety so often alluded to in debate on this floor have been created, in my judgment, not by the nominee but by the debate, the newspaper accounts, the reports, the innuendo, the rumor, the incomplete analysis of the 700-page record compiled by the Senate Judiciary Committee.

Obviously the test of Caesar's wife, that a nominee for the highest court should be free of the appearance of impropriety is a valid test. But just as properly, an appearance of impropriety should represent the situation created by the nominee and not be contributed to by an examination of the nominee's conduct or the record of an incomplete file. Just as completely, in my view, the Senate in its deliberations on the nomination of Justice Abe Fortas to be Chief Justice of the United States created by implication, if not directly, a higher level of care and greater responsibility on the part of the Senate than had probably existed at any previous point in the history of the Republic.

In that proceeding, dealing with the confirmation or the withholding of advice and consent on the nomination of Justice Fortas to be Chief Justice of the United States, the Senate effectively broadened the scope and horizon of the inquiry and, in effect, created a reaction especially unfavorable to those who allege that it is an admonition of the administration or those of us who support Judge Haynsworth's nomination that the Senate should abdicate its constitutional responsibility to advise and consent on the desirability and the propriety of a presidential nomination to the judiciary and rather should serve merely as a rubber stamp, a suggestion recurring throughout the debate and obviously advanced by those who oppose the nomination.

I believe no such thing. I believe that the Senate has never been, nor is it ever likely to be, a rubber stamp of any administration or Chief Executive whose constitutional responsibility requires that he send to the Senate his nominations so that the Senate may make the searching analysis and critical examination that is necessary to determine whether the Senate should confirm or withhold its advice and consent.

There is no element of rubber stampism involved in these proceedings. Rather, I once again thoroughly agree with and roundly applaud the searching analysis of the examination made by the Judiciary Committee, culminating in approximately 700 pages of committee testimony and reports in the debate that has now permeated the functions of the Senate for so many weeks, notwithstanding the fact that formal debate commenced only last week.

I applaud those who have clearly and forthrightly expressed their views for and against the nomination of Judge Haynsworth.

I believe we are rendering higher service and coming closer to our constitutional mandate when we approach this problem in that manner. However, I do respectively caution against adopting the doctrine of Caesar's wife and the appearance of impropriety and then creating that appearance ourselves.

I believe, on the contrary, as I have previously said on the floor of the Senate, that our first responsibility under the heightened degree we have set for ourselves is to examine carefully all the testimony taken before the Senate Committee on the Judiciary, the committee report, and the separate and individual views, to take into account the debate on the issues as presented on both sides of the issue on the floor of the Senate, to carefully evaluate, for example, the so-called bill of particulars filed by the distinguished Senator from Indiana (Mr. BAYH) and, by the same token, to take into account the fully detailed rebuttal and reply made by the distinguished Senator from Kentucky (Mr. COOK).

In a way, in a calm and dispassionate manner, we analyze and examine the aspects of the case which are factual and which are not rumor, innuendo, or inference drawn from incomplete premises.

If the Senate does that, I affirm once again that I am convinced the nominee will be confirmed overwhelmingly.

But even if this be the fact, it is being contended that while the ethical questions that have been raised were not warranted, or were without foundation, since doubt has been raised, the President should withdraw the nomination. However, as the President has said, to pursue that course of action would mean that anyone who wants to make a charge can thereby create the appearance of impropriety, raise a doubt, invoke the doctrine of Caesar's wife, and then demand that the nomination be withdrawn. The President rejected that course of action, and I commend him for it. To allow a man to be victimized in this manner would be contrary to our system, and would obviously mean that a nomination could be defeated for a good reason, for a bad reason, or, as in this case, in my view for no reason at all.

Mr. President, the charges concerning the civil rights record of Judge Haynsworth raise a serious question requiring most careful consideration by the Senate. All agree that there is no place on the High Court for a person shown to favor the continuation of second-class citizenship, and I would vigorously oppose a nominee of that persuasion. My review of Judge Haynsworth's record convinces me

that he is not such a man. It is clear that on a few occasions Judge Haynsworth has voted against the party claiming deprivation of his constitutional rights. In addition, he has not always attributed to the Supreme Court's decisions the broadest possible scope of application. Nor has he correctly anticipated the Court's rulings in every case. On three occasions he has been reversed by the Supreme Court. The question for our resolution is whether these facts disqualify a nominee for the Supreme Court.

As final interpreter of the Constitution, the Supreme Court enunciates the "law of the land," which every Federal judge takes an oath to uphold. A nominee who disregards the Supreme Court's pronouncements violates his judicial oath and is obviously unfit for service on our highest court, Judge Haynsworth has scrupulously followed the Court's decisions. On numerous occasions he has joined in decisions against persons charged with discrimination and in so doing has adhered to principles announced earlier by the Supreme Court. No less than 19 cases are cited in the majority views in the report of the Committee on the Judiciary as instances in which Judge Haynsworth aided the vindication of rights which had been held by the Supreme Court to be secured to every citizen.

The fact that Judge Haynsworth has adhered to the Court's pronouncements should end the inquiry. I ask another question: Whether his views in each decided case are reasonable. In determining the reasonableness of Judge Haynsworth's views, I suggest to Senators the consideration of the comments made to the Judiciary Committee by Prof. G. W. Foster, Jr., of the University of Wisconsin. This esteemed gentleman calls himself a liberal Democrat and is probably more responsible than anyone else for the formulation of the HEW school desegregation guidelines. He had this to say with regard to Judge Haynsworth's civil rights record:

> In the area of racially sensitive cases I have followed closely the work of the federal courts in the South over the entire span of time Judge Haynsworth has been on the Court of Appeals for the Fourth Circuit. I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent, open-minded man with a practical knack for seeking workable answers to hard questions. Here and there, to be sure, were cases I probably would have decided another way. I am not aware, however, of a single opinion associated with Judge Haynsworth that could not be sustained by a reasonable man.

It has come to my attention, too, that in addition to the 19 cases cited by the Committee on the Judiciary in its report summarizing the hearings on the nomination of Judge Haynsworth, there are a number of other cases, which I feel are significant in trying to gain some insight into the basic philosophy and ideology, if that in fact be valid, for judging the qualifications of the nominee to sit on the Supreme Court of the United States, and which may give us an inkling of what his real, fundamental concern and sensitivity may be in this area. I shall impose on the Senate to deal briefly with a number of these cases.

I refer, first, to the case styled *McCoy* v. *Greensboro City Board of Education*, 283 F. 2d 677, from the Fourth Circuit Court of Appeals, in 1960.

In that case, Judge Haynsworth joined Judges Sobeloff and Soper in holding that Negro students need not exhaust their State administrative remedies where a local board had acted in obvious violation of their constitutional duty to end school desegregation.

This, too, is one of the civil rights decisions of Judge Haynsworth, and I venture the estimate that it is not the sort of case that one would use to try to establish the basis for charging that the nominee is anti-civil rights or a segregationist.

Cummings v. *City of Charleston*, 288 F. 2d 817, in the fourth circuit, in 1961. In that case there was a per curiam opinion in which Judges Haynsworth, Sobeloff, and Boreman found no reason for postponing the integration of a public golf course beyond the 6-month period agreed to by the plaintiffs. Once again, an example of a Federal appellate judge upholding the mandate and requirements of the highest reviewing tribunal in this country, the Supreme Court of the United States, and applying the law relating to desegregation evenhandedly and firmly to accomplish the announced purpose of this Republic, and that is to abolish the real, the legal, and the equivalent status of second-class citizenship in this country. That is not a case, not a decision, to lend credence to the characterization of a fine member of the judiciary as anti-civil-rights or a segregationist.

Wheeler v. *Durham City Board of Education*, 309 F. 2d 630, from the sixth circuit in 1961. This was a unanimous en banc decision enjoining the Durham School Board from continuing to administer the North Carolina Pupil Enrollment Act in a discriminatory manner.

Once again, Mr. President, the action of an even-handed judge adhering to the announced principle and objective of this Nation to create nothing but first-class citizenship and to abolish segregation, and joining with the rest of his colleagues on that court to grant the relief sought. It is not a decision, surely, upon which one could judge a nominee to be anti-civil-rights.

Brooks v. *County School Board of Arlington*, 324 F. 2d 303, fourth circuit, 1963. Judge Haynsworth joined Judges Sobeloff and Boreman in holding that the district judge had prematurely and erroneously dissolved an injunction against the board's discriminatory practices.

The relief sought was in keeping with the decisions of our highest court, and obviously was calculated to advance the cause of desegregation in those States embraced within the Fourth Judicial Circuit of the United States. Surely, that is not the basis on which one would judge a nominee for the Supreme Court of the United States to be anti-civil rights.

Wheeler v. *Durham City Board of Education*, 346 F. 2d 768, Fourth Circuit, 1965. A unanimous court ordered that the district court reexamine the actions taken by the board to eliminate the dual system which had existed in the city of Durham. The board's suggestion that its plan should be approved by the court of appeals was rejected. The relief sought was the desegregation of schools in that area. It was a unanimous judgment by the Fourth Circuit Court of Appeals, and certainly is not a decision and a judgment on which any fair-minded person could base an inference that the participants in that opinion were anti-civil rights.

Felder v. *Harnett County Board of Education*, 349 F. 2d 366, Fourth Circuit, 1965. This was another en banc decision, a per curiam decision, upholding the district court's order that the school board cease its discriminatory application of North Carolina's assignment and enrollment of pupils act. Once again, the relief sought was to enhance and further the objectives of desegregation. It certainly was not a decision on which we could fairly base an assumption that this man, participating in that per curiam decision, was anti-civil rights.

Wanner v. *County School Board of Arlington County*, 357 F. 2d 452, from Judge Haynsworth's circuit, the Fourth Circuit, in 1966. Judge Haynsworth joined Judge Sobeloff, Judge Boreman, and Judge Bell in reversing the district court, which has enjoined the board, at the insistence of white parents, from putting certain desegregation plans into effect. The court of appeals found that the board was proceeding in an appropriate manner in its attempt to comply with earlier desegregation decrees and therefore should not have been enjoined.

Franklin v. *County School Board of Giles County*, 360 F. 2d 325, from Judge Haynsworth's circuit, the Fourth Circuit, in 1966. In this unanimous en banc decision, the court held that teachers who have been discriminatorily discharged are entitled to "reemployment in any vacancy which occurs for which they are qualified by certificate or experience." In my view, this is not a decision to form the basis for an inference that this nominee is anti-civil rights.

Smith v. *Hampton Training Schools for Nurses*, 360 F. 2d 577, from the Fourth Circuit, in 1966. Several Negro nurses at a hospital receiving Hill-Burton funds were discharged for entering an all-white cafeteria after being ordered not to do so. They brought an action under the Civil Rights Act. While the litigation was pending, the Fourth Circuit held that hospitals receiving Hill-Burton assistance are engaged in "State action" and therefore may not discriminate. A question in this case was whether the plaintiffs here could rely on that precedent. The court unanimously held that they could and that it followed that they had been unconstitutionally discharged. The nurses were ordered to be reinstated. Once again, Mr. President, the relief sought by those attempting to advance the cause of total equality of every citizen of this country, was granted, and surely this is not a decision on which one could judge this

nominee, a participant in the decision, to be anti-civil rights.

In *Wheeler* v. *Durham City Board of Education,* 363 F. 2d 738, Fourth Circuit 1966, the court unanimously reversed the district court's holding that racial considerations had not been a factor in the board's employment and placement of teachers. An order requiring the board to desegregate facilities was entered.

Once again relief was sought properly and in an admirable way by those trying to advance the cause of equality and citizenship for all people of this Nation; a decision once again that simply does not form the basis for an inference that the nominee is anti-civil rights. On the contrary, this case and the cases I have cited previously form a substantial and most impressive body of judicial work which creates the image of a fair, calm, even-handed jurist, dedicated to the furtherance of equality of individuals, of the preservation of their liberty, and the implementation of the law as determined and interpreted by the highest court of our land in a highly sensitive field, in a part of this Nation uniquely affected.

In *Chambers* v. *Hendersonville City Board of Education,* 364 F. 2d 189, fourth circuit, 1966, Judge Haynsworth was the "swing" vote. He joined Judges Sobeloff and Bell in applying the principle that where there is a long history of discrimination, the local board is under a duty to show by clear and convincing evidence that its acts were not discriminatory. Concluding that the board had not made such a showing, the three judges held that the plaintiffs were entitled to relief. Judges Bryan and Boreman in dissent were satisfied that the board's actions had not been racially motivated. This was not the view of Judge Haynsworth. In the view of this humble lawyer, Judge Haynsworth participated in the principle of law and its implementation that is truly unique to the judicial system; and that is to say the degree of concern and care to a public agency on the basis of past historical performance rather than on the facts of the instant case, notwithstanding the consequences of the law. Judge Haynsworth was once again the swing vote in establishing that principle which would bring about the relief sought by those seeking to advance the cause of equality.

Surely in this decision we do not have the example of an anti-civil-rights jurist. On the contrary, we have a brave, even-handed judge, dedicated to even-handed actions.

In Cypress v. *Newport New General & Nonsectarian Hospital Association,* 375 F. 2d 648, fourth circuit, 1967, the court sitting en banc, held that the defendant hospital had discriminatorily denied the plaintiff Negro physician's request for admission to the staff and also that it had engaged in the practice of taking race into consideration in making room assignments to patients.

Once again the nominee, Judge Haynsworth, participated in an en banc decision of his court, the court on which he sat with distinction for so many years, to advance the cause of equality and to strike down the real, imaginary, legal, and quasi-legal barriers to give full participation in this society to men and women of all races in every walk of life.

In *Wall* v. *Stanly County Board of Education,* 378 F. 2d 275, Fourth Circuit, 1967, once again a unanimous en banc court reversed the district court's denial of relief to a Negro teacher who had been discharged by the defendant board. The appellate court ordered an award of money damages as well as a cessation of the Board's discriminatory practices.

The relief was sought by those trying to advance the cause of equality. The nominee, sitting en banc with his colleagues on the Fourth Circuit Court of Appeals upheld the law of the land and advanced the dignity and opportunity of every citizen, regardless of race, color, and creed. Surely, this is not a decision on which one could base a judgment of anti-civil rights.

In *Wooten* v. *Moore,* 400 F. 2d 239, Fourth Circuit, 1968, Judges Haynsworth, Butzner, and Merhige held a restaurant subject to the 1964 Civil Rights Act. The court rejected claims that the restaurant did not offer to serve interstate travelers and did not have a substantial effect on commerce.

This is not a case on which one could judge those participating as being anti-civil-rights.

In *Felder* v. *Harnett County Board of Education,* 409 F. 2d 1070, Fourth Circuit, 1969, Judge Haynsworth joined a majority of the court in holding a school desegregation plan constitutionally deficient because its effects on segregation had not been determined. The district court's order that the board furnish a plan that would promise realistically to end the dual school system was affirmed.

These are not decisions, in my view, of a man who was anti-civil-rights or a segregationist, but rather it is the record of a dedicated judge trying to uphold the law of the land as enunciated and prescribed by our highest tribunal in the field of civil rights and human dignity, at a time in our history and place in our country where that must not have been an easy task. But he did it in this case and in other cases.

It seems to me that in the business of examining all the facts and circumstances surrounding the service of this nominee, all the facts and circumstances upon which a judgment can be made, the innuendo or even the inference, most certainly the allegation, that Clement Haynsworth is anti-civil rights does not stand against the weight of the decisions I have just alluded to.

Once again, for my part, I do not want a nominee on the Supreme Court who is anti or pro anything; but I want an even-handed, objective jurist, as far as humanly possible and, as Dr. Foster said: "an intelligent, open-minded man, with a practical knack for seeking workable answers to hard questions."

I believe we have such a man in Judge Clement Haynsworth. I believe these decisions are significant and important in making the assessment that this body must ultimately make of the qualifications and competence of Clement Haynsworth as Associate Justice.

Mr. President, the allegation has been made with respect to certain other aspects of Judge Haynsworth's judicial career. If they show a state of mind or an anti-civil-rights bias, that should be taken into account. I urge colleagues to take into account any such allegations, but I believe they should be dismissed having once been considered. If there is an anti-civil-rights attitude or anti-anything on the part of this or any nominee who is faced with the prospect of a lifetime of service on the independent judiciary, it should be known now, not later, but we must take into account all of the record compiled by the Committee on the Judiciary and compiled from the debate on this floor, and from the colloquy between Senators, and whatever other solid, sound, and reliable information we can find and manage.

Criticism has been voiced from time to time that Judge Haynsworth has shown an anti-civil-rights bias because he has failed in one case to concur in an opinion that awarded attorneys' fees.

While agreeing with the thrust of the judgment, apparently Judge Haynsworth felt that the awarding of attorneys' fees in that particular case was made and left unanimously to the discretion of the trial judge, with statements upset and overturned in the appellate court.

Those of my colleagues who are lawyers, I am sure, can understand that logic. There certainly is broad discretion on the part of a trial judge. This is so deeply imbedded in the fabric of Anglo Saxon jurisprudence that it is no longer often challenged and never successfully challenged.

The reasons for the existence of that rule are real and meaningful. A trial judge is the one who sits and hears the witnesses and sees their demeanor or conduct on the stand, who can best appreciate or evaluate their sincerity or lack of sincerity of the cause being espoused or resisted. The trial judge, therefore, has tremendous latitude and discretion in many matters, including that of awarding attorneys fees. But to say that Judge Haynsworth felt that the trial court should not be reversed in such a case, because he relied on the discretion of the trial judge, sheds no light at all on his view of the civil rights situation outlined in the pleadings and the proof of the instant case.

It occurs to me that a careful examination of all of the written opinions of the Fourth Circuit Court of Appeals is essential to a careful examination of the qualifications of and confidence in the nominee. He has been part of that court since his appointment by President Eisenhower in 1957. He has participated in virtually every decision on that court since his appointment in 1957.

Some of the opinions he wrote. Some of the opinions he concurred in. Some of the opinions he dissented from. But it is important to examine them carefully and consider the totality of the conduct of this fine jurist over the 12 years which have intervened since 1957.

Mr. President, I believe that any thorough, objective analysis of the record

before this body would result in overwhelming support for the nominee. I believe we should stop hiding behind the anti-civil-rights, and antilabor, and consider the facts as they have been presented to us.

As I have said before, Justice Holmes once remarked that lawyers and legislators of the world have the unhappy faculty of devoting much of their daily lives to the art of shoveling smoke. I hope we do not devolve into a smoke-shoveling contest, but, rather, come to terms with the facts of this situation as we see them.

EXHIBIT 1

RICHMOND, VA.
October 23, 1969.

HON. JAMES O. EASTLAND,
Chairman, Judiciary Committee,
U.S. Senate, Washington, D.C.

The Federal Judiciary Committee of the American Bar Association after careful investigation has found that Judge Clement Haynsworth is highly acceptable from the viewpoint of professional qualification to serve on the United States Supreme Court. We the undersigned past presidents of the American Bar Association, all deeply concerned with the quality of the Federal judiciary, have full confidence in the processes and judgment of the ABA Committee. Accordingly, we hereby affirm our support of Judge Haynsworth and urge his confirmation as a justice of the Supreme Court.

Harold J. Callagher; Cody Fowler; Robert G. Storey; Loyd Wright; E. Smythe Gambrell, David F. Maxwell; Charles S. Rhyne; Ross L. Malone; John D. Randall; Whitney North Seymour; John C. Satterfield; Sylvester C. Smith, Jr.; Lewis F. Powell, Jr.; Edward W. Kuhn; Orison S. Marden; Earl F. Morris.

(The following colloquy, which occurred during the delivery of Mr. BAKER'S address, is printed at this point in the RECORD by unanimous consent.)

Mr. BAYH. Mr. President, I listened with a great deal of interest to the Senator from Tennessee, just as I listened with interest to the Senator from New York (Mr. JAVITS). Each looked at the same issues, and each came to an opposite conclusion.

Mr. President, it is because of the great respect I have for my friend from Tennessee that I should like to make the observation that it is possible for men of good faith to look at the facts of a case and come to different conclusions.

I have come to a different conclusion than my friend from Tennessee, but I certainly believe that he is doing what he thinks is right. I appreciate the opportunity to have been able to listen to his remarks.

Mr. BAKER. I thank my colleague from Indiana.

I am now happy to yield to the Senator from Kansas.

Mr. DOLE. Mr. President, I wish to commend the Senator from Tennessee for his precise and to the point remarks.

We have had the opinions of many experts. Those of us who have read the hearings recognize that they were protracted. We had the testimony of experts in the field of legal ethics. I have read the record and concluded more than a week ago, there is no real basis for the charges made against Judge Haynsworth unless they are made on a philosophical level.

The Senator from Tennessee has laid to rest the feeling that Judge Haynsworth might be anti-civil rights. Others have laid to rest, or will lay to rest, the charges by labor leaders that he is antilabor.

I was very much impressed, a couple of weeks ago, when I visited with former Associate Justice Charles Whittaker, who served on the Supreme Court with great distinction, from 1957 to 1962. He was appointed by President Eisenhower and was confirmed by the Senate. He now resides in the State of Missouri where he is engaged in the private practice of law.

On November 10, he released a statement which I should like to read at this point because it sets forth the views of a man who served on the Supreme Court and who served in the same position now being sought—hopefully sought—by Judge Haynsworth. He therefore knows a little about judges, their ethics and qualifications.

I shall read this brief statement which was released to the public on November 10.

I have several times been asked to publicly state my views as to whether the hearings conducted by the Judiciary Committee of the Senate on the President's nomination of Judge Haynsworth as an Associate Justice of the Supreme Court of the United States disclosed any evidence of improper or unethical judicial conduct by Judge Haynsworth.

Although I have, rather naturally, been interested in those proceedings and have kept abreast of them by carefully reading and considering the testimony before the Judiciary Committee, I have refrained, because of my rather unique position as a former Associate Justice of that Court, from any public expressions upon the matter, but now that numerous statements are being publicly made by Judge Haynsworth's opponents saying, I think quite falsely, that the hearings before the Judiciary Committee of the Senate disclosed improper and even "unethical" judicial conduct by Judge Haynsworth, my conscience compels me to speak out.

In those very lengthy and protracted hearings before the Committee, Judge Haynsworth was impugned on two cases: The first, that he sat in a case when he owned some shares of stock in one of the litigants. In truth, the record shows that he did not own any stock in either litigant in the case, but only held some shares in a vending company which, on a lease basis, maintained some of its vending machines in a plant of one of the litigants. The second, that Judge Haynsworth sat in a case, referred to as the "Brunswick" case, when he held shares of stock in the Brunswick company. In truth, the record shows that, quite aside from this being a piddling suit on a promissory note to foreclose a chattel mortgage that resulted in a judgment for $1,425.00. Judge Haynsworth owned no stock in the Brunswick company at the time the case was heard and decided. The record shows that after the case was heard and decided, and another judge had been assigned to write the opinion, Judge Haynsworth, on the recommendation of his broker, purchased some shares in the publicly-held Brunswick company.

These are the bases upon which it is being publicly claimed by Judge Haynsworth's opponents that he has been guilty of improper and even "unethical" conduct as a judge. My sensitivities do not permit me to sit silently by, and thus condone such wholly unfounded character assaults.

Inasmuch as there is no support in the record for the charges of unethical conduct that are being widely hurled and publicized against Judge Haynsworth by his opponents, it simply has to be that they are doing these for other reasons—perhaps because they do not like his nonlegislative and conservative judicial philosophies, yet, do not want frankly to oppose him on their real grounds for fear that to do so would not be publicly well received, and hence would not be politically expedient to them.

It seems evident to me that any proper sense of moral decency requires those who oppose Judge Haynsworth's confirmation to state their real reason for opposing him rather than to resort to false charges of unethical conduct.

I am not well acquainted with Judge Haynsworth, and certainly have no political or other alliances with him, but I do know him to be a fine and highly respected judge and man, and that he has gone through very protracted hearings before the Judiciary Committee of the Senate without a showing of even any appearance of impropriety, and I simply say that it seems to me to be a shame that his opponents are willing to falsely assault his character in order to obtain his defeat because they want a more "liberal" justice appointed to the Supreme Court.

CHARLES E. WHITTAKER.
NOVEMBER 10, 1969.

Again, I state that Justice Whittaker served with great distinction on the Court, and his opinion is worth having for the RECORD.

I thank the Senator from Tennessee.

Mr. BAKER. I thank the Senator from Kansas.

Mr. BAYH. Mr. President, perhaps I should ask the Senator from Kansas to permit me to comment on what I think is a unique intervention of a former member of the Court, rather than impose on the time of the Senator from Tennessee. I will submit to whatever the Senator from Tennessee thinks is in his best interest.

Mr. BAKER. I am happy to yield to the Senator from Indiana briefly, for the purpose of establishing a colloquy.

Mr. BAYH. Let me, as a member of the legislative branch, state that I take a dim view of a former member of the judicial branch impugning the motives of some Members of this body. Justice Whittaker's statement alleges that we were concerned only that Judge Haynsworth held some stock in a vending machine company. I can speak as one member of the committee who listened to every word of testimony at the hearings. It was not a matter of merely holding some stock. It was a matter of a one-seventh interest, worth a half a million dollars, a matter of serving on the board of directors, a matter of serving as vice president, and a matter of having his wife serve as secretary of the corporation for 2 years. This was the sort of involvement that concerned me, not just the holding of some stock in a vending machine company.

I noted with great interest that Justice Whittaker talked only about the Brunswick Co. Judge Haynsworth also had interests in Grace Lines, Inc., and Maryland Casualty Co. when cases in-

volving those corporation appeared before his court.

I ask the Senator to look at page 305 of the record of the hearings, in which Senator MATHIAS asked Judge Haynsworth whether the Judge had a substantial interest in Brunswick. Senator MATHIAS asked Judge Haynsworth:

Do you consider that your interest was substantial, then?

Judge Haynsworth said that it was.

I think it is fair to assume that some of us in the Senate would conclude that the interest was substantial, if Judge Haynsworth himself said it was substantial. And if the holdings in Brunswick were substantial, so were those in Grace Lines as well as Maryland Casualty. There were many facts that led us to the conclusion that we ought to have someone with a greater sense of sensitivity. Justice Whittaker seems to ignore those facts.

I thank the Senator for letting me use his time. I thought that I ought to put the record of the Senator from Indiana straight. I am getting tired of people impugning my motives. I do not impugn the motives of the Senator from Kansas. I thought the statement of the Senator from Tennessee was very interesting to follow. I know it comes from his heart. I hope the rest of the debate will continue in this tenor.

(This marks the end of the colloquy occurring during the delivery of Mr. BAKER'S address.)

Mr. DOLE. Mr. President, I would hope the Senator from Indiana would give former Justice Whittaker the same right to express opinions as other people have. I happen to know that Justice Whittaker has carefully read the record. He has read the testimony. I am a lawyer, as is the Senator from Indiana. I feel that Justice Whittaker was objective when he read the record. Since he served on the Supreme Court for 5 years, he knows better than I, and perhaps as well as the Senator from Indiana, what is required of a Justice of that Court.

I trust the day never comes when a former Justice of the Supreme Court cannot express himself, as suggested by the Senator from Indiana. The former Justice said what was in his heart and he honestly believes, rightfully or wrongfully, that this is the conclusion he reaches after reading the record. He has a right to reach that conclusion.

The former Justice may have had in mind canon I, which, as the Senator from Indiana knows states that we have the responsibility sometimes to defend the Court, because the Court is in a peculiar position. Members of the Court cannot always defend themselves. Members of the bar, when they feel charges are baseless, should defend the Court. It may be that that is the canon former Justice Whittaker had in mind when writing his statement.

Let me also add that former Justice Whittaker did not volunteer anything. I know many people called on him. And in fact, when I visited him I had not made up my mind. He said, "Senator, I am glad you called, because I have been asked to contact you, but did not think it was proper to do so."

I wanted to make it clear to the Senator from Indiana that former Justice Whittaker was not trying to trespass upon the rights of this body. He replied only when he was asked to do so. He had read the record. He was not making an off-the-cuff statement or rendering an off-the-cuff opinion. I feel he has a perfect right to express himself and am happy he has expressed himself. I only wish more members of the Court would do so much.

Polls have been taken, and some of those polled had not read the record. I was informed that 80 percent of the ATLAS lawyers felt Judge Haynsworth's nomination should not be confirmed. Certainly former Justice Whittaker has as much right to express his views as anyone. He was a member of the Court. He understands the high degree of ethics required. He is not trying to compromise the canons of ethics. He has no personal interest in Judge Haynsworth and has no alliance with him politically or in any other way. He feels some of the charges against him are false and he has a right to reach that conclusion.

Mr. BAYH. Mr. President, will the Senator permit me to elaborate or repeat what I said? I am not sure who has the floor.

The PRESIDING OFFICER. The Senator from Tennessee has the floor.

Mr. BAKER. I am happy to yield to the Senator from Indiana.

Mr. BAYH. The Senator has been very tolerant.

I believe any citizen of this country, certainly any former member of the Court, has a right to give his opinions. I get a little sensitive, however, when I read a statement which says that those who have read the record and arrived at a different conclusion from those who favor Judge Haynsworth's nomination are really not sincere.

I salute my friend from Kansas for referring to the first canon of ethics. I think that is an important canon, and I hope that before this debate is over, the Senator from Kansas will also become interested in a half dozen other canons that deal with this matter of impropriety. I think they are equally important.

I rose to interrupt my distinguished friend from Tennessee only because, in pointing to the facts that he alleges were the basis for the determination of some of us who are concerned about ethics, he omitted some of the most significant facts. For example, it is not the mere owning of vending machine corporation stock that we question; as I have pointed out, it is also the involvement in the affairs of the corporation which disturbs us. Furthermore, in the Brunswick, Grace, and Maryland Casualty cases, the judge unfortunately did not meet the standard of conduct which he set for himself.

I would hope that Judge Whittaker would examine these facts and give us, the Members of this body, credit for making the determination which we think is right.

Mr. BAKER. Mr. President, I thank my colleagues for the interesting colloquy involving Justice Whittaker's letter. That was not one of the main thrusts of the remarks I have just made. However, I accept the colloquy as a happy addition; and, having seen the matter thus expanded, I intend to expand on my own views.

I have never seen Justice Whittaker's letter heretofore; I am glad that my colleague from Kansas requested and obtained such a letter.

Mr. DOLE. Mr. President, I did not request the statement. He had been asked by several newspapers to submit his views, and he did so only after reading the entire record. I am satisfied that he took into account the W. R. Grace case and other cases alluded to.

Mr. BAKER. I understood the Senator had requested the Justice's views.

Mr. DOLE. I did not request any written response. He did tell me in a phone conversation that if we could not confirm the nomination of Judge Haynsworth, we would have to find a trapeze artist. I contacted him seeking advice, as I did the senior Federal judge of Kansas, officers of the bar association, and leading lawyers in Kansas, who make their living practicing law. Frankly I was surprised at their overwhelming support for Judge Haynsworth because of the flurry of charges made against him.

Mr. BAKER. I commend the Senator from Kansas for bringing this matter to our attention, and for talking with former Justice Whittaker in this respect. I am pleased that he has produced the Justice's letter at this point, making it a part of the RECORD. I respectfully disagree with the Senator from Kansas when he credits it with impugning any Member or former Member of this body. I also reject the idea that any former member of the highest court cannot express his viewpoints and ideas publicly. Were he at this time a sitting member of the Court, it might be a different situation, though I am not sure it would be. But I do feel that the expression of the viewpoints and ideas by former Justice Whittaker given us today by the distinguished junior Senator from Kansas is a significant contribution to that branch of this inquiry, and I commend him for adding substance to it.

Mr. BAYH. As I said, I appreciate the indulgence of my friend from Tennessee. I must say that this is the first time I have heard of the letter. Was I correct in understanding that Justice Whittaker said that because there is no ethical question, the opponents who stress this point must really be concerned about civil rights, labor, and philosophical matters? If not, I apologize to my friends, the Senator from Tennessee and the Senator from Kansas. It was a statement to that effect I thought I heard, and I am a bit sensitive to such remarks. I think in this Body, we should give everyone full faith and credit for doing what he thinks is right, for reasons which he thinks are important. That is the reason I rose, not to take issue with my friend from Tennessee and my friend from Kansas. Although I disagree with the Senator from Tennessee, I do not think he is making his presentation on any grounds other than those he considers right.

Mr. BAKER. Mr. President, on the question of sensitivity, as I understood the statement of former Justice Whittaker, in effect, he is saying that under the circumstances there must be philosophical and ideological overtones in this struggle. I very much doubt that my friend from Indiana would deny that there has been such a thread woven through the fabric of this entire debate. I think it is a proper undertaking for those for and against Judge Haynsworth to examine his philosophy; otherwise I would not have taken 45 minutes of the Senate's time going over 19 cases, in a detailed analysis, to decide whether or not there was an anti-civil rights bias in those decisions. I concluded that there is not; but in that case, I am examining a philosophical and ideological bias or bent on the part of a member of the judiciary.

I see no reason for anyone to be offended by the considered moderation of former Justice Whittaker's letter.

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

Mr. BAKER. I am happy to yield to the Senator from Kansas.

Mr. DOLE. I do not believe he includes every opponent; but some opponents of Judge Haynsworth are opposing his confirmation on philosophical grounds. Some appeared before the committee, for example, George Meany; certainly he is opposed on philosophical grounds. He says in effect "He is antilabor; we are going to block him, just as we did Judge Parker in the Hoover administration."

Certainly, if he has that right, Justice Whittaker should be accorded the same right, to make a public statement about Judge Haynsworth, because public statements have been made that he is antilabor, anti-civil rights, and unethical.

The Senator from Indiana has said that, "he is honest and a man of integrity, but he is insensitive." That generally is what the Senator from Indiana said, as well as others; that he is honest and a man of integrity, but he is insensitive, and that, therefore, he is unfit to sit on the Supreme Court.

Justice Whittaker, having sat on the Court for a period of 5 years, had something to say which should be helpful to all Senators.

Mr. BAYH. Mr. President, I am glad the Senator read the letter into the RECORD, because I have not had a chance to see it, and I want to examine it with some degree of particularity.

As I said a moment ago, any Member of this body, any former justice of the Supreme Court, or any citizen of this country has a right to express himself. Of course he does. But I do not think we should impugn the motives of those who draw conclusions different from the conclusions reached by the proponents of Judge Haynsworth.

I concur that the matter of philosophy has been interwoven into this debate, but I think it is entirely possible for people to look at this record and say, "all right, on the matter of philosophy we are going to give the President the benefit of the doubt, but on the matter of ethical conduct, at this particular time, with these facts, we feel that the conduct falls below the required standards." Disapproval of Judge Haynsworth's ethical conduct can be a valid reason for opposing him, and not some subterfuge for some other reason which George Meany or someone else might offer.

I think each of us could look at this matter entirely differently. I trust my colleagues from Kansas and Tennessee, and the other participants in this discussion who are going to face this particular issue, will look at the facts and make their own determination. I am giving them credit for doing what they think is right.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. CRANSTON. Mr. President, on October 31, 1969, the Hollywood Bar Association wrote the President urging him to withdraw the nomination of Judge Clement F. Haynsworth as an Associate Justice of the Supreme Court. In their letter, the bar also requested the Senate to reject his confirmation, in event his nomination is not withdrawn. Since the recommendations of the Hollywood Bar Association have a direct bearing on the current debate on Judge Haynsworth's fitness to sit on the Court, I ask unanimous consent that the letter of the Hollywood Bar Association be printed in the RECORD at this point.

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

OCTOBER 31, 1969.

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

MR. PRESIDENT: The Hollywood Bar Association by vote of its Board of Governors and officers recommends the withdrawal of the nomination of Judge Clement F. Haynsworth to the Supreme Court and further recommends if such nomination is not withdrawn, that confirmation by the Senate be denied.

We have not considered nor do we feel it the province of the Bar Association to comment on Judge Haynsworth's political or social attitudes as reflected in his decisions. These attitudes and decisions are not the question before us.

Judge Haynsworth purchased stock in a company which was a party to a lawsuit before him after the court had completed its deliberation but before the decision was publicly announced. If a judge is aware that a decision is pending on a case and enters into a relationship with a party to the action, we deem such an act an impropriety. If a judge enters into a relationship with a party and is not aware of a pending decision before him, this action raises material question as to his lack of awareness and judgment. Let all Americans know that this Bar Association feels such action by a judge cannot be condoned, for a judge's first interest and obligation is to the people he serves.

The American people demand in a judge a man who is fair and impartial, a man who will analyze the questions before him with an open mind and unobstructed view. One cannot properly judge the wine from inside the barrel. Most important, the American people want to have confidence in their courts, in their judges, and in their government. If this confidence is shaken by some act of a justice of the highest court, however innocent the intention of the act, the morale of the country suffers.

This then is the focal point of Judge Haynsworth's nomination. His acts, however intended, have shaken the trust and confidence in our judicial system.

Very truly yours,

HOLLYWOOD BAR ASSOCIATION,
By PHILIP H. GILLIN.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

HAYNSWORTH AND LABOR

Mr. HANSEN. Mr. President, opponents of Judge Haynsworth claim that he is antilabor. In no meaningful sense is this true.

Judge Haynsworth has undoubtedly either written, or joined in, opinions which were objectionable to the national leadership of the AFL–CIO. And, it is true, that if this is enough to make a judge antilabor, then Judge Haynsworth, along with countless other Federal appellate judges in our country, are antilabor. This sort of judgment is found in the statement of Mr. George Meany, president of the AFL–CIO, before the Committee on the Judiciary that "he would not approve of a decision against labor." And, predictably, therefore, Mr. Meany does not approve of Judge Haynsworth.

But if one takes the broader view, recognizing that organized labor is not entitled to receive everything it demands from the courts, any more than is management, then the criticism of the leadership of organized labor becomes much less impressive. Like most other judges of Federal courts of appeals, Judge Haynsworth has joined in many opinions that have rejected the position of the unions, and many opinions that have favored the positions of the unions. Perhaps a highly specialized labor lawyer could develop a sort of a legal Geiger counter that would tell us, at least to his satisfaction, whether the judge is a couple of degrees off center one way or the other. I do not claim to be such an expert, and I am satisfied that Judge Haynsworth is well within the mainstream on labor law.

Forty years ago, organized labor successfully opposed the confirmation of the nomination of John J. Parker as an Associate Justice of the Supreme Court of the United States. Ironically enough, Judge Parker was at that time a judge of the U.S. Court of Appeals for the Fourth Circuit, just as Judge Haynsworth is at present. Opposition to Parker was placed on the grounds that he had been antilabor, and particular emphasis was given to his opinion in the so-called Red Jacket case.

Organized labor now concedes that it misjudged its man in 1930, and that its

opposition was a mistake. Mr. Thomas Harris, general counsel of the AFL–CIO, stated at the Judiciary Committee hearings on the Haynsworth nomination:

I agree with you that the attack on Judge Parker on that ground was unjustified. But the Federation succeeded in blocking his confirmation to the Supreme Court and, as you say, he served for many years thereafter as a pro-labor judge and if we can get both of the same two results here, we will be happy.

More objective observers, feeling that the Supreme Court in the ensuing 39 years could have used the legal talents of John J. Parker, may not feel that the result was quite as funny as Mr. Harris apparently thinks it was. But these observers would doubtless agree with Mr. Harris that the Senate did make a mistake when it refused to confirm the nomination of Judge Parker, of whom Chief Justice Earl Warren said in 1958:

No judge in the land was more truly distinguished or more sincerely loved. His contemporaries appreciated and honored this man's qualities, and in the judicial history of the nation his great reputation will endure.

I, for one, do not relish the prospect of some future general counsel of the AFL–CIO, or of any other organization, telling us 40 years from now that the organization made a mistake in opposing Judge Haynsworth in 1969, but it was all a pretty good joke anyway. The decision that the Senate makes with respect to this nomination is obviously a serious one, entitled to the most careful consideration on the part of each of its Members. Fair consideration must be given to the claims of any group who feel that a candidate for the High Court would administer the law unfairly as to that group. But, by the same token, no group can be accorded a veto power, exercised in terms of its own necessarily narrow interests, over the right of the President to nominate, and the Senate to confirm, Justices who must represent every element in our Nation.

I do not find that Judge Haynsworth is antilabor. I find that he is a careful, scholarly, middle-of-the-road judge, and I strongly favor the confirmation of his nomination as an Associate Justice of the Supreme Court of the United States.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DOLE in the chair). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

SENATOR PROUTY OF VERMONT WILL VOTE TO CONFIRM JUDGE HAYNSWORTH

Mr. HRUSKA. Mr. President, a few moments ago, my attention was called to a news release that the junior Senator from Vermont (Mr. PROUTY) has announced his position in support of Judge Haynsworth.

I read from a part of the news release, in which Senator Prouty stated:

The most important consideration to me is whether the nominee possesses the qualifications required to serve on the nation's highest court. I am convinced Judge Haynsworth is qualified to serve.

The news release continued:

Prouty said in his ten years in the U.S. Senate he had on every occasion voted to confirm the President's nominee to the Supreme Court. "I would vote against confirmation only if I had serious doubts as to the nominee's morality, integrity or honesty." Prouty said, adding, "In this instance I have no such doubts."

The Vermonter said he had studied the record carefully and found that "the blizzard of accusations against Judge Haynsworth melts quickly under close scrutiny."

Likewise Prouty said that a thorough examination of Haynsworth's decisions refutes charges of bias and reveals "a record of objectivity and impartiality."

Prouty found the opposition to Haynsworth to be "more on political grounds than ethical grounds and more emotional than reasoned."

He concluded by saying: "It might be easier to vote against confirmation and thus bow to the volume of the accusations. Instead, I chose to weigh the merits of the charges and found them lacking in substance."

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

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

Mr. GURNEY. Mr. President, as I mentioned in my remarks on Thursday, November 6, I have carefully examined the record developed by the Judiciary Committee concerning Judge Clement Haynsworth's appointment to the Supreme Court; and, I have studied the views of the distinguished Senators who object to Judge Haynsworth. I have also considered the objections which have been raised in the press and the media.

I must say, as was indicated in the announcement just read to the Senate by the Senator from Nebraska (Mr. HRUSKA), on the decision of the Senator from Vermont (Mr. PROUTY) to vote for confirmation of Judge Haynsworth that he feels much of the opposition to Judge Haynsworth has been politically motivated, that I cannot help agreeing with that feeling, that much of the discussion thus far concerning Judge Haynsworth's ethics, his stock market transactions, and his involvement in various business enterprises, is a smokescreen and a subterfuge which has had the effect of obscuring the real, underlying objections to his nomination As other Senators have also stated, it seems to me that at the root of these objections is the judge's philosophical posture. The real question, to my mind, is then not one of ethics or Judge Haynsworth's off-the-bench conduct. The sooner we come to grips with the real objections to Judge Haynsworth's nomination, his judicial record and his performance as a judge, the more realistic and meaningful our discussion will be.

Certainly, Judge Haynsworth's critics have a right to their point of view as a class—and I mean most, not all, because there are exceptions—but as a class, it seems to me that they wish to see the perpetuation and continuation of the Warren court, a court which saw its role as an activist court which sought and seeks—that is, those who are still there—to impose upon this country its own notions of virtue, its own socioeconomic viewpoint, and its own view of the Nation and of the world.

In this sense I think we can applaud the candor of those critics of Judge Haynsworth, such as the AFL–CIO, and the National Education Association—NEA—who have admitted that their objections frankly go to Judge Haynsworth's judicial record, and not to his stock market dealings.

In fact, I commend the senior Senator from New York (Mr. JAVITS), who said that he would not talk about the ethics matter, because he opposed the judge on his attitude toward civil rights matters—other words, on philosophical grounds.

I think he was being very honest and candid in stating that that was what his objection was.

I think that, as President Nixon pointed out recently, much of the criticism of this decent man in the final analysis comes down to nitpicking of the worst sort. His critics in the press have gone to the well and they have come up dry. Having failed to produce any real evidence of wrong doing, his critics now fall back on canon 4 of the Canons of Judicial Ethics. That canon reads:

A judge's official conduct should be free of impropriety and the *appearance of impropriety* . . .

They now say that the Haynsworth nomination should be withdrawn or defeated because in their view there is an "appearance" of impropriety.

The appearance of impropriety of course has been contrived by the critics and exists only in their mind's eye. This is sophistry of the worst sort: The appearance of wrongdoing as an objection to this nomination has no independent existence.

I think that what the people want is a new direction to the Supreme Court. What we need most I think is a restoration of judicial restraint, which in years gone by characterized the deliberations of our highest court.

We have a good illustration of the kind of judicial restraint I am thinking about in the recent case involving Representative ADAM CLAYTON POWELL and his suit against the House of Representatives.

Judge Warren Burger, prior to his elevation to the Supreme Court, as a member of the court of appeals wrote the opinion concerning that case which was later made the basis of the appeal to the Supreme Court of the United States. There, former Chief Justice Warren, in one of his last official acts, wrote the majority opinion. Judge Warren Burger refused to pass judgment on the House of Representatives in the Powell case because of the inappropriateness of the subject matter for judicial consideration.

His opinion stated that he deplored the "blow to representative government where judges either so rash or so sure of their infallibility as to think they should command an elected coequal branch in these circumstances."

Chief Justice Earl Warren, on the other hand, Mr. President, was not so restrained. Pursuing his activist posture to the very end of his tenure, Mr. Chief Justice Warren—with the lack of judicial restraint which in my view has characterized a great deal of his performance on the Court—wrote the majority opinion holding that the House of Representatives had acted wrongfully and unconstitutionally when it had refused to seat ADAM CLAYTON POWELL.

Our system of government—

Said Earl Warren—

requires that Federal Courts on occasion interpret the Constitution in a manner in variance with the construction given the document by another branch. The alleged conflict that such an adjudication may cause cannot justify the Court's avoiding . . . constitutional responsibility.

The decision, which exemplifies the judicial overreaching which I deplore, has precipitated a constitutional debate which, as we all know, is not yet settled.

Judge Burger's treatment of the Powell case sought to avoid a decision which would bring about a serious constitutional confrontation between the courts and the legislative branch. Judge Warren's approach was just the opposite, because apparently he believed, for reasons which do not appear on the record that POWELL had been punished unconstitutionally, and his decision was tailored to reflect this belief.

The notion of judicial restraint which I am alluding to today was described in detail and with much eloquence by Justice Felix Frankfurter in many decisions in his long service on the Court. Examples I am speaking of are found in the 1940 case, *Osbourne* v. *Ozlen*, 310 U.S. 53; in *Board of Education* v. *Barnette*, 319 U.S. 624, 1943; and in *AF of L* v. *American Sash Co.*, 35 U.S. 538, 1949. Let me quote to you from that last case:

Even where the social undesirability of a law may be convincingly urged, invalidation of the law by a court debilitates popular democratic government. Most laws dealing with economic and social problems are matters of trial and error. That which before trial appears to be demonstrably bad may belie prophecy in actual operation. It may not prove good, but it may prove innocuous. But even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed than that the law should be aborted by judicial fiat. Such an assertion of judicial power deflects responsibility from those on whom in a democratic society it ultimately rests—the people. If the proponents of union-security agreements have confidence in the arguments addressed to the court in their "economic brief," they should address those arguments to the electorate. Its endorsement would be a vindication that the mandate of this court could never give.

But there is reason for judicial restraint in matters of policy deeper than the value of experiment: It is founded on a recognition of the gulf of difference between sustaining the nullifying legislation. This difference is theoretical in that *the function of legislating is for legislatures who have also taken oaths to support the constitution, while the function of courts, when legislation is challenged, is merely to make sure that the legislature has exercised an allowable judgment, and not to exercise their own judgment*, whether a policy is within or without 'the vague contours' of due process. Theory is reinforced by the notorious fact that lawyers predominate in American Legislatures. In practice also the difference is wide. In the day-to-day working of our democracy it is vital that the power of the non-democratic organ of our government be exercised with rigorous self-restraint. Because the powers exercised by this court are inherently oligarchic, Jefferson all of his life thought of the court as "an irresponsible body" and "independent of the Nation itself."

As an attorney, I have followed the Court through its judicial excursions with much misgiving over the years. Curiously, I found that much of the harshest criticism of the Court comes from the Court itself in the form of opinions by dissenting justices. Let me offer, Mr. President, a few examples.

In the case of Mapp against Ohio decided by the Supreme Court in June 1961, the Supreme Court majority, willy-nilly, upset 50 years of American jurisprudence by holding in effect that illegally obtained evidence may not be used against defendants in State prosecutions. As Justice Harlan eloquently pointed out in his dissent in that case—a dissent in which Justices Frankfurter and Whittaker joined—the central question on which the case turned had not even been briefed before it reached the court. Certiorari had originally been granted in Mapp against Ohio to test the constitutionality of an Ohio obscenity statute. The privilege against unlawful seizure and search and questions concerning introduction of unlawfully obtained evidence in State court prosecutions were raised only casually, and in passing, by the defendants and in an amicus curiae brief filed by the American Civil Liberties Union. Nevertheless, in spite of the fact this matter was not even briefed or argued, in spite of the fact that this question was not therefore formally before the court, the majority of the Warren court in Mapp against Ohio held that illegally obtained evidence could not thereafter be used as a basis of a State prosecution, thus upsetting the doctrine of Wolf against Colorado and numerous other cases dealing with this important question. Here is what Mr. Justice Harlan said:

The Court in my opinion has forgotten the sense of judicial restraint which, with due regard for stare decisis, *is one element that should enter into deciding whether a past decision of this court should be overruled . . .*

The action of the Court finds no support in the rule that decision of constitutional issues should be avoided wherever possible. . . . the unwisdom of overruling Wolf without full-dress argument is aggravated by the circumstance that that decision is a comparatively recent one (1949) to which three members of the present majority have at one time or another expressly subscribed, one to be sure with explicit misgivings. I would think that our obligation to the States on whom we impose this new rule as well as the obligation of orderly adherence to our own processes would demand that we seek that aid which adequate briefing and argument lends to the determination of an important issue. It certainly has never been a postulate of judicial power that mere altered disposition, or subsequent membership on the Court, is sufficient warrant for overturning a deliberately decided rule of constitutional law.

President Nixon has thus far sent forward two nominations for the Supreme Court, and both men are experienced and senior appellate court judges both of whom have also had district court trial experience. This is a most refreshing development and one which I certainly applaud. I cannot help feeling that if some of our other recent Justices—I think immediately of Mr. Chief Justice Warren, Mr. Justice Douglas, Mr. Justice Fortas—had had prior judicial training before coming to the High Court, they would have been conditioned in the exercise of judicial restraint and American jurisprudence would have been the better for it.

I have spent some time talking about this matter of judicial restraint, and reading from some of the Supreme Court decisions dealing with it, because I believe that the appointment of Judge Haynsworth would be a step in that direction. This certainly is one of the elements that President Nixon had in mind in his nominations of both Chief Justice Burger and Judge Haynsworth. I think it is also something that the people of the United States have in mind.

When I was campaigning in Florida last year the immediate issues bothering most Floridians were of course the war in Vietnam, the question of inflation, and the question of crime. I think that was probably true of all the political races last year. But another matter which disturbed many people in Florida, and which I found very much in their minds was the behavior of the Supreme Court on a number of fronts. The people expressed to me dissatisfaction with the course of the Supreme Court's decision on school prayer, and outlawing Bible reading in schools. They were upset with the apportionment decisions which heretofore had been political matters within the exclusive jurisdiction of the States. They were irritated with the Supreme Court's tinkering with and even upsetting some State constitutions. They resented the way in which the court had effectively curbed efforts of law enforcement, and postal authorities to stop the flood of pornography. They resented the recent striking down of residency requirements for welfare recipients. They resented the striking down of the marihuana tax control laws.

They were upset, and rightfully so with the seemingly ludicrous criminal decisions such as Miranda, Escobedo, and a whole string of successive cases. Very often they did not know the names of the decisions. They could not give a citation, or anything of that sort. But they had the feeling, and I think the feeling was correct, that the thrust of many of these opinions was to free criminals, in some cases self-confessed criminals, on the flimsiest sort of technicalities.

They expressed to me the view, and it is a view that I subscribe to, that in the midst of the greatest crime wave in our Nation's history, the decisions of the

court which resulted in the freeing of criminals were absurd, almost, as one constituent told me, "like throwing gasoline on the fire." Even Justice Hugo Black, whose liberal credentials I think it is fair to say are beyond question, has said on several occasions that the majority of the Court's actions have "hobbled" legitimate law enforcement efforts and that prosecutors have been denied the right to proceed effectively against criminals, and set up procedures which unduly favored accused criminals. Let me quote some remarks by Mr. Justice Black in this connection.

In a 1968 case he said:

The importance of bringing criminals to book is a far more crucial consideration than the desirability of giving defendants every possible assistance in their efforts to challenge the admissibility of evidence.

In a 1969 case he complained:

The constitution does not give this court any general authority to require exclusion of all evidence that this court considers improperly obtained or that this court considers insufficiently reliable.

At the moment we need stronger law enforcement, Mr. President. The Court, by fiat, has set about to create a host of new rights and privileges in criminal law which have no judicial history, which no one had ever heard of a generation ago. The net effect of these decisions was to free criminals and to make a mockery out of the efforts of our law enforcement people.

Florida, as the ninth ranking State in population, has, Mr. President, a varied population and I know that many of these same views apply across the country. In a July 1968 Gallup poll, two out of three persons interviewed viewed the Court with disfavor.

I think it would be most unfair to characterize all of the opposition to Judge Haynsworth's nomination as political. I know that many of the distinguished Senators whom I respect feel that there are serious ethical question. I respect their viewpoints, but I think that in all candor a fair appraisal of this matter would substantiate the point of view that very much of what we hear in opposition to this nomination is philosophically and politically motivated.

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

Mr. GURNEY. I yield to the Senator from Oregon.

Mr. HATFIELD. I thank the Senator from Florida for his erudite, scholarly presentation on this very important issue.

I should like to ask the Senator a question. I believe he has just stated that he feels the philosophy of the Court, or the trend in its philosophy, is one of the basic reasons why the President made his selection, or at least this was one of his measurements. Further the Senator observes there are those in this body who are also using philosophy, perhaps, as a criterion in determining their vote on the confirmation question.

Do I understand that the Senator believes it to be within the prerogative and responsibility of Senators to use or judge the philosophy of the candidate, Clement Haynsworth, in casting their votes for confirmation or against confirmation?

Mr. GURNEY. I would answer the Senator by saying I think that is the prerogative of any Senator, if he wants to use that criterion.

The point I was making is that I do think many Senators have used it in their reasoning as to whether they are going to vote for or against the confirmation of Judge Haynsworth. As I pointed out earlier, I think before the Senator from Oregon arrived, at least one Senator last week, I believe on Friday, had the candor to say exactly that. That was the senior Senator from New York (Mr. JAVITS), who said that he opposed the confirmation of Judge Haynsworth on the ground of his civil rights decisions—or at least he was basing his argument on that—rather than on the ethics of the matter.

Of course, as far as the civil rights decisions are concerned, I think one can make a case either way. The Senator from New York felt keenly about that issue; and in his argument here today, the Senator from Tennessee arrived at the opposite conclusion. I am simply making the point that I think that philosophical assessment of Judge Haynsworth will have a great deal to do with the "yes" or "no" votes of many Senators. I do not think they are really saying that that is their reason; they are putting it on ethical grounds.

Mr. HATFIELD. Will the Senator yield further?

Mr. GURNEY. I yield.

Mr. HATFIELD. Again, as I emphasized on a previous occasion, not as an attorney but rather as a layman attempting to make a judgment as to how to vote on confirmation, I am aware of the various arguments that are being used for and against a confirmation vote. One of the arguments that has been used most frequently with me, by those who have been in the position of favoring Judge Haynsworth's confirmation, has been that I am not to include in my judgment, or I should not include in my judgment, the question of philosophy; that if that were proper, men like Justice Brandeis and Justice Charles Evans Hughes would never have been confirmed. The Senator knows the argument—he has heard the discussions, as I have heard them—and that philosophy, therefore, should be ruled out as a base for my judgment on my vote. So, I found the statements of the Senator today to be very helpful and very enlightening.

I just wanted to make sure I understood correctly that they indicate that, whether it is a right or wrong thing, philosopy is a consideration of the President in his selection of Judge Haynsworth for this position and of those of us in the Senate who have, either directly or indirectly, indicated that philosophy is part of our consideration. Is that a correct observation of the Senator's statement?

Mr. GURNEY. It is correct to the extent that I think is motivating many Senators in whether they will vote yea or nay.

I would go on from there and point out that I do not think the U.S. Senate would be well advised to turn down a nomination on purely philosophical reasons. I think that the President of the United States, be he a liberal, middle of the road, or conservative man in his philosophical persuasion, should have the prerogative of nominating the person he wants for philosophical reasons to the Supreme Court of the United States.

So, in answer to the question of the Senator, no, I do not think that Judge Haynsworth's nomination should be turned down on philosophical reasons.

The point I was making was that I think Senators are turning him down on philosophical reasons, but using as a real reason the smokescreen of an ethical matter.

I do not think that is fair. If we look back at a lot of other nominations made in previous administrations by President Johnson, President Kennedy, and President Franklin Roosevelt, I do not think the Senator ever turned down, as I recall, a Supreme Court Justice on philosophical reasons.

I do not doubt that perhaps some nay votes were cast over the years that were motivated by philosophical reasons. However, I do not think a judge has ever been turned down on those grounds in recent years, unless it was in the case of Judge Parker.

Mr. HATFIELD. Mr. President, as an attorney and as one trained in the law, does the Senator think it would be fair to make a judgment on Judge Haynsworth on the basis of philosophy since, as the Senator says, the President of the United States takes cognizance of the attitude of the general public toward the Court today, and, therefore, did make his selection taking into consideration the philosophy of the man? Would it not be just as fair to cast a vote on philosophical reasons, as the President of the United States used philosophical reasons as part of his appointment criteria?

Mr. GURNEY. I do not think so, because my feeling of the advice and consent of the Senate in these matters is that it should go to the man's ability as a judge and not to the philosophical disposition expressed in his decisions.

It certainly should go to his ethics, indeed, and it should go to his honesty, integrity, and ability. However, I do not think we should make a judgment in the Senate and say, "no, the President should not appoint this man because we disagree with his political philosophy."

One reason that I do not think we should take that view in a broad sense is that the whole process of democratic government in this country is certainly involved in last year's elections. Along with the issues of Vietnam and crime and inflation, there was also a decision on philosophy. I do not think there is much question of that. I think that most people voted for President Nixon because they thought he was middle of the road to conservative. I believe that many people voted for Vice President Humphrey because they thought he was liberal.

If the outcome of the election means anything, it means that the people voted middle of the road to conservative in the

election. And since that was the voice of the people, I think that the President has every right to follow those general guidelines in his appointment to the Supreme Court of a new Justice.

And I say also that, in my opinion, the President is not trying to make a conservative court out of the Supreme Court.

As I see the Burger and the Haynsworth appointments, they were made in an effort to get the Court more near the middle of the road and more nearly akin to the feelings expressed across the country as to how the Court should be divided philosophically. I think that is what he is trying to do.

I do not think he is trying to revise the Court. And if he succeeds in his intention, he will be doing the country a great service.

As I mentioned earlier in my 2-year campaign for U.S. Senator from Florida—and I campaigned last year and the year before—I can say in all honesty that whenever the issue of the Supreme Court of the United States was made in any of my speeches, there was a roar such as I cannot describe on the Senate floor. It was a roar of unanimous disapproval by the people. They expressed how they felt about the Supreme Court of the United States.

I think this is a dangerous thing. I think it is very dangerous. The highest Court of the land is a Court that I as a lawyer, and I am sure every other lawyer who sits in the Senate or in law school—certainly in our earlier days of legal experience—viewed as something up high.

We viewed the men of the Supreme Court, the Brandeises and the Cardozas—and Judge Cardoza taught me at Harvard Law School—as great legal giants. We had enormous respect for them. However, during the Warren court a lot of that respect disappeared. We noticed that the people then viewed the Supreme Court as something they did not want, disrespected, and did not like. This was because the Court was tearing down many of the fundamental things people believed in.

This is very important in the appointment of Judge Haynsworth, because I firmly believe that one of the things the President is trying to do is to change the direction of the Court and, indeed, reestablish it as a bastion of strength and respect in the eyes of the people. And for the Senate of the United States to turn down the President of the United States on a matter of philosophical judgment, I think, is entirely wrong.

Mr. HATFIELD. Then, as I understand the Senator from Florida, if the President takes cognizance of this conservative trend, as the Senator would interpret the last election, in the feeling that the Court is now too liberal in its general character and that therefore he has purposely selected a conservative to balance the Court, not to make it all conservative, but to bring it into greater balance, that it is appropriate that this sentiment should stop at the Senate door as far as our judgment of the floor actions is concerned, and that we should ignore philosophical reasons, that even though the people of the United States have taken cognizance of the Supreme Court and Judge Haynsworth, we should not.

Mr. GURNEY. The Senator is correct. And I think that in the former action of the Senate in confirming other Supreme Court Justices, such as Justice Fortas, when his name was presented, and Justice Goldberg and Justice Thurgood Marshall—I am not familiar with the record at that time, although I am sure that many conservative Senators would have preferred another name to come here from President Johnson, President Kennedy, or President Roosevelt—nevertheless, the Senators voted "aye" and did not take into consideration the other arguments.

Mr. HATFIELD. The Senator stated his belief that the people had lost faith in the Supreme Court and that great resentment was reflected toward the Court in the Senator's campaign in Florida. I think that much of my mail from Oregon would indicate that situation is also true in Oregon. They feel that the breakdown in law and order should be laid at the doorstep of the present Court and, that the greater permissiveness in our society should be blamed on the present Court. They blame many things on the Court that I take issue with.

Does the Senator think that the faith we should have in our Supreme Court could be reestablished by a close vote on Judge Haynsworth of, say, 52 to 48?

Mr. GURNEY. No. I do not think that would enhance the cause of the Supreme Court or reestablish faith in it. I must admit that the Senator raises a good question.

On the other hand, I must also hasten to point out—and this is the whole meat of the argument I am presenting—that it is not the fault of the President of the United States, it is not the fault of Judge Haynsworth, it is not the fault of the people of the United States that we are going to have in this Chamber next Wednesday, Thursday, or Friday a close vote on Judge Haynsworth. But, as I see it, it is Senators sitting in this body who are erroneously and wrongfully injecting their own philosophical ideas of who ought to sit on the Supreme Court. I do not think that is right. I think it is wrong.

Mr. HATFIELD. In other words, by the action of the Senate, then—the individuals the Senator refers to—we have already undermined the potential of Judge Haynsworth becoming an instrument of reestablishing the faith and confidence in the Court that we might otherwise have been able to accomplish?

Mr. GURNEY. Perhaps, to a certain extent. But if we have done that, I do not think that should inure to the detriment of Judge Haynsworth, because it is not his fault that philosophical viewpoints were erroneously injected into this matter.

The argument has been made by a number of people, as the Senator from Oregon knows, and as I know, that the President should withdraw Judge Haynsworth's name, because then we will avoid a close vote and we will not get into the business of perhaps further discrediting the Court and further bringing it into disfavor. But I would say that I am sure that what is going on in the mind of the President of the United States is that if he caves in on this one, if he gives way to the philosophical, individual idiosyncracies of each Senator, then the same thing will happen when he sends up another name. So I think he is right in standing firm.

Mr. HATFIELD. Why does the Senator feel that this opposition to a so-called conservative appointee was not raised with the appointment of Chief Justice Burger? Chief Justice Burger fit generally into the same philosophical mold. Why was the opposition within the Senate that has accrued to Judge Haynsworth not raised against Chief Justice Burger?

Mr. GURNEY. Well, I do not know that I can answer the question of the Senator from Oregon. I would make a guess, but I cannot prove that it is so. I would say that perhaps the forces that are opposing Judge Haynsworth did not gear themselves up to oppose Judge Burger in the same fashion.

We might just as well face it: The two forces that are opposed to Judge Haynsworth are the civil rights groups of the country and the organized labor groups, the AFL–CIO. This is the steam behind keeping Judge Haynsworth off the Court, and I would say that probably they did not generate this concerted action against Judge Burger.

Then, too, I think that, in some of the ethical matters they have raised, they have found little things on which they can hang their hats. I do not think they are valid reasons, but I do think they are the kinds of things one can make a lot of noise about and spread a lot of smoke about.

Mr. HATFIELD. So there is something beyond the philosophical question, then, that the Senator feels might exist in the Haynsworth case that did not exist in the Burger case?

Mr. GURNEY. There is something to hang their hats on in the Haynsworth case that did not exist in the Burger case.

Mr. HATFIELD. I thank the Senator.

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

Mr. GURNEY. I yield.

Mr. BAKER. On the point made by the distinguished senior Senator from Oregon, I should like to respond with my own views in one respect.

The question was put, in substance—at least, as I understood it—"would a close vote for confirmation, by 50, 51, or 52 votes, do anything to further the public confidence and trust in one of our equal departments of Government?"

I must say that I entirely agree with the implication that the Court is in need of greater public support and greater public trust. It should have it; it is going to have it; and I am going to do what I can to get it. But my answer is that it does not make any difference, for a very great reason, one I am proud to have had some part in, and that was the recent extended debate and conflict over the confirmation, or failure of confirmation, of Justice Fortas.

As I said in my remarks this morning,

I think that, as a result of the Fortas fight, the Senate, in effect, created a higher duty of care than it had ever exercised before in reviewing judicial appointments. I think that as a result of the Fortas case we created and implemented the "Caesar's wife" concept. We expanded the doctrine of advice and consent far beyond that which had existed probably at any other stage in the history of the Senate. As a result, we can probably foresee that every nomination to the Supreme Court of the United States, by Presidents of whichever party, will be scrutinized more carefully by this and succeeding sessions of the Senate than has been the case in the past.

I think we can expect to have closer votes than in the past. We are moving away from the position, as some have charged, of a rubberstamp Senate. I think we have broadened the scope of advice and consent.

I have frankly admitted that this nomination must be judged according to those new and improved rules. But I think that the support given and the celebration I make of the heightened degree of care that the Senate is now exercising will produce closer votes in the future, and I do not think it is going to militate against public confidence in the Court. On the contrary, I think the Court will be a better, stronger, and more accepted part of the tripartite system of government because of the searching scrutiny we give this appointment and other appointments in the future.

Mr. HRUSKA. Mr. President (Mr. SAXBE in the chair), will the Senator yield?

Mr. GURNEY. I yield.

Mr. HRUSKA. Mr. President, if we are going to think in terms of a close vote for Judge Haynsworth, if it is something undesirable and should be withdrawn, why not extend that principle to the Supreme Court. Those nine men gather and often have a difference and the vote comes out 5 to 4? If it is something we do not like and the other side has five votes, then we can say: "It is too close to really have any value. It should be a more resounding vote than that, and really does not count. So we will disregard the 5-to-3 vote."

After all, if there is anything to this one-man, one-vote rule and to the democratic processes, there is always that possibility of determining the outcome by a very narrow margin. Are we to say, if it is narrow and it is against us, "Let's call the whole thing off and go at it again"?

I do not see anything wrong with the record that Justice Brandeis made and that Chief Justice Hughes made. They had a very substantial number of votes against them. They went on to become two of the most brilliant, best, and most constructive jurists this country has ever seen.

I see nothing sinful, or improper about a close vote. I would be happy with a 50-50 vote if the man in the Presiding Officer's chair would say that he would use his best judgment as to which of the candidates would be his favorite and would cast his vote accordingly. I think that still would be a victory.

Mr. GURNEY. The Senator from Nebraska has made a good point, in his usual, well reasoned argument.

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

Mr. GURNEY. I yield.

Mr. HATFIELD. I should like to clarify one of the questions I put to the Senator from Florida, because I think the comments of the Senator from Nebraska may indicate that it was not clearly understood.

I think that what the Senator from Florida said is very true—that there is a great need today to build stronger confidence and faith in the Supreme Court as an institution in this Nation's political system. With a close vote, we are talking here not of a rule of law or an interpretation of law which has very specific wording and very specific criteria, but we are talking about very intangible things, of faith and confidence of the mass of our people. This has emotion in it. It has many other elements that are not put through the same process of rendering an opinion or a decision on a law that is being challenged before the Supreme Court in which there may be a 5-to-4 decision.

I think the Senator from Florida was quite correct when he responded that it would tend to demean the role Judge Haynsworth might play in becoming an instrumentallty of reestablishing this faith if it were a close vote, because it would show that in the Senate there were a number of people who did not have faith in him to sit as a qualified member of the Supreme Court. I am not saying this is what is going to happen. I do not know what the vote is going to be in the Senate; I do not even know what my vote will be at this point.

I am deeply troubled by these discussions and arguments because as a layman I have to ferret through all the arguments in order to make a decision.

I am grateful to the Senator for discussing the matter of philosophy. I appreciate the forthrightness of his argument in saying that Senators should not use philosophy as an answer, even though the President has done so in his nominating power.

That gives me a clear-cut answer to what the Senator is talking about on the floor of the Senate. There are other Senators who have stated otherwise and who have admitted the criteria should include philosophy. I think there is a difference in rendering an opinion by a vote of 5 to 4 and confirming a nominee by a vote of 52 to 48.

Mr. GURNEY. I thank the Senator. Our colloquy on this matter of philosophy was meaningful. I shall go further and say I hope I have convinced him that philosophy should not play a part in his decision when he casts his vote a few days hence.

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

Mr. GURNEY. I yield.

Mr. DOLE. Mr. President, I have listened with great interest. Some in this body came to the Senate on rather close votes. I remember President Johnson, when he came to the Senate, had a majority of 87 votes. He went on to become a great political figure. When President Nixon was Vice President and first sought the Presidency he lost, but there was still confidence in him. He was elected President in 1968.

In the past many Senators have had close elections and have gone on to become great Senators. The Senator from Florida properly pointed out that some judges who have gone on the bench after close votes have become great Justices.

I share the concern of the Senator from Oregon but do not believe we can shape the image of the Court in the Senate. The President has the right to nominate and if qualified so far as integrity, honesty, and ability are concerned, the nominee should be confirmed. I think Judge Haynsworth fits these qualifications and am not concerned that a close vote, will shake confidence in the Court. It is my guess that this nominee has been scrutinized more closely than anyone in history. If he is confirmed by a one-vote margin most Americans will accept the decision of the Senate and he can become one of our great jurists.

Mr. GURNEY. I thank the Senator. I agree that if there is a close vote, it is better that he be confirmed by a close vote than for the Senate to reject the confirmation. That would not be building confidence in the Supreme Court.

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

Mr. GURNEY. I yield.

Mr. BAYH. Mr. President, I appreciate the remarks of the distinguished Senator from Florida. I certainly know he has given this matter a great deal of thought.

On the point raised earlier by the Senator from Tennessee, I think we have set a higher standard. I concur with him. I think this new standard is good.

I do not believe, however, that because we have set a higher standard, we will always have a close vote. That was not the case in the Burger nomination. I do not know how many people opposed that nomination, but it was relatively few.

I am deeply concerned about the impact of a close vote on this nomination. Everybody looks at this matter differently. I appreciate the Senator yielding to me on his time although I have a different opinion. However, here we are for the first time in history being asked to fill a vacancy on the Court, which came about due to a question of ethics. Many people are looking to us to lead the way. I hope we will consider the loss of public confidence which will result from a narrow margin of votes for confirmation. I think it would be unfortunate to lose such confidence. I respectfully differ with my friend from Florida and I think it is in the finest democratic traditions.

Mr. GURNEY. I thank the Senator for his contribution. It is certain that Senators are going to differ on this matter. That is a certainty.

I might say, since this matter has been brought up as to what the country may feel about Judge Haynsworth one way or another, I have noticed in one or two polls taken recently that there is a fair amount of opposition to Judge Haynsworth. However, the interesting thing is that no one seems to know why. The pollsters, when questioning people dur-

ing a poll as to why they are opposed to Judge Haynsworth cannot get any response as to why he would not make a good Judge. I think that may have something to do with some remarks made the other night by the Vice President, and that is, what people hear from the news media.

I can give a very good example of what I am talking about. On November 6 I made a speech in the Senate in which I publicly came out for the first time for Judge Haynsworth. I happened to be in Florida the next day. On that same day one other Senator made a speech opposing Judge Haynsworth, and that was the Senator from Iowa (Mr. MILLER). I saw three leading Florida papers the next day that dealt with this matter. Every one of them headlined Senator MILLER'S opposition to Judge Haynsworth. In not one of the three newspapers was there one shred of print, not even a line, not even a word about the fact that their own Senator from Florida had come out in favor of Judge Haynsworth.

So it is not surprising that the people of the country may have an idea about Judge Haynsworth and they may not know exactly what the facts are. There is further evidence of what the Vice President was talking about the other night, and that is the power of molding opinion by some of the news media.

I would urge my colleagues to view this matter as dispassionately as possible. Stripping away the subterfuge and the exaggerations, I think no true bill can be delivered against Judge Haynsworth. The opposition has had more than 2 months now to pore over Judge Haynsworth's records and his business dealings and his stock market transactions—in a manner it might say which is unusual in public life—and the result of this search has disclosed little solid material, and in my view, no substantial or valid objections. I think the Senate could better discharge its obligations to advise and consent on this nomination by examining Judge Haynsworth's judicial record.

I realize that Judge Haynsworth's views on social issues may not please all my colleagues but I think that those who have these problems should state them in those terms. In that way we can come to the real problems which are bothering some of my colleagues, and the real basis for much of the opposition to Judge Haynsworth, philosophical attitudes on civil rights matters and attitudes on matters close to the hearts of organized labor.

For me, I believe that Judge Haynsworth is eminently qualified to serve on the Supreme Court, and I will vote for his confirmation.

Mr. SPONG. Mr. President, I concur with those of my colleagues who, in announcing their positions on the nomination of Clement F. Haynsworth, Jr., have spoken of the rather awesome responsibility imposed when exercising the constitutional prerogative to advise and consent to a President's nomination to the Supreme Court.

My first exposure to this responsibility was the nomination in 1967 of Justice Thurgood Marshall. At that time I determined that a Senator should review the hearings on a Presidential nominee for the Supreme Court with a presumption in favor of approval. The nominating power lies with the President of the United States and it is his prerogative to select the man he wishes to become a part of the Nation's highest tribunal. Of course, this is not to suggest that a Senator should blindly acquiesce to an appointment, for consent should be governed by evidence concerning qualification, background, experience, integrity, and temperament. The Senate should not endeavor to shape the Court in its own image. For that matter, in determining judicial philosophy, many fail to appreciate how meaningless classifications are except in relationship to a particular case. How many justices have been seated on the Court, neatly labeled as to their philosophical, social, and political views, only to disprove all predictions of how they would perform?

My preference for a narrow view of advice and consent results in part from a survey of the rather shoddy history of the Senate's role in Supreme Court appointments during the 19th century, particularly during the administrations of Tyler, Fillmore, and Grant. Rejections by the Senate—and they were numerous—were, for the most part, based upon purely partisan, political considerations.

Also, I recall the humiliation of Judge John J. Parker, of North Carolina, who, in 1930, was designated a Supreme Court Justice by President Herbert Hoover. That nomination was rejected by a vote of 41 to 39 and Judge Parker remained on the fourth circuit, serving with distinction for many years as its chief judge. As a law student, I came to regard Judge Parker as perhaps the most able jurist in the United States. Such of the argument against Judge Parker during the debate on his confirmation resulted from an opinion he had written in one case. Many who voted against his confirmation later acknowledged that they had been mistaken in judging his alleged bias in the midst of heated, political debate.

Opposition to Judge Parker was similar in many respects to that expressed to the nomination of Clement Haynsworth, although there were no ethical charges in the Parker debates. When charges questioning judical conduct are made, there is an obligation to weigh them cautiously. In the case of this particular nomination, one to fill a vacancy created by a resignation following charges of judicial impropriety, it is necessary to examine carefully the charges, the testimony taken by the committee, and the committee's report thereon.

Moreover, one has a particular obligation to a sitting judge. For if it be determined that Judge Haynsworth has behaved with impropriety, then, in concluding that he does not meet the standards of fitness for service on the Supreme Court, are we not also suggesting that the judge is not suitable for service as chief judge of the fourth circuit?

Realization of this seemed to dictate that independent investigation be made beyond the testimony contained in the record of the hearings. It has not been difficult for me to make inquiries concerning Judge Haynsworth. The State of Virginia is in the fourth circuit. Members of the Virginia bar have been readily available to give their independent opinions concerning Judge Haynsworth's fitness for higher judicial appointment. It has been helpful to consult with them after the hearings on the nomination were completed and the ethical charges made public, as well as having the benefit of their views of Judge Haynsworth's attitude toward ethical problems. Also, there are within my State excellent law schools whose professors have been available for evaluation of ethical questions raised during the Haynsworth hearings, as well as to comment upon the testimony before the committee concerning certain of the judge's decisions.

The Virginia lawyers with whom I consulted, who practice extensively in the fourth circuit, almost without exception are of the opinion that Judge Haynsworth is a man who is professionally qualified for service on the Supreme Court of the United States. They view him as a man with both personal and intellectual integrity. These views have been buttressed by Judges Albert V. Bryan and John D. Butzner, the Virginia members of the Fourth Circuit Court of Appeals, who have expressed their complete confidence in Judge Haynsworth's integrity and ability. Despite the many expressions of high regard for Judge Haynsworth's qualifications, the objections against the nominee which raise ethical questions have been so numerous and have been given such wide publicity, that I resolved to examine and evaluate them carefully before making a determination as to whether I should consent to this nomination. Accompanying allegations of judicial misconduct have been statements that his record of decisions indicate prejudice against the interests of many of our citizens. This is an extremely sensitive time for the Supreme Court and a time during which it is essential to restore public confidence in the Court. Regardless of whether a fair analysis of Judge Haynsworth's decisions shows him to be free of prejudice, if there were a real question about his honesty, his effectiveness as a judge would be forever impaired and public confidence in the Court further damaged.

Accordingly, I have consulted with law professors as well as corresponded with authorities on judicial ethics, particularly concerning disqualification.

The various objections to confirmation of this nomination are outlined in both the majority and minority views of the committee report. Many of the charges are, in my judgment, groundless and have served only to cloud the basic issue of determining Judge Haynsworth's fitness for this appointment. Most of these charges have been answered, but there are questions relating to disqualification because of stock ownership that require detailed examination and comment. We must realize that there is no present prohibition against the ownership of stock by a judge. Specifically, five cases have been cited in which opponents of the nomination have stated that Judge Haynsworth sat when the cases involved corporations in which he had financial in-

terests by reason of stock ownership, and in so doing, violated both the disqualification law and the canons of judicial ethics. Ownership of stock as it relates to judicial disqualification is governed by 28 U.S.C. 455 which provides as follows:

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein.

Canon 29 provides as follows:

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved.

THE DARLINGTON CASE

Of the five cases cited, the one with the longest history is *Darlington Manufacturing* Co. v. *NLRB*, 325 F. 2d 682, decided before the fourth circuit in November 1963. Judge Haynsworth's participation in this decision was questioned as far back as December 1963 and was investigated by Judge Simon Sobeloff, then chief judge for the fourth circuit, who in February of 1964 advised the then Attorney General, Robert F. Kennedy, that he had conducted an independent investigation of certain allegations with regard to Judge Haynsworth and concluded they were without foundation. Judge Sobeloff's conclusions were shared by Attorney General Kennedy, who expressed complete confidence in Judge Haynsworth.

The various corporate parties to the case are outlined in detail in the hearings and committee report. Nevertheless, we might recite briefly the following facts: At the time of the hearing Deering-Milliken operated textile plants in several southern States and was a party to the suit. Deering-Milliken granted space in its plants to vending machine companies on a competitive bidding basis, and one of these companies was Carolina Vend-A-Matic, which had machines in five of Deering-Milliken's 27 textile plants. Judge Haynsworth served as vice president and director of Carolina Vend-A-Matic until October 1963, resigning in compliance with a resolution passed by the United States Judicial Conference and adopted shortly before that date. When Judge Haynsworth resigned either as an officer or director of Vend-A-Matic is, in my judgment, not relevant to a determination of whether or not he should have disqualified himself in the Darlington case. He was a substantial stockholder in Carolina Vend-a-Matic from its inception in 1950 until 1964, when he sold his interest, and a stockholder at the time the Darlington case was heard. The legal and ethical questions concern whether a judge who owns stock in one corporation which in turn does business with a second corporation should disqualify himself when the second corporation is a party litigant in his court.

Cases seeking disqualification where a judge holds stock, not in a party before the court, but in a corporation which does business with a party litigant have rejected the argument for disqualification. After reviewing the record and the case law, I concur with the statement by Judge Lawrence E. Walsh, chairman of the American Bar Association Committee on Judicial Selection, who stated:

We believe that there was no conflict of interest in the *Darlington* case which would have barred Judge Haynsworth from sitting and we also concluded that it was his duty to sit.

PARENT-SUBSIDIARY CASES

In three cases: *Farrow* v. *Grace Lines*, 381 F. 2d 380 (1967); *Donahue* v. *Maryland Casualty Co.*, 363 F. 2d 442 (1966); *Maryland Casualty* Co. v. *Baldwin*, 357 F. 2d (1966), it is charged that Judge Haynsworth violated the law and the canons of judicial ethics because he sat while he owned shares in the parent subsidiaries which were before the court.

There is no clear authority in Federal cases dealing specifically with disqualification in parent-subsidiary cases, but there is some State court authority which holds that ownership in the parent of a subsidiary does not require disqualification.

It is clear from my examination, however, that Judge Haynsworth's interest in these three cases was very limited and that by the standard of "substantial interest" laid down in the disqualification statute or by the standard of "personal interest" set forth by the canons of judicial ethics he was not required to disqualify himself. In fact, faced with the strong rule that requires federal judges to sit where not disqualified, it would seem that Judge Haynsworth was under a duty to accept the responsibility of ruling in these cases, as he was in the Darlington case.

THE BRUNSWICK CASE

The matter that has given me grave concern was the purchase by Judge Haynsworth of 1,000 shares of stock in the Brunswick Corp. while a case involving that corporation was still pending before the fourth circuit. A chronological recitation of facts is outlined in the report on the nomination. The situation is unique insofar as the application of the recognized standards of ethics is concerned because the purchase was made after the case has been decided, but before a written opinion had been signed.

The Brunswick case and the Judge's stock ownership first came under discussion during the hearings. Judge Haynsworth had previously testified and been excused, and the subcommittee was examining John P. Frank, a recognized expert on disqualification of judges who is quoted in the committee report by both proponents and opponents of the nomination.[1]

Mr. Frank did not comment specifically on the Brunswick case in this testimony because he was not familiar with the facts. The following week Judge Haynsworth reappeared before the committee concerning this stock ownership. Also, the committee heard from Judge Harrison L. Winter of Baltimore, the judge to whom the Brunswick opinion was assigned for preparation, and Arthur C. McCall, a stockbroker of Greenville, S.C., who handled Judge Haynsworth's account.

From their testimony, one can make the following conclusions:

First. There was nothing in the evidence of the case, or from the precedent it established, that would encourage investment in the stock of Brunswick Corp.—hearings, pages 251, 256, 257.

Second. The panel of judges designated by the fourth circuit to hear the Brunswick case unanimously decided to affirm the district judge's opinion on November 10, 1967—hearings, page 238.

Third. The broker, Mr. McCall, suggested around December 15, 1967, to Judge Haynsworth that he purchase the Brunswick stock. The stock was ordered on December 26, 1967—hearings, page 264.

Fourth. On December 27, 1967, Judge Winter mailed the Brunswick opinion to Judge Haynsworth and upon receipt of same he realized that the case had not ended—hearings, pages 238, 272.

Fifth. The Brunswick decision was announced on February 2, 1968, after which the rules provided for 30 days in which to petition for a rehearing. No petition was filed within the 30-day period, but on March 12 and April 4, 1968, petitions to extend the time for a rehearing were filed and subsequently denied—hearings, page 245, 262.

Judge Winter, in addition to providing the committee with the factual situation in the Brunswick case, expressed the opinion that Judge Haynsworth was not in violation of either Canon 26 or Canon 29 of the American Bar Association's Code of Judicial Ethics—Hearings, Page 251, 252—and further, that he did not have a "substantial interest" within the meaning of 28 U.S.C. 455, the Federal statute in this matter.

Neverthless, there is disagreement on this between proponents and opponents of the nomination. Since Professor Frank did not testify in any detail on

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[1] Mr. Frank is the author of *Disqualification of Judges* 56 Yale L.J. 605 (1947). The following note was appended to his letter of September 3 to the Chairman of the Judicial Committee:

"This is my thirtieth year as a law teacher, lawyer, and author. Politically, I was a strong supporter of President Kennedy, President Johnson, and Vice President Humphrey. In the constitutional field, I believe I filed, with others including the present Solicitor General of the United States, the first brief calling for a total end to school segregation (*Sweatt* v. *Painter*, 339 U.S. 629 (1950); was one of the first to advocate the rule which has become one man, one vote (*Political Questions*) in *Supreme Court* and *Supreme Law* 36, 41 (E. Cahn ed. 1954); consistently advocated the right to counsel rule which culminated in *Gideon* v. *Wainwright*, 372 U.S. 335 (1963); and was co-counsel on the prevailing side of the confession case of *Miranda* v. *Arizona*, 384 U.S. 436 (1966). Numerous books and articles reflect an abiding admiration for the work of Justice Hugo L. Black, and my immediately forthcoming work on law reform is dedicated to Chief Justice Earl Warren. I know Judge Haynsworth by virtue of twice having been a guest speaker on current developments in the law of civil procedure at the Fourth Circuit Judicial Conference, over which he presides, and as a fellow member of the American Law Institute." (Hearings, Page 117)

the Brunswick case and filed no subsequent statement for the record, I undertook to solicit additional comment from him. His conclusion was that while reasonable people might conclude differently regarding what Judge Haynsworth should have done when he discovered the inadvertent acquisition of the Brunswick stock, the Judge's actions reflected a practical judgment on the alternatives available and did not rise to the level of ethics.

At this point I ask unanimous consent that my letter, dated October 30, 1969, addressed to John P. Frank, Esq., Phoenix, Ariz., be made a part of the RECORD at this point in my remarks and, also, that his letter to me, dated November 3, 1969, be admitted subsequent thereto.

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

OCTOBER 30, 1969.

JOHN P. FRANK, Esq.,
Lewis, Roca, Beauchamp & Linton,
Phoenix, Ariz.

DEAR MR. FRANK: I have been reading your testimony of September 17th before the Senate Judiciary Committee in the hearings on the nomination of Judge Clement F. Haynsworth, Jr. On Page 128 of the printed transcript, Senator Bayh questions you about *Brunswick Corp.* v. *Long*, 392 Fed. 2d 348, but the matter was not pursued.

Judge Haynsworth testified again on Tuesday, September 23rd, and as near as I can conclude from his testimony the facts concerning his purchase of the Brunswick stock are as follows: beginning December 15th, 1967, through his broker, Arthur C. McCall, Judge Haynsworth sought to purchase a thousand shares of Brunswick stock. After some hesitation over price on the part of the broker, an order was entered on December 26th, purchasing a thousand shares of stock at $16 a share. Judge Haynsworth paid for the stock by check on December 27th and received his stock certificates on the 20th of January 1968.

At some time subsequent to that Judge Haynsworth received the proposed opinion in the case from Judge Winter. At that stage he realized the case had not been completely disposed of and that he had become a stockholder. On Page 272 of the printed transcript Judge Haynsworth is quoted as follows:

"My conclusion was that I should endorse it since Judge Winter had written an opinion precisely as we had agreed, since Judge Jones concurred, since no one had any doubt about it, and nothing else occurred to return the case to the discussion stage. Now, it does occur sometimes, as was brought out from Judge Winter, that when an opinion is assigned to a judge for a number of reasons he may change his view.

"This may be the result of something he found in the record of which we were not aware. It may be the result of some research he did in his library to bring out some point that we were not aware of, were not fully appreciative of, and the case then reverts to the conference stage. It goes back for a brand new, fresh viewpoint. That happens now and then, not with great frequency but it does occur.

"Nothing of the sort occurred in this instance. If it had occurred, I would have gotten myself out. Indeed, I would not only have gotten myself out, I would have gotten Judge Winter out and Judge Jones, because if I was not qualified to sit in this case, I had conferred with them and if it was wrong for me to be in, it was wrong for them to be in it, so I would have gotten all three out and the case would have been set to be reheard before three new judges.

"As against that, I thought that really the decision had been made in November, long before I knew anything about Brunswick stock or became a stockholder, and in the interest of judicial efficiency, I should go on and endorse my name on the opinion as approving what we had agreed upon, as approving it as an expression of what we had agreed upon back in November.

"That, of course, I did. I do not think that was acting in a strictly judicial capacity at the time because it was merely an affirmation of what we had agreed upon some, well, 8 weeks earlier.

"As I say, Judge Winter said that he would not have bought this stock and I agree with him completely. I would not have bought it either if I had been aware of the fact that this case that we had heard in November had not been disposed of. Afterward I saw no reason why I should not proceed as I did in light of the circumstances and the fact that there was no reversion of this case ever to the conference stage. So I signed it and that was that.

"I do not think under the circumstances that under the statute, I did not think then, I do not think now, that what I did in the decisional process in that case was done while I had any interest whatever in the case or in its outcome."

Subsequent to this, after a 30-day period under the rules had expired, there was a petition to extend the time for filing a motion for a new trial. Later there was a petition to reconsider denial of the petition to extend the time within which to file the motion. I do not believe you had all these facts before you at the time you testified and I am writing to ask if you would care to make any additional comment with regard to the question of whether Judge Haynsworth should have disqualified himself. I shall be calling you concerning this inquiry the early part of next week.

Sincerely,

WILLIAM B. SPONG, Jr.

LEWIS, ROCA, BEAUCHAMP & LINTON,
Phoenix, Ariz., November 3, 1969.

Hon. WILLIAM B. SPONG, JR.,
U.S. Senate, Washington, D.C.

DEAR SENATOR SPONG: This will acknowledge your letter of October 30 asking for further comment on the matter of the *Brunswick* case as it relates to Judge Haynsworth in terms of the law of disqualification, and the relevant ethical standards.

I. GENERAL PRINCIPLES

The heavy majority point of view is that a judge should not hear a case of a corporation in which he holds stock. As I said in my earlier statement, "the heavy majority rule" is that "if a judge holds shares in a corporation which is in fact a party before him, he should disqualify as much as if he himself were a party." Senator Bayh asked me directly about this at P. 127 of the Hearings as printed and I expressly replied in agreement with his statement that if one holds "stock of any appreciable value in any corporation that is before you, you should automatically disqualify yourself." The cases to this effect are collected in the comprehensive annotation cited by me earlier, 25 A.L.R. 3d 1331 and were discussed to the same effect in my 1947 article.

While this is the majority view and I think clearly the better view, there are limitations where either the interest is small in relation to the whole or where there has been a waiver. This takes two forms: illustratively, the 5th Circuit takes the view that if the interest is small in relation to the total interest involved and there is no real effect of the decision on that interest, it is proper for the judge to sit. See *Kinnear-Weed Corp.* v. *Humble Oil & Refining*, 5th Cir. 1968, 403 F. 2d 437. This was brought into sharper focus very recently in connection with a utility matter where two of the judges had stock. The 5th Circuit Court of Appeals expressly found that the judges were nonetheless not disqualified by interest."

The second limitation of this sort is the closely related view that if there is any objection because of small stockholding, it may be dissipated by a waiver after notice.

II. PERSONAL VIEW

For myself, as I said earlier, I subscribe to the majority view. In that view, the judge should not sit if he has any stock at all in the corporation. This is the ABA position. The matter is not cured by disclosure and waiver. This practice is eminently suitable in arbitrations, where counsel need never practice before the particular arbitrator. See *Commonwealth Coatings Corp.* v. *Cont. Gas Co.*, 393 U.S. 145 (1968). But it puts an unreasonable pressure on counsel to waive if they appear regularly.

III. APPLICATION OF THE FOREGOING TO THE BRUNSWICK CASE

A. General principles

I read the testimony of Judge Haynsworth as agreeing with me that a judge should not sit if he has stock although he did follow the practice of waiver and disclosure in very small instances. He expressly testified that had he been aware that *Brunswick* was still in his court he would not have bought the stock. He does differ from me in approving the disclosure and waiver practice, but this is abstract in the circumstances of this case since it was not involved.

B. Controlling law

1. If one takes the 5th Circuit view, then there would have been no violation of the statute even if Judge Haynsworth had held the stock from the beginning since the interest is wholly unaffected by the case.

2. But this, too, is an abstraction, since he did not so hold it. There simply is no law on the subject of inadvertent after-acquisition. The whole problem of inadvertency is a perfectly real one. I recollect that when I was a law clerk at the Supreme Court 27 years ago, one of the Justices had his law clerks regularly inspect all records to be sure that no corporation was tucked away in the case in which he might hold some stock. This is clearly the better practice. Judge Haynsworth testified that in the light of the incident he would "check the cases that had been heard in his Court and were not disposed of" if he were doing it again.

IV. CONCLUSION

Given the facts as stated, the Brunswick stock acquisition of Judge Haynsworth seems to me, as he says, to have been a plain mistake. Once it occurred, the problem was how to dispose of the matter with fair concern for the interests of all. I suppose that reasonable people could conclude differently as to what might have been done—it was necessary to balance the cost of reargument of a perfunctory case against the other factors involved. While I think that this is a matter of practical judgment, I don't believe that it rises to the level of ethics.

Yours very truly,

JOHN P. FRANK.

Mr. SPONG. Mr. President, I agree that this matter does not rise to the level of ethics, but I wish that Judge Haynsworth had consulted with either the other members of the panel or with counsel after he became aware of the inadvertent purchasing of the stock. In my initial reading of the transcript, I was disappointed to realize he had not done this. Nevertheless he discussed this matter frankly with the committee, stating that acquisition of Brunswick stock was a plain mistake. Considering the perfunctory nature of the remaining matters

before the Court after the acquisition, the rather narrow legal question involved, and the fact that every judge who has reviewed the case from the district level through denial of certiorari is in complete agreement on the Brunswick decision, one must recognize that the judge made a practical judgment, one on which reasonable men might disagree, but nevertheless one that does not involve a violation of ethics.

There have been repeated suggestions that Judge Haynsworth was performing an act of judicial discretion with regard to the two petitions filed in March and April of 1968. These petitions were not timely in that they were filed after the allowed 30-day period had expired*—hearings, page 262, 278–280. In my view, the judges had no choice but to deny the petitions.

CONCLUSION

I believe Judge Haynsworth is an honest man. In my view, the questions concerning his ethics have not been substantiated. While some of his actions might be classified as mistakes or unintentional indiscretions, I do not believe they rise to a level which should cause one to doubt his basic integrity. My inquiries concerning his fitness for service on the Supreme Court have confirmed the high opinions held of him by members of the bench and bar of the fourth circuit.

I believe Judge Haynsworth possesses the qualifications to serve with distinctinction as an Associate Justice of the Supreme Court of the United States. Accordingly, I shall vote for confirmation.

Mr. BROOKE. Mr. President, the time is drawing near when the discussion and debate on the nomination of Judge Clement F. Haynsworth, Jr., will conclude and each of us will have to make a judgment of this man's qualifications for service on the highest Court in the land. Our respective decisions, while certainly not infallible, will have benefited greatly from the interrogation of witnesses by the Senate Judiciary Committee and from the exhaustive public review that has accompanied this nomination.

Service on the U.S. Supreme Court represents the high point of any lawyer's professional career. This personal consideration, along with an awareness of the impact that such an appointment will have on the development of our national history, places on each of us the grave and solemn responsibility for making a full and careful evaluation of Judge Haynsworth's credentials. The distressing conclusion that I could not support this nomination came only after I had devoted much time and thought to a reading of the hearing transcripts and a review of the opinions that the judge has authored. I also had the benefit of thoughtful comments from my constituents and some independent investigation of my own.

The question of confirmation quite properly deals with the nominee's intellectual capabilities, his judicial temperament, and his personal integrity.

The judge's opinions often reflect a capability for understanding the intricacies of the law. In certain areas his opinions reflect a thoughtful and independent approach.

It has been argued that Judge Haynsworth is the epitome of a strict constructionist. Yet a reading of the judge's opinions makes it clear that he is not always bound by a narrow construction of the law. In *Bruton* v. *United States* (391 U.S. 123, 1968), the Supreme Court ruled that two defendants cannot be tried together if one has made a confession implicating the other unless precautions have been taken to protect the right of confrontation of the defendant who has not confessed. It is significant to me that 8 years before this decision, Judge Haynsworth had written of the need for precautions of this kind in *Ward* v. *United States* (288 F. 2d 820), and said there that "in the normal case, such a precaution should be taken routinely."

His position was more clearly stated in *Rowe* v. *Peyton* (383 F. 2d 709), 1967, when he said:

> This Court, of course, must follow the Supreme Court, but there are occasional situations in which subsequent Supreme Court opinions have so eroded an older case, without explicitly overruling it, as to warrant a subordinate court in pursuing what it conceives to be a clearly defined new lead from the Supreme Court to a conclusion inconsistent with an older Supreme Court case (p. 714).

In this case, the judge anticipated that the Supreme Court would no longer follow its earlier decision in which it held that a prisoner in custody under one sentence could not challenge another sentence he was to serve in the future.

It is equally clear that Judge Haynsworth has been willing on occasion to overlook technical deficiencies in cases before him. In *Coleman* v. *Peyton* (340 F. 2d 603), 1965, he stated:

> Claims of legal substance should not be forfeited because of a failure to state them with technical precision (p. 604).

Later he said:

> Theoretical abstactions are of no help. Our conclusion must be founded upon practical consideration. (*United States* v. *Southern Ry. Co.* [341 F. 2d 669, 671], 1965.)

Judge Haynsworth's broad construction of legal issues involving criminal justice contrasts markedly with his approach to issues presented in other cases. On other issues, for reasons best known to him, Judge Haynsworth has chosen to ignore "practical considerations," and to rely strictly on legal technicalities.

Let me illustrate my point. In the now famous Prince Edward County case, Judge Haynsworth reached the conclusion that the county has "abandoned discriminatory admission practices when they closed all schools as fully as if they had continued to operate schools, but without discrimination," page 336 of the opinion. He went on to quote Anatole France by saying:

> The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread. That the poor are more likely to steal bread than the rich or the banker more likely to embezzle than the poor man, who is not entrusted with the safekeeping of the monies of others, does not mean that the laws proscribing thefts and embezzlements are in conflict with the equal protection provision of the Fourteenth Amendment. Similarly, when there is a total cessation of operation of an independent school system, there is no denial of equal protection of the laws, though the resort of the poor man to an adequate substitute may be more difficult and though the result may be the absence of integrated classrooms in the locality (pp. 336–337).

It did not seem to matter to the judge that the suit was brought by poor parents whose children had been denied access to any public education for the preceding 4 years and who, in fact, had had no schooling during that period. The practical effect of his opinion was, in the words of Judge Bell's dissent, a "humble acquiescence in outrageously dilatory tactics." Mr. Justice Black, speaking for a unanimous Supreme Court in reversing Judge Haynsworth, wrote:

> Prince Edward's public schools were closed and private schools operated in their place with State and county assistance, for one reason only: to insure, through measures taken by the county and the State, that white and colored children in Prince Edward County would not, under any circumstances, go to the same school.

The issue was at least clear to all of the Supreme Court.

The judge has been reversed for favoring procedural delays to desegregation in other cases. *Bowman* v. *County School Board of Charles City County, Va.* (382 F. 2d 326) 1967; and *Green* v. *County School Board of New Kent County, Va.* (382 F. 2d 338) 1967, are just two examples. In the Bowman case, Judge Sobeloff and Judge Winter felt compelled to write:

> The situation presented in the records before us is so patently wrong that it cries out for immediate remedial action, not an inquest to discover what is obvious and undisputed.

It would be both inaccurate and unfair to argue that Judge Haynsworth has been uniformly insensitive to the practical implications of these educational cases for Negro children. Other opinions in which he has participated, mostly unsigned, have upheld settled desegregation law or granted partial relief to the litigants. Of significance, however, is the fact that in his few signed opinions and dissents, technical issues have been permitted to control his decisions in favor of those who seek local evasion of a clear Supreme Court mandate.

Do such inconsistencies reflect the "cold neutrality of an impartial judge"? Where is the even hand of justice? Should a jurist be more sensitive to the protection of individual rights in criminal cases than he is to the protection of individual and group rights in other cases, especially when the power of the State is engaged? I think not.

I make these observations not as conclusive evidence of any professional shortcomings on Judge Haynsworth's part. Rather, the point I wish to make is that his vaunted precision and strict constructionism are not uniformly evident in all areas of the law.

Nor, I regret to say, is this claimed

* Rule 34, section 2.

thoroughness and meticulous care always present in the judge's nonjudicial activities and in some of his testimony concerning them. I have looked at the evidence as it was elicited from the various witnesses and I have examined the Canons of Judicial Ethics and the appropriate conflict-of-interest provisions in the United States Code. The distinct impression that emerged from my review was that Judge Haynsworth, on numerous occasions, had demonstrated an insensitivity to the spirit if not the letter of the law and canons.

Equally disturbing to me was the judge's apparent lack of candor in his testimony before the Senate Judiciary Committee. On more than one occasion, his testimony created discrepancies with what were later determined to be the facts.

I will not here review the details of the judge's business and stock involvements, since they have been the subject of intense debate already. I will only note what I believe parties to either side of the dispute can acknowledge; Judge Haynsworth does not always strictly construe the standards governing such activities.

Let me make clear that I believe the Court needs men who are dedicated to strict construction of the law. Jurists of this type, including the late Justice Frankfurter, are essential to the interplay within the Court as it strives for the most reasonable and most equitable interpretation of the law. When the Court has leaned to broader constructions in the interest of social justice and the larger purpose of the Constitution, as in the Brown case and Baker against Carr, it has done so most deliberately because its members had the benefit of powerful arguments for strict interpretation of the Constitution. The question before the Senate is not whether strict constructionists should sit on the Court; they should. The question is whether Judge Haynsworth should sit on the Court.

Mr. President, this is a difficult and painful situation. No one relishes depriving another man of the immense honor and opportunity for service which appointment to the Supreme Court offers. At the personal level, it would be easier and far more comfortable for most Senators to go along with the nomination, to skip over the record lightly, to ignore the blemishes which appear there.

But men are sent to the Senate to make hard judgments in the public interest, not to find comfort in their personal relations.

Some would assert that a President's nomination deserves the greatest deference and that any doubts should be resolved in favor of confirmation. That is true in some cases and in some degree.

When a President nominates an officer of the executive branch, he deserves and usually gets, the greatest latitude. The reason is simple and sound. An executive official is responsible to the President and can be held accountable. He carries out the President's policies. He holds office only at the pleasure of the White House. He is, in short, a political appointee. His tenure, like that of Members of Congress and the President himself, is limited.

These considerations have built a strong tradition that the President is entitled to pick his own men and to have them confirmed, barring clear evidence of incompetence or flagrant ethical shortcomings. That tradition largely explains the outcome of the long controversy over Secretary Hickel's nomination to the Interior Department. Many of us had qualms about his qualifications for that particular post, but there were no sufficient grounds for rejecting the President's judgment. And no one could be happier than I that the Secretary's performance has proven the great capacity which the President discerned in him. Not only is Walter Hickel vindicating his confirmation by doing a far better job than the critics including myself, had expected; he is well on the way to being one of the finest Interior Secretaries in memory. He has shown a rare ability for taking on the tough issues and for promoting the national interest by enlightened personal leadership. His achievements as a member of the Cabinet should bolster our confidence in the practice of respecting Presidential wishes in appointments to the executive branch.

But there is another, wholly different class of nominations. Judicial appointments have little in common with those to the executive branch. The factors in the confirmation of a judge must never be confused with those governing Cabinet nominees.

Any judge, and especially a Justice of the Supreme Court, is decidedly not the "President's man." Once appointed, he may sit for life. His decisions should be totally free from executive or legislative supervision. Although the laws he interprets may well be changed, his interpretations are exclusively his own.

The Court's unique position as the third, coequal branch in our political system imposes unique requirements on candidates for the bench. It also creates quite different obligations on the part of the President and the Senate. In confirming a nominee to the Supreme Court, the Senate bears no less responsibility than the President to insure that the most impeccable standards are met. It is the mutual obligation of the Senate and the President to safeguard the third branch of our Government.

The Court's stature is too precious to jeopardize, and that stature depends largely on the confidence our people have in the wisdom and integrity of its members. Nowhere in American government is it so essential for the superior competence and fairness of a public official to be demonstrated and recognized.

It does not take a professional student of the Court to understand this. It is the common insight of most Americans. The recent tumoil surrounding the Court has only underscored the need to apply this stringent test rigorously.

This, then, is the context in which Judge Haynsworth's nomination must be viewed. The question of confirmation transcends the specific concerns which many have voiced about his record on labor cases, or civil rights cases, or even his questionable financial activities while sitting on the bench. The judgment must be made in the whole, and I think it must be based on answers to the questions I posed some weeks ago:

Is Judge Haynsworth the man to restore the nation's confidence in the utter integrity of the Supreme Court? And is Judge Haynsworth the man to maintain the faith of that vast majority of fairminded Americans, not to mention the disillusioned minority, who look to the Court as the indispensable instrument of equal justice under law? I have concluded, reluctantly and sadly, that he is not.

The rejection of this nomination would be a personal tragedy for Judge Haynsworth. I regret that deeply. But his confirmation could be a collective tragedy for the Nation, and that risk is simply too real and too grave to accept.

We cannot afford to fill the ninth seat on the Court with a man who enjoys anything less than the full faith and respect of those whom he serves. We cannot afford to weaken the reverence on which the Court's power is ultimately founded.

The events of recent months have given us a new appreciation of our duties in the vital process of confirmation. As the Senate looks forward to future nominations, I believe the present proceedings will play a singular role in establishing the scope of this body's prerogative and the seriousness with which it views its duties in these matters. The result, I trust, will be a Supreme Court of even greater influence in American life, an influence founded on the merited confidence of our citizens.

That is the paramount consideration which ought to govern our action. Weighing it, I am sure the Senate will act wisely.

Mr. DOLE. Mr. President, from time to time one of our newspapers strikes the nail squarely on the head when it comes to analyzing the issues.

The Chicago Tribune did this recently in the case of Judge Clement Haynsworth.

I ask unanimous consent to include this editorial in the RECORD.

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

THE DEFAMATION OF JUDGE HAYNSWORTH

Professional "civil rights" agitators, labor leaders, and "liberal" columnists have launched a massive propaganda campaign against confirmation by the Senate of President Nixon's nomination of Judge Clement F. Haynsworth Jr., of South Carolina, to be a justice of the United States Supreme court.

Judge Haynsworth is opposed mainly by the same forces that defeated Senate confirmation of President Hoover's nomination of Judge John J. Parker, of North Carolina, for the Supreme court in 1930. Jndge Parker was chief judge of the United States Court of Appeals for the 4th circuit, of which Judge Haynsworth has been chief judge since 1964. The National Association for the Advancement of Colored People, the labor unions, and other "liberal" elements attacked Judge Parker as a "reactionary," but some liberal senators who voted against him, notably Borah of Idaho, Wheeler of Montana, and La Follette of Wisconsin, praised him in later years.

Judge Haynsworth has been called a 'hard core segregationist" by Joseph L. Rauh Jr., vice chairman of Americans for Democratic

velop. Inevitably, such conditions, if prolonged, degenerate into violence. It is not surprising that the flag of the enemy was the most prominent feature of this mobilization.

Nicholas von Hoffman, the New Left columnist for the Washington Post, wrote as follows on Sunday:

If after today the war doesn't end immediately, these same thousands and their even more numerous supporters will commence the campaign to end it. We will see a tapering off of demonstrations designed to convince public officials to change their minds. Instead the movement will shift its vectors toward direct action.

What is this if it is not a call to violence? Von Hoffman is saying that the alternatives are immediate surrender or violent confrontation. This Nation will not submit to the Von Hoffman type of blackmail, yet it requires very little insight to see that the kind of mob politics we are witnessing must quickly degenerate into violence.

Such movements weaken our country, and they weaken the efforts of the President to get an honorable peace.

The publicized aim was to bring peace in Vietnam to be accomplished by the unilateral and precipitate withdrawal of U.S. forces. Such withdrawal would inevitably mean U.S. surrender and a massive Communist bloodbath and genocide in that unfortunate country. In effect, the hard-core demonstrators and those innocently aiding and abetting them were serving as a Communist fifth column marching in time of war in the Capital of the United States.

What did the massive demonstration accomplish? Did it possess any specific plan for ending the war, except by what would be a disastrously costly surrender? Did it offer any intelligent method for abandoning our treaty obligation as regards Southeast Asia, or show any concern for the fact that such demonstrations give North Vietnam a tremendous boost in their aggressive attempts to destroy the South Vietnam Government and its people?

Did any speaker addressing the throng submit a reasonable plan to terminate the war? Did not all its leaders and orators fail to suggest any means for solving the tremendous difficulties involved which would offer any imaginable advantage over the administration's present program? Did they not recognize the fact that Communist power is at its peak and is endeavoring to make further encroachments with huge successes through the weakening of governmental structures of free nations that have been coasting along toward a condition of submission? Did not this aggregation make our Government's task vastly more difficult in ending the war, and did they not know that North Vietnam has been hailing their demonstrators as "comrades"?

In closing, I would like to make one comment about the mass of the antiwar Washington demonstrators. Most of them, both men and women, were of the so-called hippie type, who probably imagined themselves as being original—but they were not. They are merely 20th-century nihilists repeating the pattern of Russian revolutionary socialism a century ago.

As the following excerpt from a scholarly article on "nihilism," by Sir Donald MacKenzie Wallace, K.C.I.E., K.C.V.O., and an authority on Russia, in the 11th edition of the "Encyclopaedia Britannica" should be of great interest to thoughtful editors and publicists as well as to the responsible agencies of our Government, I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

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

[From Encyclopaedia Britannica (11th edition) 1911, vol. XIX, pp. 686–7]

NIHILISM

(By Sir Donald MacKenzie Wallace, K.C.I.E., K.C.V.O.)

Nihilism, the name commonly given to the Russian form of revolutionary Socialism, which had at first an academical character, and rapidly developed into an anarchist revolutionary movement. It originated in the early years of the reign of Alexander II and the term was first used by Turgueniev in his celebrated novel, *Fathers and Children*, published in 1862. Among the students of the universities and the higher technical schools Turgueniev had noticed a new and strikingly original type—young men and women in slovenly attire, who called in question and ridiculed the generally received convictions and respectable conventionalities of social life, and who talked of reorganizing society on strictly scientific principles. They reversed the traditional order of things even in trivial matters of external appearance, the males allowing the hair to grow long and the female adepts cutting it short, and adding sometimes the additional badge of blue spectacles. Their appearance, manners and conversation were apt to shock ordinary people, but to this they were profoundly indifferent, for they had raised themselves above the level of so-called public opinion, despised Philistine respectability, and rather liked to scandalize people still under the influence of what they considered antiquated prejudices.

For aesthetic culture, sentimentalism and refinement of every kind they had a profound and undisguised contempt. Professing extreme utilitarianism and delighting in paradox, they were ready to declare that a shoemaker who distinguished himself in his craft was a greater man than a Shakespeare or a Goethe, because humanity had more need of shoes than of poetry. Thanks to Turgueniev, these young persons came to be known in common parlance as "Nihilists", though they never ceased to protest against the term as a calumnious nickname. According to their own account, they were simply earnest students who desired reasonable reforms, and the peculiarities in their appearance and manner arose simply from an excusable neglect of trivialities in view of graver interests.

In reality, whatever name we may apply to them, they were the extreme representatives of a curious moral awakening and an important intellectual movement among the Russian educated classes (See Alexander II, of Russia).

In material and moral progress Russia has remained behind the other European nations, and the educated classes felt, after the humiliation of the Crimean War, that the reactionary regime of the Emperor Nicholas must be replaced by a series of drastic reforms. With the impulsiveness of youth and the recklessness of inexperience, the students went in this direction much farther than their elders, and their reforming zeal naturally took an academic, pseudo-scientific form. Having learned the rudiments of positivism, they conceived the idea that Russia had outlived the religious and metaphysical stages of human development, and was ready to enter on the positivist stage. She ought, therefore, to throw aside all religious and metaphysical conceptions, and to regulate her intellectual, social and political life by the pure light of natural science. Among the antiquated institutions which had to be abolished as obstructions to real progress were religion, family life, private property and centralized administration. Religion was to be replaced by the exact sciences, family life by free love, private property by collectivism, and centralized administration by a federation of independent communes. Such doctrines could not, of course, be preached openly under a paternal, despotic government, but the press censure had become so permeated with the prevailing spirit of enthusiastic liberalism, that they could be artfully disseminated under the disguise of literary criticism and fiction, and the public very soon learned the art of reading between the lines.

ORDER OF BUSINESS

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAVEL in the chair). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

SUPREME COURT OF THE UNITED STATES

The Senate as in executive session resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. HRUSKA. Mr. President, one of the principal issues in the current debate on confirmation of Judge Haynsworth's nomination has centered around his decisions as a judge on the subject of civil rights legislation.

I am seriously concerned by the claim that the judge has indicated hostility to civil rights and to the aspirations of minorities. I would be most reluctant to vote favorably on the confirmation of any Supreme Court nominee against whom that charge could fairly be made. Thus, I have tried to pay close attention to the arguments as they have been made and to the record that has been compiled within the Committee on the Judiciary.

The case Judge Haynsworth's opponents make against him in the area of civil rights, as I see it, is basically that he is not as advanced on that subject as is the Supreme Court of the United States. There are those who conclude that the judge is, indeed, out of the mainstream in the area of civil rights. Some have used the terms "persistent in error" and "a judge who will make it his fundamental life philosophy to try to bring the Court back to a time which history has passed by for close to two decades now."

Some have used the phrase—

Here is an irreconcilable judicial voice consistently reiterating a doctrine of the past.

I should like first to point out that such conclusions with respect to Judge Haynsworth are sharply at odds with several respected voices of liberalism, who might be expected to embrace them if they were, indeed, factually supportable. Professor Bickel, professor of law at the Yale Law School, though critical of Judge Haynsworth on the conflicts question, made the following statement with respect to the judge's civil rights views:

Judge Haynsworth is no reactionary. His civil rights record is centrist, although more cautious than some senators might like. If the Senate demands precisely the ideological profile it would prefer, the appointment process will be a deadlock. Judge Haynsworth should be seen ideologically as falling within that area of tolerance in which the Senate defers to the President's initiative.

The St. Louis Post-Dispatch, not known as a spokesman for hidebound reaction, described Judge Haynsworth's judicial record in these words:

Judge Clement Furman Haynsworth, Jr., President Richard M. Nixon's new nominee for the Supreme Court, is an experienced jurist with a razor-sharp mind and a solid, middle-of-the-road record.

Even more important, though, in my mind, is the statement of Professor Foster of the University of Wisconsin Law School, filed with the Judiciary Committee.

I ask unanimous consent to have this statement printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HRUSKA. Mr. President, the statement contains a careful analysis of almost all of the cases upon which the senior Senator from New York (Mr. JAVITS) relied upon in his analysis of last Friday. I shall try to merely highlight a few points that Professor Foster made.

First, a few excerpts from the beginning of the statement:

I am G. W. Foster, Jr. Since 1952 I have taught at the Law School of the University of Wisconsin, have been a full professor there since 1959 and an Associate Dean of the Law School for a period of approximately a month. Still earlier I served as an administrative aide to the then Secretary of State, Dean Acheson. Before that I was the Legislative Assistant to the late United States Senator Francis J. Myers (D-Pa.), at that time the Whip of the Senate.

By faith I am a liberal Democrat and while Judge Haynsworth would not have been my first preference in filling the existing vacancy on the Supreme Court, I am convinced that it is both wrong and unfair to charge that he is a racial segregationist or that his judicial record shows him to be out of step with the Warren Court on racial questions. I now support his nomination unreservedly.

Judge Haynsworth is not a segregationist nor is he out of step with judges whose fidelity to the directions of the Warren Court is unquestioned, and on this point I believe I have some special competence to speak. For more than a decade much of my time has been taken by problems of school segregation. Particularly between the years 1958 and 1966 I came to know a number of federal judges across the South as I studied the impact of school cases on the courts in that region. From early 1961 until I went to Europe for the year in 1963–1964 I served as a consultant on problems of school segregation to the United States Commission on Civil Rights. On my return in 1964 I became a consultant, again on problems of school segregation, to the United States Office of Education and retained that role until returning to Europe in 1967. For better or worse I am probably as much or more responsible than anyone else for the original HEW School Desegregation Guidelines that first appeared in April 1965.

In the area of racially sensitive cases I have followed closely the work of the federal courts in the South over the entire span of time Judge Haynsworth has been on the Court of Appeals for the Fourth Circuit. I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent, open-minded man with a practical knack for seeking workable answers to hard questions. Here and there, to be sure, were cases I probably would have decided another way. I am not aware, however, of a single opinion associated with Judge Haynsworth that could not be sustained by a reasonable man.

Any description of judicial implementation of *Brown* v. *Board of Education* involves a moving picture. Every judge worth his salt who has devoted any substantial time to wrestling with problems of school desegregation has changed views he earlier held. The reasons are straight-forward: Remedies thought workable when ordered by the court turned out in practice to be partially, sometimes entirely, unworkable either because they were circumvented by school authorities or had encountered obstacles not foreseen. Again, there remain to this day questions not resolved as to the final scope of the Brown mandate: even now I know no one bold enough to attempt a final definition of what constitutes a "racially nondiscriminatory" public school system.

Professor Foster then goes into a detailed analysis, not merely of the cases in which Judge Haynsworth has written, but of the background of the entire school desegregation problem as it evolves the decision of the Brown case in 1954.

Notwithstanding declarations to the contrary, a reference to Professor Foster's statement, or to the cases discussed by both him and the senior Senator from New York, make crystal clear the fact that the Supreme Court decision in Brown against Board of Education in 1954 was by no means the end of the legal development in this area. Indeed, it was in many respects only a beginning. Though it is something of an oversimplification, it is nonetheless accurate in the sense we are speaking of it to say that Brown against Board of Education outlawed "de jure" segregation of schools—that is, school systems in which by law blacks were required to attend schools separate from those attended by whites. I know of no opinion or decision authored or participated in by Judge Haynsworth in which he has expressed doubt or reservation about this doctrine. But, as Professor Foster points out, there were numerous issues that developed during the late 1950s and early 1960s which were not in any way foreclosed by the Supreme Court's decision in the Brown case. One of these was faculty and staff integration; another was what is called by some the "minority transfer" rule, and by others the "freedom of choice" doctrine. In these areas, decisions written by Judge Haynsworth were reversed by the Supreme Court of the United States, but in these respects the Court of Appeals for the Fourth Circuit, for which he wrote, suffered a fate at the hands of the Supreme Court no different than that of other Federal appellate courts.

Let us take, for example, similar cases decided by the Courts of Appeals for the Sixth Circuit and for the Eighth Circuit, both of which have jurisdiction over some areas in which there was once segregation of schools by law, but both of which also covered several states which have never had any legal requirement of segregated schools. In short, these circuits represent combinations of Southern and Northern States, and draw their judges, as well as their lawsuits, from both Southern and Northern States.

It may be true that certain cases indicate that Judge Haynsworth has not been as advanced on the subject of civil rights as the U.S. Supreme Court, but I think it unfair to criticize Judge Haynsworth or the Court of Appeals for the Fourth Circuit on which he sits without considering the entire development of the law in this area in the last 20 years.

The most casual reference to the landmark civil rights cases shows that the Supreme Court of the United States has been ahead of virtually all of the lower courts in this area, and not just of the Court of Appeals for the Fourth Circuit or of Judge Haynsworth. *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637, decided in 1950, requiring state supported graduate schools to treat Negroes and whites alike, was a decision which reversed a three-judge Federal court sitting in the Western District of Oklahoma.

The great landmark case of *Brown* v. *Board of Education of Topeka*, 347 U.S. 483, in which the Supreme Court finally held that segregated public schools were unconstitutional, was a reversal of a judgment entered by a three-judge Federal district court in the District of Kansas.

Burton v. *Wilmington Parking Authority*, 365 U.S. 715, decided in 1961, in which the Supreme Court of the United States greatly expanded the concept of "state action" under the 14th amendment, reversed a contrary opinion of the Supreme Court of Delaware.

Indeed, *Goss* v. *Board of Education*, 373 U.S. 683, which is referred to in the helpful carefully prepared statement of the Leadership Conference on Civil Rights before this committee, was a reversal of a judgment of a Federal court of appeals—not the Court of Appeals for the Fourth Circuit, on which Judge Haynsworth sits, but of the Court of Appeals for the Sixth Circuit, whose headquarters is in Cincinnati.

Other Federal courts as well have not been as advanced in the civil rights area as the Supreme Court. *McNeese* v. *Board of Education*, 373 U.S. 668, decided in 1963, for example, was a reversal of a decision of the Seventh Circuit Court of Appeals. The Eighth Circuit was reversed twice last year and once this last term by the Court in civil rights cases. *Raney* v. *Board of Education of Gould School District*, 391 U.S. 443 (1968); *Jones* v. *Mayer*, 392 U.S. 409 (1968); *Daniel* v. *Paul*, 395 U.S. 298 (1969).

The decisions of a number of special

three judge courts have similarly been overturned. *Anderson* v. *Martin*, 375 U.S. 399, decided in 1964, reversed the lower court's decision upholding a Louisiana law requiring racial designations of candidates to be shown on the ballot. And *Katzenbach* v. *McClung*, 379 U.S. 294, decided in 1964, upheld the constitutionality of the Civil Rights Act of 1964, as applied to a restaurant, after the lower court had enjoined the act's enforcement on the ground that it exceeded the powers of Congress.

Those of us who support civil rights have on more than one occasion commended the Supreme Court of the United States for its pioneering efforts in this area of the law. But I cannot help feeling that it is a little bit inconsistent to praise the Supreme Court for breaking new ground in the field of civil rights, on the one hand, and to criticize the judge of a lower Federal court for not having been as advanced as the Supreme Court, on the other hand. I am quite doubtful that we would want judges of the lower Federal courts constantly departing from existing law on their own—if new constitutional doctrine is to be made, it should very probably be made by the Supreme Court of the United States.

While I certainly do not agree with all of those of Judge Haynsworth's opinions in the field of civil rights which I have read, and doubtless would not agree with some of his decisions in other areas, I am quite certain that I would have the same reaction to just about any other nominee who would come before this committee. I do not think that the criticism of Judge Haynsworth for not being as advanced as the Supreme Court in the field of civil rights is a fair one. He seems to have faithfully followed the precedents as he understood them in those of his opinions which have come to our attention.

I must say, Mr. President, that during discourses on this floor, far too often cases are referred to, abstracted, and commented upon. They are not out of context exactly, but certainly are not considered within the continuity of the development of a brand new field of law. That, as I have already said, is not the proper way to consider the proposition of whether the nominee is pro-civil rights or anti-civil rights. Attention must be given to the development of civil rights law during the past 20 years.

An honest evaluation of the judge's views on school segregation can only be made by taking into consideration the time in which he spoke. His decisions must be assessed by comparing them with decisions of other judges who were faced with the same problems with respect to the particular school year. Virtually every judge who has devoted any substantial time to grappling with the school desegregation problem has changed the views he earlier held. This evolution of judicial opinion has been caused by the simple fact that remedies originally thought to be workable when ordered by a court turned out in practice to be unworkable either because unforeseen obstacles were encountered or because they were circumvented by school officials. It would be easy to take the views of the Supreme Court and some other front running Federal Judge today and compare those with earlier views held by the Supreme Court and proved that those earlier views were wrong. New law has been made by the Supreme Court when it reversed other courts of appeals and indeed would have modified its own views. For example, on October 29 of this year, the Supreme Court of the United States in the case of Alexander against Holmes County Board of Education, announced that the standard of allowing "all deliberate speed" for desegregation was no longer constitutionally permissible. Thus the Supreme Court modified the standard it itself had laid down in Brown against Board of Education in 1954. By using the type of reasoning that has been employed against Judge Haynsworth, one could argue that a Federal judge who was following the guidelines laid down by the Supreme Court in Brown against Board of Education was out of step with the Supreme Court. Such reasoning is obviously fallacious. The views of any Federal judge on school desegregation in any given year must be made by comparing those views with what other judges were doing in that same year.

There are numerous other cases in which the Supreme Court has modified its earlier views. For example, in 1959 only three Supreme Court Justices believed it was important to consider the question whether a school plan which explicitly recognized race as an absolute ground for the transfer of students between schools was constitutional. *Kelly* v. *Board of Education of the City of Nashville*, 361 U.S. 924 (1959). Just four years later, the Supreme Court was not only willing to consider the issue but a unanimous Supreme Court held that such a plan was unconstitutional. *Goss* v. *Board of Education of Knoxville*, 373 U.S. 683 (1963).

The Supreme Court has of course made new law in the area of civil rights by reversing at one time or another the several courts of appeals that consider such questions. It is quite simply wrong to say that the Fourth Circuit is the only circuit which has been reversed by the Supreme Court in this area. For example, in the Goss case, to which I just referred, the Supreme Court reversed the Court of Appeals for the Sixth Circuit. The Sixth Circuit panel was composed of Judges Cecil, Weick, and O'Sullivan. Similarly, in the Kelley case, the Sixth Circuit panel was composed of Judges Allen, McAlister and Choate. Another example is furnished by *Rogers* v. *Paul*, 382 U.S. 198 (1965) where the Supreme Court reversed a panel for the Eighth Circuit Court of Appeals composed of Judges Vogel, Matthes, and Mehaffy.

We have here some nine judges of two courts of appeals, all of whom were handing down the same sort of rulings as Judge Haynsworth was. Are they all faithless to the teachings of the Supreme Court? Are they all die-hard segregationists? To put them in proper perspective, Judge Allen was from Ohio, and Judge McAllister was from Michigan; both were appointed to the Court of Appeals for the Sixth Circuit by President Franklin Roosevelt. Judge Cecil and Judge Weick were both from Ohio, while Judge O'Sullivan was from Michigan; They were all appointed to the Sixth Circuit by President Eisenhower. Judge Mehaffy is from Arkansas, and was appointed to the Court of Appeals for the Eighth Circuit by President Kennedy; Judge Vogel was from North Dakota, and Judge Matthes was from Missouri, and they were both appointed to the Court of Appeals for the Eighth Circuit by President Eisenhower.

It is possible, of course, to say that if these judges voted the way they did in these cases, they too are to be condemned. But the plain fact of the matter is that what we are looking for is not 100-percent correspondence between the view of any particular Senator and the judicial philosophy of a Supreme Court nominee, but simply a range of reasonableness. And if the opinions handed down by Judge Haynsworth in areas of civil rights law which have arisen since the decision in the Brown case are no different from those of judges in Michigan, Ohio, North Dakota, and Missouri, can it fairly be said that they were unreasonable applications of the law as then understood? I think not.

No one would contend that Judge Haynsworth's record in civil rights cases is as liberal as say, for example, that of Justice Douglas. Nor would anyone contend that his record in finding new constitutional rights for criminal defendants, or new constitutional protections for pornography, is comparable to that of Justice Douglas or of the very liberal wing of the Supreme Court. Individual Senators must decide for themselves whether they choose to evaluate these philosophical aspects of the nominee, and if so on what basis. But if there is to be philosophical evaluation, and if the test is to be not identical correspondence with the Senator's view, but a range of reasonableness, then I think Judge Haynsworth plainly passes this test in the field of civil rights. I think his views in this area, and in other areas of constitutional law currently under study, are entirely consistent with the position of Associate Justice of the Supreme Court of the United States to which he has been nominated.

Mr. President, the issue of whether this nominee for the Supreme Court is in the mainstream of a particular legal concept or branch of the law or whether he is found to be in consonance with the Supreme Court has been considered by other authorities.

Judge Lawrence Walsh, who is the chairman of the committee of the American Bar Association Committee on the Federal Judiciary, testified that his committee considered this question. They have been doing this type of investigation now for 18 years. And it has been my good fortune for a period of more than a decade as a member of the Judiciary Committee, to have been one of the recipients of their reports in each one of these instances. I know the fashion in which they operate.

I quote from the testimony of Judge Walsh regarding this question:

> Now I do not mean in any way to suggest that I thought Judge Haynsworth was running against the stream of the law. I think he was punctilious in following that stream as the Supreme Court laid it up, and in some fields he has run ahead and broken

new ground. For example, in the expansion of the doctrine of the utility of habeas corpus, he broke away from an old restraint in earlier Supreme Court opinions and was complimented by the present Supreme Court for doing so. He has moved over into, as I recall it, more modern tests on insanity and things of that kind.

So he is in no sense running against the stream of the law. If I were going to characterize it, I would say where new ground is being broken by the Supreme Court, he believes in moving deliberately rather than rapidly and particularly where an interpretation of the Constitution which has stood for many years is reversed or turned around.

He would perhaps give more time than other judges to adjust to the new state of affairs.

Mr. President, in conclusion, I simply point out that in trying to make a judgment of the nominee on his civil rights decisions these factors must be considered: First of all, the time when that decision was rendered; second, how other judges and other circuits were deciding; what precedents existed within his own circuit; and finally, the nature of the problems presented in applying a fundamental principle of law such as that which was declared in Brown against Board of Education.

After all, that decision, while it was precedent-setting, was necessarily general in its impact. Outside of its immediate decision it simply raised the problem of asking and deciding innumerable other questions within that period.

The lower courts of course had to apply as best they could in each of those instances the rules of law they thought were extant, those that they thought were applicable, and those that in their best judgment they thought flowed from the Supreme Court's declaration of principles which had been made at that time.

If these principles are applied and observed, I am satisfied that most reasonable men will conclude that this man who has been adjudged to be an excellent jurist, a man of integrity will satisfy every test required of a member of the Supreme Court not only in the field of civil rights but in other fields as well.

Mr. President, I yield the floor.

EXHIBIT 1

STATEMENT BY G. W. FOSTER, JR., IN SUPPORT OF THE NOMINATION OF JUDGE CLEMENT F. HAYNSWORTH, JR., TO THE SUPREME COURT OF THE UNITED STATES

I am G. W. Foster, Jr. Since 1952 I have taught at the Law School of the University of Wisconsin, have been a full professor there since 1959 and an Associate Dean of the Law School for a period of approximately a month. Still earlier I served as an administrative aide to the then Secretary of State, Dean Acheson. Before that I was the Legislative Assistant to the late United States Senator Francis J. Myers (D-Pa.), at that time the Whip of the Senate.

By faith I am a liberal Democrat and while Judge Haynsworth would not have been my first preference in filling the existing vacancy on the Supreme Court, I am convinced that it is both wrong and unfair to charge that he is a racial segregationist or that his judicial record shows him to be out of step with the Warren Court on racial questions. I now support his nomination unreservedly.

Judge Haynsworth is not a segregationist nor is he out of step with judges whose fidelity to the directions of the Warren Court is unquestioned, and on this point I believe I have some special competence to speak. For more than a decade much of my time has been taken by problems of school segregation. Partcularly between the years 1958 and 1966 I came to know a number of federal judges across the South as I studied the impact of school cases on the courts in that region. From early 1961 until I went to Europe for the year in 1963–1964 I served as a consultant on problems of school segregation to the United States Commisson on Civil Rights. On my return in 1964 I became a consultant, again on problems of school segregation, to the United States Office of Education and retained that role until returning to Europe in 1967. For better or worse I am probably as much or more responsible than anyone else for the original HEW School Desegregatin Guidelines that first appeared in April 1965.[1]

In the area of racially sensitive cases I have followed closely the work of the federal courts in the South over the entire span of time Judge Haynsworth has been on the Court of Appeals for the Fourth Circuit. I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent, open-minded man with a practical knack for seeking workable answers to hard questions. Here and there, to be sure, were cases I probably would have decided another way. I am not aware, however, of a single opinion associated with Judge Haynsworth that could not be sustained by a reasonable man.

Any description of judicial implementation of *Brown* v. *Board of Education* involves a moving picture. Every judge worth his salt who has devoted any substantial time to wrestling with problems of school-desegregation has changed views he earlier held. The reasons are straightforward: Remedies thought workable when ordered by the court turned out in practice to be partially, sometimes entirely, unworkable either because they were circumvented by school authorities or had encountered obstacles not foreseen. Again, there remain to this day questions not resolved as to the final scope of the Brown mandate: even now I know no one bold enough to attempt a final definition of what constitutes a "racially nondiscriminatory" public school system.[2]

FACULTY AND STAFF INTEGRATION

Thus an assessment of a judge's views on school segregation must be made in the context of the time in which he spoke. Said another way, he must be judged by comparison with other judges facing the same problems with respect to the particular forthcoming school year to which the answers were to be applied. The reason is simply that from school year to school year the picture changed—and rules and priorities applied for one year were modified or abandoned for the next.

I can—albeit quite unfairly—take the views held earlier by any of the small number of federal Judges whose views on racial matters make them front runners among their fellows and compare earlier positions with ones held later by themselves or the Supreme Court and thereby "prove" them "wrong" and out of step with the Supreme Court. Judge Haynsworth is not among that very small front-runner group but he is no foot-dragging, entrenched segregationist, either. In my judgment he ranks along with the best of the open-minded, pragmatic judges in the federal system, neither dogmatic nor doctrinaire.

To buttress the conclusion just stated, I intend to review in a different light the cases that have been cited to the Committee on the Judiciary as evidence that Judge Haynsworth cannot be trusted to respond fairly to cases involving racial problems. These will be treated under three headings: (1) Faculty and Staff Integratio; (2) The "Minority Transfer" Rule; and (3) the "Racially Nondiscriminatory" School System.

Much has been made of the point that the Supreme Court's per curiam reversal of Judge Haynsworth's opinion in the *Bradley* case[3] proves how far he was out of line with the Supreme Court's thinking. I would like, if I may, to put the faculty integration question in a broader context.

The South's dual schools traditionally had distinctive sets of black and white teachers. The administrative staffs within each school followed a comparable pattern. Yet the school cases before the federal courts during the 1950's focused primarily upon pupil desegregation and apart from some scattered instances in the Border States the school plaintiffs did not assign any important priority to teacher and staff integration.

By the early 1960's, however, complaints filed on behalf of pupils and parents were including demands for faculty integration. Even in this period, plaintiffs generally assigned higher priorities to student integration and as a rule did not press hard either to build a record showing discriminatory faculty assignments nor ask for orders to break up discriminatory faculty patterns. What I intend to do here is summarize developments in the various circuits down through the standards they applied to faculty segregation for the 1965–1966 school year, the year the Fourth Circuit was considering when Judge Haynsworth wrote the *Bradley* decision.

What happened to the Fifth Circuit down to 1965 is typical. On July 24, 1962, a panel consisting of Judges Rives, Tuttle and Brown reversed a District Court order in the Escambia County, Florida, case which had struck from the complaint a claim that discriminatory assignment of faculty resulted in harm to pupils; this point should not have been resolved at the pleading stage, the panel held, but only after a hearing on the question.[4] A few weeks later then District Judge Bryan Simpson ordered school authorities in Duval County, Florida, to submit plans prior to the end of October 1962 for assigning teachers without regard to race.[5] From the context of Judge Simpson's order it was clear that no change earlier than the 1963–1964 school year was intended. Things were further delayed while Duval County took an appeal and not until January 10, 1964, did the Fifth Circuit rule on the case. Chief Judge Tuttle's opinion[6]—by this time looking forward to the 1964–1965 school year—held that pupil objections to racial assignment of teachers and staff was a proper concern for the court, adding that the question of teacher assignment could either be postponed[7] or at the discretion of the trial court brought on for hearing as Judge Simpson had done.

This brings us now to the Fifth Circuit's views respecting faculty segregation for the 1965–1966 school year, the year under consideration when the fourth Circuit decided the *Bradley* case. On February 24, 1965—approximately six weeks before the *Bradley* decision was announced—a panel which included Chief Judge Tuttle reaffirmed the view that the District Court had discretion to postpone consideration of faculty integration (but adding that the court was not precluded from taking up the question).[8] On July 2, 1965—roughly two months after the *Bradley* decision was announced—another panel of the Fifth, also considering plans for the 1965–1966 school year, reversed an order of the District Court which denied standing to pupils challenging faculty segregation but set no priorities for handling the question on remand. This opinion—in the *Price* case out of Texas—was written by now Chief Judge John Brown, who indicated the question of faculty segregation was best left to the Dis-

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trict Court "for consideration by and with the Board as the imported HEW standards are applied." [9]

The reference to the "imported HEW standards" calls for explanation. Near the end of April 1965 the U.S. Department of Health, Education, and Welfare issued the "General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools," a document widely known thereafter as the HEW Guidelines.[10] Broadly, the Guidelines required all desegregation plans to contain provisions for ultimate faculty and staff desegregation [11] but for the 1965–1966 school year a district was "normally" expected to do no more in this direction than arrange for joint faculty meetings and joint inservice programs.[12] Some not-normal districts, as the Guidelines perceived 1965–1966, would be relieved of even this much joint faculty and staff activity. The position of the Guidelines restated what we understood the prevailing judicial doctrine of the day to be: faculty desegregation was ultimately to be in the picture but a good bit of discretion was to be retained for decision in individual cases when to bring it on.[13]

Summarizing the position of the Fifth Circuit with respect to the 1965–1966 school year—views expressed both before and after Judge Haynsworth's decision in *Bradley*—faculty and staff integration was part of the job to be done but its timing was to be left largely to the discretion of the District Court (which should also take account of the directives in the HEW Guidelines). And the Fifth Circuit views toward the 1965–1966 school year were either written or concurred in by such men as Judge John Brown and Chief Judge Elbert Tuttle.

Developments in the Sixth Circuit on the faculty desegregation front down to the 1965–1966 school year paralleled closely those in the Fifth, just described. In an early phase of the Chattanooga case, the District Court had struck from the complaint a demand by pupils for faculty desegregation and on July 8, 1963, the Sixth Circuit reversed, restoring the issue to the complaint and leaving it to the discretion of the trial court to determine when to bring the issue on for consideration.[14] A year later, looking into the forthcoming 1964–1965 school year while reviewing the Memphis case, ths Sixth quoted with approval the view adopted a year earlier in the Chattanooga case that the question of faculty segregation was a proper one to be considered but was an issue left to the discretion of the District Court as to timing.[15] A year later, assessing the Sixth Circuit position on the faculty integration question, District Judge Bailey Brown concluded shortly before the 1965–1966 school year commenced that the timing of the question was still left to the discretion of the trial court.[16]

The faculty segregation question came before the Eighth Circuit only in connection with the 1965–1966 school year and in the context of a case out of Fort Smith, Arkansas. A unanimous panel of the Eighth affirmed the discretion of the District Court in postponing the question and went on to limit the standing to challenge faculty segregation to pupils attending grades already desegregated under the plan.[17] Shortly after reversing the Fourth Circuit on the faculty segregation question in the *Bradley* case, the Supreme Court reversed the Eighth for its holding on the same question.[18]

The views of the Fourth Circuit down through the 1965–1966 school year remain to be accounted for. Developments in the Fourth paralleled those in the Fifth and Sixth Circuits and its views for 1965–1966 were somewhat broader than those just described for the Eighth Circuit. On June 29, 1963, Judge Sobeloff announced for himself and Judge Haynsworth an opinion involving an appeal from Lynchburg, Virginia. (Judge Soper had heard argument in the case but died prior to participating in the Court's opinion.) In reversing and remanding the case to the District Court the Sobeloff-Haynsworth panel held that the complaint had raised the question of faculty and staff desegregation and that the issue was appropriate to the establishment of a racially nondiscriminatory school system.[19] (For those who suggest Judge Haynsworth has gone along on new developments only where no other recourse was available to him, it is worth noting that he joined Judge Sobeloff on a point apparently new for the Fourth Circuit and reached by the two of them without reference to other authority on the point.)

By now looking into the 1965–1966 school year, the Fourth sitting en banc announced unanimously, with Judge Haynsworth participating, that the complaints as amended raised the faculty segregation question and that the plaintiffs had standing press the issues against school authorities in Prince Edward and Surrey Counties in Virginia.[20] This decision came December 2, 1964, about four months prior to the en banc decision in *Bradley* [21] and the companion cases decided with it.[22]

The *Bradley* case was argued in the Fourth Circuit on October 5, 1964, and the companion cases involving Hopewell, Virginia, and Buncombe County, North Carolina, were argued November 5, 1964. All three were heard by the Fourth sitting en banc and the opinions on the three were announced together April 7, 1965. In each Judge Haynsworth wrote for the Court and as to each Judges Sobeloff and Bell joined in a partial dissent.

The point of difference between the majority and minority on the question of faculty integration was comparatively a narrow one. All the en banc Court agreed that pupils had standing to challenge faculty and staff segregation, a view which was shared by the Fifth, Sixth and Eighth Circuits at this point in time. Judge Haynsworth's opinion followed the view then current in the other Circuits that the timing for bringing on faculty integration was to be left to the discretion of the District Court and it was on the question of timing that the Sobeloff-Bell dissent parted company, not only with Judge Haynsworth but with the views of the other three Circuits as well.[23] Occupying new ground, the dissenters insisted that evidentiary hearings on faculty segregation should be brought on at once and, secondly, that following such a hearing the District Court should have only limited discretion thereafter to delay faculty integration.[24]

By the time the *Bradley* case came before the Supreme Court for review, yet another school year—1966–1967—was in the offing and in a terse per curiam announced November 15, 1965, *Bradley* was reversed on the question of timing the evidentiary hearing on faculty segregation; the Court saw no justification at this point in time for further postponement of evidentiary hearings.[25] The Court did not speak to the second point raised in the Sobeloff-Bell dissent—the priority of timing faculty integration once an evidentiary record showed segregated patterns to exist—and not until the *Montgomery* case in the Spring of 1969 did the Court speak to the substantive content of plans for faculty integration.[26]

The real significance of the Supreme Court's decision in *Bradley* is not that it establishes Judge Haynsworth as a foot-dragging segregationist unable to keep step with the currents of the Warren Court. This conclusion can be reached only by saying that the same decision also tars the image of other highly respected judges and ones clearly liberal on racial questions who were announcing positions similar to Judge Haynsworth's at the very time the Fourth Circuit opinion in Bradley was written. And that just simply will not do.

Moreover, the real significance of *Bradley* is that it represented the commitment of the Supreme Court to the proposition that faculty integration was part of the school desegregation picture. Despite the unanimity that the Circuit had reached in concluding that pupils could challenge faculty segregation, there was continued insistence from school authorities that this point did not have the support of the Supreme Court. The Supreme Court's decision in *Bradley*—and its per curiam decision shortly afterwards reversing the Eighth Circuit's ruling in the Fort Smith case [27] supplied the support for faculty integration. And in supplying that support the Court had speeded the process for the forthcoming 1966–1967 school year by ordering prompt evidentiary hearings on the question of faculty segregation. Moreover, the Court left for the future the question of timing steps toward faculty integration although the Sobeloff-Bell dissent had suggested an answer on that issue, too.

THE "MINORITY TRANSFER" RULE

On September 17, 1962, the Fourth Circuit sitting en banc announced through a per curiam decision that the "racial minority" transfer provision in the school plan for Charlottesville, Virginia, was unconstitutional because its purpose and effect were to retard desegregation.[28] There were two dissents, one of them from Judge Haynsworth. Almost nine months later, on June 3, 1963, a unanimous Supreme Court invalidated a like minority transfer provision in reviewing two cases out of Tennessee, [29] one of them the *Goss* case out of Knoxville.

For reasons that I will try to develop briefly here I believed at the time that *Goss* laid down too inflexible a doctrine and developments in the years that came after have not removed my doubts *Goss* torpedoed the then growing development of unitary geographic zoning that was being built on the foundation of the so-called "Nashville Plan" by striking down an obviously discriminatory but nevertheless useful transition device for bringing an end to the dual school systems. Moreover, by injecting inflexibility into geographic zoning at this instant in time, *Goss* gave a critically important shot in the arm to experiments just getting under way with giving pupils a "free choice" of schools. The point was that without some kind of safety valve available at least for the short run, a geographic zoning system that locked in unhappy minorities whether black or white was simply unworkable in the initial stages of desegregation in many communities. If insisted on, families either moved out of the attendance zone, further concentrating racial imbalances in housing or they withdrew their children and enrolled them in private schools. The alternative to this kind of locked-in geographic assignment was freedom of choice and it was toward this alternative that much of the school board response turned in the wake of the *Goss* decision.

A brief description of the Nashville plan is helpful in judging the minority transfer question. The plan was put in effect there in 1957 under the watchful eye of District Judge William E. Miller, whose sensitivity and judgment toward racial problems over the years have been matched by few indeed. For 1957 a unitary system of zones was established for the first-grade level in all of the City's public schools. Each child entering first grade was initially assigned to the elementary school in his zone of residence and was permitted to transfer to another school only if he were in a racial minority in his school or class.[30]

The overtly racial character was troublesome but as a transitional device it could be justified on several grounds. First, it was a safety valve through which both black and white minorities could escape to schools where their own races were predominant. At first all the whites and nearly all the blacks

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chose to escape but as the years passed the numbers of blacks who chose to remain in an integrated situation rose steadily and in time growing numbers of whites abandoned the inconvenience of going outside their attendance zone to school. A second and critically important feature of the minority transfer rule was to prevent white majorities from avoiding attendance at an integrated school. A white pupil was not permitted to transfer from a school merely because a Negro minority had elected to attend. Almost certainly this tended to stabilize the initial stages of the transition to a unitary system. This feature of holding down white minorities is of course lost if the minority transfer provision gives way to transfers based on unrestricted choice.

Judge Haynsworth in his dissent in the Charlottesville case did not develop his position in the detail stated here but it is perfectly evident that these were the kinds of problems about which he was concerned. His own Court, he thought, had considered the question largely in abstract terms and the parties had not asked for consideration of practical consequences of the alternatives they pressed the Court to rule on. His is one of the few opinions I know on the subject of the minority transfer question that did seek to open the practical inquiry into the operations of the rule as a transitional device and in retrospect I regret that he did not carry the day in order that the alternatives could have been thought out better than they were at the time.

The assumptions the Supreme Court makes in *Goss* are that the minority transfer device tends to perpetuate segregation—a point entirely true—and secondly, that transfer provisions not based on state imposed racial conditions can be appropriate means for desegregation—a point also true but whether transfers granted in wholly nonracial terms are the most reasonable means in every case for bringing about a system of "just schools" in place of a system of "black" schools and "white" schools can be questioned.

Indeed the rigidity of the *Goss* ruling seems quite out of character with the insistence by the Supreme Court last year in *New Kent* and its companion cases that the end product must be no more dual schools and that the test in each case requires selection of alternatives that are more, rather than less, likely to produce a unitary system.[31] Nor do the current cases impose objections to making use of racial criteria—the assignment of faculty in the *Montgomery* case[32] and the growing use of optional attendance zones and majority to minority transfers are examples.[33]

To summarize, Judge Haynsworth in his Charlottesville dissent rested on the point that the question was more complex than the majority was ready to concede and more attention to his concerns for developing effective transitional devices might well have done much to head off the explosive move toward freedom of choice that came after the Fourth Circuit, and then the Supreme Court, struck down a transitional device essential in many cases to the initial establishment of unitary zoning. And more careful attention to the working of various devices such as minority transfers, paired schools, optional zones might have come sooner than has been the case.

In any event, the Haynsworth dissent in Charlottesville cannot be explained by asserting it demonstrates him to be out of step with the directions of the Warren Court.

THE "BASICALLY NONDISCRIMINATORY" SCHOOL SYSTEM

Across the years that followed the *Brown* decisions in the Supreme Court a basic difference developed among the judges of the lower federal courts with respect to what, ultimately, was required to bring the dual systems of the South into line with the requirements of the Fourteenth Amendment.

The new view—which only began to emerge in the 1960's—saw the end product as a system of "just schools," rather than a system that could include "black" schools and "white" schools from which discriminatory obstacles to admission had been removed.

The other and older view saw the end product as the removal of racial obstacles and burdens—and if at the end some white and some black schools remained as the collective results of unfettered choices by school patrons, there was no violation of the Fourteenth Amendment involved.

It was common to both views that racially invidious practices, when shown to exist or to be intended, would not be tolerated in the name of the state. Most of the changes in the rules relating to school desegregation over the years came about in the context of demonstrated invidious discriminations and as a result it was simply not necessary to decide any more than that steps be taken to eliminate the results of invidious discrimination.

There gradually emerged however, a series of school situations in which the difference in view toward the end product called for by *Brown* resulted in a difference in the outcome of a particular case. The *New Kent* case and the cases from the Sixth and Eighth Circuit decided with it are classic examples. If one assumes that *Brown* commanded only an end to burdens and discriminations respecting choice of schools, the decisions reached by the Fourth, Sixth and Eighth Circuits appear clearly correct. In the *New Kent* case, for example, the plaintiffs conceded they had an unencumbered opportunity annually to choose the white rather than the black school in the County. A view on the other hand that *Brown* commanded an actual undoing of the dual school system to produce a system of "just schools" calls for a different result on the facts of the case: New Kent County operated two comprehensive schools, one traditionally for whites, the other for blacks. No attendance zones existed and each school served the entire county. Moreover, Negroes and whites were more or less generally distributed throughout the County. Thus by the comparatively straightforward move of zoning one school to serve one half of the County and the other school the other half, substantial integration would result. That kind of move would be a long step toward a system of "just schools," given the fact that the freedom of choice system had done little to alter the original character of the two schools as "black" and "white."

In the *New Kent* case, Judge Haynsworth had remanded the case for inclusion of a minimal objective timetable that took account of the comprehensive timetable adopted only a short time before by the Fifth Circuit in the *Jefferson County* case.[34] Judges Sobeloff and Winter specially concurred, expressing approval of Judge Haynsworth's assertion that the *Jefferson* standards were applicable on remand to the question of faculty integration and regret at the failure of the majority to require on remand the establishment of a periodic review by the District Court to determine the effectiveness of the freedom of choice system in operation, particularly to see that residual effects of the past dual system were removed.[35]

The Supreme Court in reversing *New Kent* and its companion cases from the Sixth and Eighth Circuits on May 7, 1968, moved on to new ground well beyond that occupied previously by any decisions of the Circuit Courts. The Fifth Circuit's en banc decision in the *Jefferson County* case at the end of March 1967 had gone farther than any other, though Judge Haynsworth's decision in *New Kent* two and a half month's later announced his accord with the Fifth Circuit standards of the *Jefferson* case (but see the Sobeloff-Winter concurrence for expression of the wish that the Fourth repeat specifically some of the things said in Jefferson). What the Fifth had done in *Jefferson County* was to come down hard on insisting that the test of a desegregation plan was whether it did away with the vestiges of the dual school system and to test that question specified a quite detailed decree that called for regular reporting of information concerning progress toward a unitary system.

What the Fifth had not done in Jefferson County, and what was new in the Supreme Court's decision in the *New Kent* line of cases, was to impose the duty on a board to select among feasible alternatives those which were more rather than less likely to result in putting an end to the vestiges of the dual system. While the Fifth had called for periodic review of developments, it had said nothing this clear about actual implementation.

Back then to Judge Haynsworth's opinion for the Court in New Kent. What he said there seems clearly in line with what the Fifth, Sixth and Eighth Circuits were saying at the time. By keying Fourth Circuit views to those of the Fifth Circuit in *Jefferson County*, he was giving a quiet burial to the *Briggs* dictum[36] which had so long cast a shadow across the writings of the Fourth Circuit. (Judge Sobeloff's concurrence in *New Kent* contains a sensitive summary of problems *Briggs* posed for the Fourth, coming as it had from Chief Judge John Parker who did not live long enough thereafter to qualify its thrust.)[37] But one could say that Judge Haynsworth's decision in *New Kent* was out of step with the direction of the Warren Court only by concluding that the same would have to be said of the Fifth, Sixth and Eighth Circuits which were saying the same things in that period. What the Fourth had done, along with the other Circuits, was to bring itself in line for the Supreme Court to resolve that the end product called for by *Brown* was a system of "just schools" and that school districts were under a duty to select reasonable means best calculated to produce that result.

IN CONCLUSION

It has troubled me greatly that so much of the criticism directed recently at Judge Haynsworth has rested either on gross overstatement or seriously incomplete descriptions of the context in which he has acted. This is not to say that I have agreed with every one of his decisions, for I have not. At the time I would probably have decided the *Moses H. Cone Memorial Hospital* case[38] the other way, although the case was clearly a lot more difficult than was the *Burton* case that was the principal Supreme Court precedent in that period. Judge Haynsworth's decision later on the question of admitting Dr. Hawkins to the North Carolina Dental Society was hardly the "easy" case that some of the Judge's critics said it to be, as even a casual reference to the quite distant precedents drawn on will attest—and the result is a victory over racial discrimination.[39] Both *Hawkins* and *Moses Cone* draw on state action concepts and a comparison of the two opinions reflect, I submit, the capacity of Judge Haynsworth to grow in breadth and sensitivity on the job.

I also think the decision to abstain in the *Prince Edwards County* case was wrong. Partly this is because I believe the Abstention Doctrine itself was a mistake, and a mistake of the Supreme Court's own making.[40] The abstention in *Prince Edward* came about the time that doctrine had reached high tide and just ahead of the time that the Court itself began cutting back on abstention with its decision in the *England* case.[41] Moreover, by the time the Supreme Court reached the *Prince Edward* case for review, it had access to the opinion of the Virginia Supreme Court of Appeals, to wait for which had been the basis for the abstention by the Haynsworth panel. Yet regardless where the Abstention Doctrine came from, abstention on the facts of *Prince Edward* was in my

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judgment wrong and Judge Haynsworth must accept his part of the responsibility for the decision.

Perhaps there are some other decisions, too, that I would have turned the other way. But I cannot read his record in general or in particular as that of a dogmatic or doctrinaire man nor as that of a man out of step with the need to afford proper protection against racial discrimination. The suggestion offered during the hearings before the Judiciary Committee that his dissent in the *Brewer* case [42] out of Norfolk was in some fashion improper and at odds with the just-announced *New Kent* decision of the Supreme Court simply will not survive a reading of the two cases. Again in the *Chambers* case involving what were claimed to be racially discriminatory dismissal of Negro teachers, Judge Haynsworth cast the deciding vote for a 3 to 2 Court of Appeals that shifted to school authorities the burden of showing that discrimination had not motivated the dismissal.

All things considered, I find Judge Haynsworth not easy to characterize. I can cite instances in which he has declined to give strict construction to procedural rules where, to have done so, would have denied a party his day in court.[43] He has declined, I believe quite correctly, to stretch a statute limiting the contempt powers of lower federal courts to cover conduct which he regarded both as a contempt of the court and quite unconscionable.[44] In a doctrinally important habeas corpus case Judge Haynsworth abandoned a Supreme Court precedent before the Supreme Court itself had done so (and the Court in a later unanimous opinion said both that Judge Haynsworth's result was correct and that it was correct for the very reasons he gave).[45] But where arguments have failed to persuade him an established precedent should not be applied to the case at hand, he has followed the precedent.

To sum up: Judge Haynsworth is an intelligent, sensitive, reasoning man. He does not fit among that small handful of front-running federal judges who have consistently made new law in the racial area. He has earned a place, however, among those who serve in the best tradition of the system as pragmatic, open-minded men, neither dogmatic nor doctrinalre. His decisions, including those in the racial area, have been consistent with those of other sensitive and thoughtful judges who faced the same problems at the same time. And it simply cannot be said that his record in the racial field marks him as out of step with the directions of the Warren Court.

Thus the question for me is not whether I would have made another nomination for the Supreme Court. It is rather the question whether Judge Haynsworth possesses the qualities required to become a fine Justice of the Supreme Court. My view is that he will make a first-rate Associate Justice.

I hope this Committee—and later, the Senate itself—will support the nomination of Judge Clement Haynsworth to the Supreme Court of the United States.

FOOTNOTES

[1] A detailed account of the evolution of the HEW Desegregation Guidelines appears in Orfield. The Reconstruction of Southern Education (John Wiley & Sons, 1969), pp. 76–101.

[2] In *Brown* II, the Court remanded the cases to the District Court with instructions, among others, "to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties in these cases." 349 U.S. 294, 301 (1955). Nowhere else until its decisions in the group of cases including *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968), did the Court provide any clearer definition of the end product intended by *Brown*. In *Green*, however, the Court held that where racially dual schools had previously been operated the end product must be "just schools," not a system still having "white" schools and "Negro" schools, and school boards had a constitutional duty to take meanful steps leading to a "unitary, non-racial system." 391 U.S. 430, 439–442 (1968).

[3] *Bradley* v. *School Board of the City of Richmond*, 382 U.S. 103 (Nov. 15, 1965), reversing 345 F. 2d 310 and the companion case, *Gilliam* v. *School Board of the City of Hopewell*, 345 F. 2d 325 (CA 4, April 7, 1965).

[4] *Augustus* v. *Board of Public Instruction of Escambia County Florida*, 306 F. 2d 862 (CA 5, 1962).

[5] *Braxton* v. *Board of Public Instruction of Duval County*. ——— F. Supp. ——— (S.D. Fla., August 21, 1962); also reported at 7 Race Relations Law Reporter 675.

[6] *Board of Public Instruction of Duval County, Florida* v. *Braxton*, 326 F. 2d 616 (CA. 4, January 19, 1964).

[7] Judge Tuttle cited *Calhoun* v. *Latimer*, 321 F. 2d 302 (CA 5, 1963), holding that it was not error for the District Court to postpone consideration of teacher assignment in the Atlanta system. See *Braxton*, p. 6, *supra*, at 620.

[8] *Lockett* v. *Board of Education of Muscogee County, Dist., Ga.*, 342 F. 2d 225, 229 (CA 5, 1965).

[9] *Price* v. *Denison Independent School District Bd. of Ed.*, 348 F. 2d 1010, 1014–1015 (CA 5, 1965).

[10] The HEW Guidelines for 1965–1966 are reproduced at 30 Fed Register 9981 (Aug. 14, 1965). They may also be seen as an appendix to the Price case cited in n. 9, *supra*, and a copy is attached as an appendix to this statement.

[11] *Guidelines* v. *Methods of Compliance—Plans for Desegregation of School Systems*:

B. Requirements Which All Desegregation Plans Must Satisfy—

1. *Faculty and staff desegregation.* All desegregation plans shall provide for the desegregation of faculty and staff in accordance with the following requirements:

a. *Initial assignment.* The race, color, or national origin of pupils shall not he a factor in the assignment to a particular school or class with a school of teachers, administrators or other employees who serve pupils.

b. *Segregation resulting from prior discriminatory assignments.* Steps shall also be taken toward the elimination of segregation of teaching and staff personnel in the schools resulting from prior assignments based on race, color, or national origin (see E4b below).

[12] *Guidelines*, V. Methods of Compliance—Plans for Desegregation of School Systems:

E. Rate of Desegregation—

4. Every school system beginning desegragation must provide for a substantial good faith start on desegregation starting with the 1965–1966 school year, in light of the 1967 target date.

a. Such a good faith start shall normally require proviaion in the plan that:

. . . (6) Steps will be taken for the desegregation of faculty, at least including such actions as joint faculty meeting and joint in-service programs.

b. In exceptional cases the Commissioner may, for good cause shown, accept plans which provide for desegregation of fewer or other grades or defer other provisions set out in 4a above for the 1965–1966 school year, provided that desegregation for the 1965–1966 school year shall extend to at least two grades, including the first grade, and provided that the school districts, in such case, shall take into account the steps which would be required to meet the 1967 target date.

[13] In an article published in Saturday Review on March 20, 1965, and upon which the HEW Guidelines rested heavily I thus indicated our then understandings about teacher and staff desegregation: "Desegregation of teachers and professional staffs is ultimately in the picture . . . The problem is one which every district must face and start working on. Every desegregation plan should reveal awareness of the problem and provide assurance that steps will be taken to remove racial discrimination in assignment of teaching personnel. Foster. *Title VI: Southern Education Faces the Facts*, Saturday Review, March 20, 1965, 60, 77.

[14] *Mapp* v. *Board of Education of City of Chattanooga, Tenn.*, 319 F. 2d 571, 576 (CA 6, 1963).

[15] *Northcross* v. *Board of Education of City of Memphis*, 333 F. 2d 661, 667 (CA 6, 1964).

[16] *Monroe* v. *Board of Commissioners, City of Jackson*, 244 F. Supp. 353 (W. D. Tenn., 1965).

[17] *Rogers* v. *Paul*, 345 F. 2d 117, 125 (CA 8, 1965).

[18] *Rogers* v. *Paul*, 382 U.S. 198, 200 (Dec. 6, 1965).

[19] *Jackson* v. *School Board of City of Lynchburg, Virginia*, 321 F. 2d 210, 233 (CA 4, 1963).

[20] *Griffin* v. *Board of Supervisors of Prince Edward County*, 339 F. 2d 487 (CA 4, 1964).

[21] *Bradley* v. *School Board of City of Richmond, Virginia*, 345 F. 2d 310 (1965).

[22] *Gilliam* v. *School Board of City of Hopewell, Virginia*, 345 F. 2d 325 (1965); *Bowditch* v. *Buncombe County Board of Education*, 345 F. 2d 329 (CA 4, 1965).

[23] Bradley, note 21, supra, at 320.

[24] Bradley, note 21, supra, at 324.

[25] *Bradley* v. *School Board of Richmond*, 382 U.S. 103, 105 (November 15, 1965).

[26] *United States* v. *Montgomery County Board of Education*, 89 S. Ct. 1670 (1969).

[27] *Rogers* v. *Paul*, 382 U.S. 198, 200 (December 6, 1965).

[28] *Dillard* v. *School Board of City of Charlottesville, Va.*, 308 F. 2d 920 (1962).

[29] *Goss* v. *Board of Education*, 373 U.S. 683 (1963).

[30] *Kelley* v. *Board of Education of the City of Nashville*, 2 Race Rel. Law R. 21 (M.D. Tenn. 1957), 270 F. 2d 209 (CA 6, 1959), cert. den. 361 U.S. 924 (1959).

[31] *Green* v. *School Board of New Kent County*, 391 U.S. 430; *Raney* v. *Board of Education*, 391 U.S. 443; and *Monroe* v. *Board of Commissioners*, 391 U.S. 450 (1968).

[32] *United States* v. *Montgomery County Board of Education*, 89 S. Ct. 1670 (1969).

[33] See, for example, *Brewer* v. *School Board of the City of Norfolk, Virginia*, 397 F. 2d 37 (1968).

[34] United States v. Jefferson County Board of Education, 372 F. 2d 836, aff'd on rehearing en banc, 380 F. 2d 385 (CA 5, 1967), cert. den. sub non. Caddo Parish School Board v. U.S., 389 U.S. 840 (1967).

[35] Bowman v. County School Board of Charles City County, Virginia, 382 F. 2d 326, 330 (SA 4, 1967) for concurring opinions of Judges Sobeloff and Winter intended for Bowman and for the companion Green v. County School Board of New Kent. Virginia, 382 F. 2d 338 (CA 4, 1967).

[36] Briggs v. Elliott was a companion case to Brown v. Board of Education and came out of South Carolina. On remand of Briggs to the District Court of three judges following the Supreme Court's decision in Brown II, Chief Judge John Parker of the Fourth Circuit attempted as a member of the Briggs panel to explain what Brown had decided. He said, in language often quoted thereafter:

"Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination." 132 F. Supp. 776, 777 (E.D.S.C. 1955).

[37] See Bowman, note 35, supra, at 336 ff.

[38] Simkins v. Moses H. Cone Memorial Hospital, 323 F. 2d 959 (CA 4, 1963).

[39] Hawkins v. North Carolina Dental Society, 355 F. 2d 718 (CA 4, 1966).

[40] Griffin v. Board of Supervisors, 322 F. 2d 332 (CA 4, 1963), reports the decision to abstain. A thoughtful and useful collection of materials on abstention appears in Currie, Federal Courts 500–530 (1968).

[41] England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964).

ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in executive session, in accordance with the previous order, that the Senate stand in adjournment until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 59 minutes p.m.) the Senate adjourned until Tuesday, November 18, 1969, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate November 17, 1969:

IN THE MARINE CORPS

The following named (staff noncommissioned officers) for temporary appointment to the grade of second lieutenant in the Marine Corps, subject to the qualifications therefor as provided by law:

Albright, James A.	Howard, Sylvester
Armstrong, Russell P.	May, Richard P.
Ash, James B.	Menart, Joseph A.
Bacon, Welles D.	Morgan, Richard C.
Bahr, Wayne D.	Parker, Frederick D.
Beard, Fred W.	Phillips, Hugh F.
Bowman, Charles F. N., Jr.	Randel, Garrett V. H., Jr.
Boyd, Joseph S.	Roamer, Richard H.
Brake, Robert L.	Robin, Edmond L.
Brown, Donald R.	Rudolf, Robert M.
Clark, Owen D.	Skinner, Lloyd L.
Edwards, Sidney B.	Smith, Charles L.
Ethington, Riley S.	Smith, Delmer
Hall, John E.	Smith, Lyle W.
Henry, John D.	Sunn, Larry A.

ASSISTANT TO THE COMMISSIONER OF THE DISTRICT OF COLUMBIA

Graham W. Watt, of Ohio, to be Assistant to the Commissioner of the District of Columbia, vice Thomas W. Fletcher.

IN THE COAST GUARD

The following-named officers of the Coast Guard for promotion to the grade of commander:

Walter E. Mason, Jr.	Melvin J. Hartman
John R. MacDonald	Harold U. Wilson, Jr.
John N. MacDonald	John F. Dunn
Earle K. Hand	George L. Gordon
Thomas C. Volkle	Royce R. Garrett
Hugh M. McCreery	Benjamin R. Sheaffer
James Napier, Jr.	Kearney L. Yancey, Jr.
Ronald D. Stenzel	John V. A. Thompson
Bobby C. Wilks	Roger V. Millett
Donald E. Hand	Charles S. Wetherell
Gordon H. Dickman	Hugh L. Murphy, Jr.
Albert L. Olsen, Jr.	Richard A. Decorps, Jr.
James H. Scott	Mitchell J. Whiting
George P. Asche	John B. Lynn
Paul L. Lamb	John W. Kime
William Senn	Harlan D. Hanson
Milton J. Stewart	Richard J. Green
Delmar F. Smith	James E. Brown, Jr.
Harold E. Geck	George D. Passmore, Jr.
John J. Clayton	
Charles F. Gailey, Jr.	Louis K. Bragaw, Jr.
Bruce S. Little	Richard J. Collins
Bobby G. Burns	Charles S. Niederman
Hodges S. Gallop, Jr.	George P. Vance
Dalton J. Beasley	Ronald R. McClellan
David W. Irons	John C. Wirtz
Mathew Woods	David R. Markey
Leo J. Kelley	Robert A. Johnson
Howard C. Beeler, Jr.	Keith D. Ripley
Gerald C. Hinson	John I. Maloney, Jr.
Calvin F. Langford	

The following-named Reserve officer to be a permanent commissioned officer in the Coast Guard in the grade of lieutenant:

Jack K. Stice.

EXTENSIONS OF REMARKS

L. E. "GUS" SHAFER, MERRIAM, KANS., SCULPTOR AND PAINTER

HON. ROBERT DOLE

OF KANSAS

IN THE SENATE OF THE UNITED STATES

Monday, November 17, 1969

Mr. DOLE. Mr. President, unfortunately Kansas is not generally recognized as a foremost proponent and participant in art.

I say unfortunately because, in our State, there is not only a growing awareness and appreciation of art, but also a growing number of men and women who are creating on canvas some rather excellent and significant art works.

One such Kansas is L. E. "Gus" Shafer of Merriam, a sculptor and painter of national acclaim, who translates the life of the Old West into bronze and oils.

Mr. President, I ask unanimous consent to include an article about Mr. Shafer from the Johnson County Herald of November 12.

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

L. E. "GUS" SHAFER, KANSAS SCULPTOR AND PAINTER

(By Elizabeth Barnes)

It was not only our pioneer settlers who braved the hazards of an unknown land to build the history of this area.

There are among us many devoted souls who are giving to the community and to the world what will become a precious heritage. These people, though they little realize it, are also making history.

As a rule you do not hear much about these people until some signal bonor is dumped at their door. So, if you have not already done so, meet Leonard E. (Gus) Shafer, 8308 West 61st. St., Merriam, sculptor and painter, who perpetuates in bronze and oils the life of the Old West.

Born on a farm in western Kansas in 1907, Gus early developed a love of the west from his grandfather, who hunted big game with Buffalo Bill. He also learned the ways of animals through his chores about the farm, and of the wild creatures from his excursions through the rugged prairie land about bim.

Gus has been painting since early boyhood. He bad his first one-man showing when only fifteen years old in an old mortuary near his home. His father purchased one of the paintings exhibited there, an old Dutch windmill, that now hangs in the artist's bedroom.—not an original composition, Gus confesses, but a copy of an illustration in an old school geography.

His interest in clay modeling also began early. He dug the clay from a bank near his home.

Gus was left motherless at the age of ten. Two years later he left home to take a job on a neighboring ranch, tending cattle and choring about. For his first year's pay, in addition to his keep, he received a pony for his very own. The next year bought a fine saddle and bridle for it.

Next he took up selling magazines for the Hearst Publishing Company, and was soon working hard for a scholarship to Grinnell College. Out of 450 applications, Gus was the winner, which entitled him to full expenses. For three semesters he stayed at Grinnell, finally leaving for Kansas State College where he continued to work his way through to graduation.

In 1930 he brought his family to Kansas City where he set up his own office as a commercial artist. Here, as he had time, he continued his paintings of his beloved west, putting on canvas scenes that had been familiar to bim. He utilized vacation times to visit the old west, scouring the country side, talking with old timers, and visiting libraries in search of old maps and materials of a bygone era. Nothing was more exciting to him than to drive into a ghost town and round up somebody who could tell him of its past. Or to drive up to some old ranch home (often a rather dangerous undertaking, for the people in secluded areas were wary of strangers, and like as not Gus would be looking down a gun barrel until he could explain the nature of his visit.)

In his sculpturing, Gus started out with wood carving until an accident with a power saw cost him several fingers about three years ago. Then he turned to fashioning his figures in clay, or rather in an oil residue which serves the purposes better.

In the three short years in which Gus has devoted himself to sculpturing, he has won not only national recognition, but acclaim in other countries, as well.

He now has four foundries where his figures are cast, two in New York City, one in Topeka and one in Carrara, Italy. The Royal Worcester Porcelain Works of London, has also asked permission to cast his figures in porcelain.

There are six agencies and display offices which handle the Gus Shafer pieces—the Kennedy Sales Gallery in New York City, Hall Bros. in Kansas City, Phippens in Topeka, and agencies in Tucson (Arizona) and Aspen (Colorado). A special showing of Shafer's work (probably the largest ever assembled in one place) was at Hall Bros. on the Plaza during the recent American Royal.

To date Gus has completed around 40 pieces for casting in bronze. Of these, only the bust figure of his grandfather is not for sale. Each casting is numbered and is limited in number, ranging from perhaps ten to 25 or 30 castings of each. Prices range from $450 for a small figure up to $10,640.00 for a piece in silver. Only the first two castings may be done in silver. Gus reserves No. 3 of each piece for himself.

This limitation on number of castings makes a Gus Shafer piece close to an exclusive. A buyer for investment will try to purchase the lower numbers for the original price put on a piece automatically increases with each succeeding piece, in which the purchase of a No. 1 piece will find his buy worth the most as the years go by.

turn us away from the basic direction of our progress toward freer exchange.

FAIR TREATMENT OF U.S. EXPORTS

By nature and by definition, trade is a two-way street. We must make every effort to ensure that American products are allowed to compete in world markets on equitable terms. These efforts will be more successful if we have the means to take effective action when confronted with illegal or unjust restrictions on American exports.

Section 252 of the Trade Expansion Act of 1962 authorizes the President to impose duties or other import restrictions on the products of any nation that places unjustifiable restrictions on U.S. agricultural products. *I recommend that this authority be expanded in two ways:*

—By extending the existing authority to cover unfair actions against all U.S. products, rather than only against U.S. agricultural products.

—By providing new authority to take appropriate action against nations that practice what amounts to subsidized competition in third-country markets, when that subsidized competition unfairly affects U.S. exports.

Any weapon is most effective if its presence makes its use unnecessary. With these new weapons in our negotiating arsenal, we should be better able to negotiate relief from the unfair restrictions to which American exports still are subject.

STRENGTHENING GATT

Ever since its beginning in 1947, U.S. participation in GATT—the General Agreement on Tariffs and Trade—has been financed through general contingency funds rather than through a specific appropriation.

GATT has proved its worth. It is the international organization we depend on for the enforcement of our trading rights, and toward which we look as a forum for the important new negotiations on nontariff barriers which must now be undertaken.

I recommend specific authorization for the funding of our participation in GATT, thus both demonstrating our support and regularizing our procedures.

FOR THE LONG-TERM FUTURE

The trade bill I have submitted today is a necessary beginning. It corrects deficiencies in present policies; it enables us to begin the 1970s with a program geared to the start of that decade.

As we look further into the Seventies, it is clear that we must reexamine the entire range of our policies and objectives.

We must take into account the far-reaching changes which have occurred in investment abroad and in patterns of world trade. I have already outlined some of the problems which we will face in the 1970s. Many more will develop—and also new opportunities will emerge.

Intense international competition, new and growing markets, changes in cost levels, technological developments in both agriculture and industry, and large-scale exports of capital are having profound and continuing effects on international production and trade patterns. We can no longer afford to think of our trade policies in the old, simple terms of liberalism vs. protectionism. Rather, we must learn to treat investment, production, employment and trade as interrelated and interdependent.

We need a deeper understanding of the ways in which the major sectors of our economy are actually affected by international trade.

We have arrived at a point at which a careful review should also be made of our tariff structure itself—including such traditional aspects as its reliance upon specific duties, the relationships among tariff rates on various products, and adapting our system to conform more closely with that of the rest of the world.

To help prepare for these many future needs, I will appoint a Commission on World Trade to examine the entire range of our trade and related policies, to analyze the problems we are likely to face in the 1970s, and to prepare recommendations on what we should do about them. It will be empowered to call upon the Tariff Commission and the agencies of the Executive Branch for advice, support and assistance, but its recommendations will be its own.

By expanding world markets, our trade policies have speeded the pace of our own economic progress and aided the development of others. As we look to the future, we must seek a continued expansion of world trade, even as we also seek the dismantling of those other barriers—political, social and ideological—that have stood in the way of a freer exchange of people and ideas, as well as of goods and technology.

Our goal is an open world. Trade is one of the doors to that open world. Its continued expansion requires that others move with us, and that we achieve reciprocity in fact as well as in spirit.

Armed with the recommendations and analyses of the new Commission on World Trade, we will work toward broad new policies for the 1970s that will encourage that reciprocity, and that will lead us, in growing and shared prosperity, toward a world both open and just.

RICHARD NIXON.

THE WHITE HOUSE, *November 18, 1969.*

CONCLUSION OF MORNING BUSINESS AS IN LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, is there further morning business as in legislative session.

The PRESIDENT pro tempore. Is there further morning business as in legislative session? If not, morning business is closed.

SUPREME COURT OF THE UNITED STATES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, in executive session, the Senate proceed to the consideration of the pending nomination.

The PRESIDENT pro tempore. The clerk will report the nomination.

The assistant legislative clerk read the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

The PRESIDENT pro tempore. Is there objection?

There being no objection, the Senate resumed the consideration of the nomination.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

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

The Chair recognizes the distinguished Senator from South Carolina (Mr. HOLLINGS).

Mr. HOLLINGS. Mr. President, on last Thursday, the news media reported that the debate on confirmation of Judge Haynsworth had finally begun. This brings into sharp focus the current debate over the accuracy of the news media. For, in fact, the debate was over when it supposedly began last Thursday. Opposition to the confirmation was launched long before the appointment. Long before the Judiciary Committee could hold its hearings and make its findings, the opposition filled the air with sufficient confusion and doubt as to cause a near majority of this Senate to proclaim against Judge Haynsworth. All save a dozen Senators had taken a position before last Thursday. Rather than debate, what occurs now is an articulation of positions taken.

Spencer Rich in the Sunday Washington Post, quoting Senator MILLER of Iowa stated:

> What is all important, however, is that judges who have lifetime appointments and do not have to answer to the public at election time demonstrate that their high office and the public they serve come first, and that private considerations come second. Validly or not, Haynsworth's opponents have succeeded in convincing many senators and much of the public that Haynsworth does not meet this standard, and if his nomination is beaten, that will be the reason.

Mr. President, this may be the excuse, but not the reason. If the judge had put his private interests first in 1963, he never would have sold his stock. With the stock, on which they claim he made a half million dollars in putting his private interests first, he would have made an additional million dollars in the last 7 years. But he did more than the judicial conference had asked him to do. If he had put his private interests first, he would have been keeping the records of Carolina Vend-A-Matic, in South Carolina, rather than not keeping the records, as was the fact, and which causes him now to be charged with a violation or a crime by the Senator from Indiana in his bill of particulars.

So Judge Haynsworth was not putting his private interests first. Indeed, if he had put his private interests first, he would have been handling his own stock, rather than, as the records show, having it handled by one of his close friends, Arthur McCall, of Greenville, whom he brought into the fraternity at Furman University. McCall, for all intents and purposes, invested and sold, and bought

and sold, and reviewed the judge's stock at the end of each year. This was also true in the Brunswick situation where he had $20,000 left from the sale of some stock. Making an accounting at the end of the year, Judge Haynsworth was advised to purchase the Brunswick stock.

So he did not put his private interest first. If he had put his private interest first, I guess he would have had a good portfolio of stock.

I remember well that the heat of this particular debate really began in August and it got heated up by the second week in September. The New York Daily News had a stock broker, or an investment counselor, analyze Judge Haynsworth's stock portfolio, which had nothing to do with the confirmation of a judge, but this is how far the opposition reached. The investment counselor went over it in detail and said that with that much money invested, rather than having 35 types he should better have 15 types of stock, and rather than holding on to that "lousy" textile stock—which the Senator from New Hampshire and the distinguished Senator from Rhode Island are constantly talking about—because it is a poor investment, no wise investor would have held that textile investment.

So rather than putting his private interest first he had put his public interest first in the administration of justice, and he was leading the way—it was called dynamic by the Senator from Maryland—and he was appearing and acting as a consultant for the American Bar Association on the ethics panel in leading the way and participating in a full-fledged judicial administration.

The truth is that the standards of judicial ethics are not obscure. Violations of law and ethics for which the judge has been charged constitute dishonesty. No Senator questions Judge Haynsworth's honesty. None has asked Judge Haynsworth's resignation as chief judge of the Fourth Circuit Court of Appeals. Yet since shadows have been cast, they, in turn, shadow the philosophical and political reasons employed by the Senators in a finding of "insensitivity." And the die is cast.

So that the public would better understand this "debate," the strategy of the opposition should be revealed. Judge Haynsworth was appointed on August 18; but prior to the appointment, the AFL–CIO had already gone to work, with investigators fanning out into South Carolina soliciting rumors and talking with South Carolina leaders of the ADA, NAACP, and AFL–CIO.

Back in Washington, they immediately began spreading their poison. On August 15, Tom Harris, general counsel for the AFL–CIO, called the White House and Justice Department stating the opposition of the AFL–CIO to the Haynsworth appointment, and George Meany confirmed this in a telegram to the President that same day. By August 24, and this is prior to even receiving the nomination in the Senate because we were in recess and had not received the appointment, such headlines appeared in the Washington Post as "Haynsworth Had $450,000 Stock Linked to Suit," and by August 26, "Haynsworth Was in Clear Violation of Canons and Ethics for 10 Years." On the day the Senators returned from the Labor Day break on September 4, the Senate on that day received the appointment and that same day each Senator received a 59-page brief from the AFL–CIO in opposition to Haynsworth. Walter Reuther of the United Auto Workers, Alexander E. Barkan of COPE, Lee W. Minton of the Glass Bottle Blowers Association, William Pollock of TWUA all joined the assault. They met with a responsive press. The eminent group of writers covering the Supreme Court and judicial affairs in Washington had been burned by the Fortas affair. They pooh-poohed and minimized all about Fortas until Bill Lambert of Life magazine, one of their own profession, brought the facts to the surface. These writers were not going to be burned again. Overreaction was the result. They came with a case and a conviction made in their minds and they only asked certain questions of me and other Senators and only listened to answers they wanted to receive and disregarded anything that disagreed with their own preconceptions. By the time Judge Haynsworth was presented to the Judiciary Committee, I commented in the introduction that rather than an appointee, I had the feeling I was presenting an indicted defendant. The witnesses in support of the judge were not given a chance. Mr. Meany demanded to be heard before the witnesses for Judge Haynsworth had completed their testimony. Witnesses that traveled long distances were told to file written statements. Prof. Charles Alan Wright, University of Texas Law School, and G. W. Foster, Jr., associate dean of University of Wisconsin School of Law, came to Washington and were told to file statements. Mr. Coming B. Gibbs, an attorney who wanted to show consideration and understanding of the problems of the young, came and was told to file his statement. Prof. William Van Alystyne, of Duke University Law School, came and was told to file his statement.

In the middle of the hearing, Joseph Rauh, in the tactics of Bobby Seale, blurted out that the committee was preventing Roy Wilkins from being heard. Now the Judiciary Committee was on the defense. Each stockholding was examined in the light of "wheeler-dealer." The judge had presented his income tax returns, had reported on all income and holdings, and had answered in detail the requested information of Senators TYDINGS and HART. But he was accused of withholding information. The judge had answered in detail but he was accused immediately of withholding information. The Justice Department was accused of trying to sanitize the record. In the middle of it all, headlines blared that Judge Haynsworth was a friend of Bobby Baker. So suspect was news coverage that when the judge announced categorically that in order to end all questions he would place his stock in trust whether or not he was confirmed, the news headline read, "Haynsworth Deal Eyed." Furman Haynsworth, one of his forebears, was the founder of Furman University, so when it was learned that the judge had given a house to Furman University as the contribution of a loyal and proud alumni—and it was viewed in the news as "sinister."

Herblock's "Vend-a-Justice" cartoon published in the Washington Post had a lot of humor but it also has a devastating effect, because there are many people who do not read a newspaper thoroughly but do look at the pictures, and when there is a cartoon like the "Vend-a-Justice" cartoons, it has a particularly devastating and damaging effect. Herblock kept hammering with "Vend-a-Justice" cartoons. Another cartoon this weekend shows the judge rocking on the front porch of his southern plantation with his slave servant standing by as he reads the Wall Street Journal; the title, "How To Succeed in Business Without Really Trying," as though it were a crime to invest in the future of America.

Mr. President, how would half the Senate sustain itself financially if Senators did not go back into the cloakroom and grab the Wall Street Journal and make money "without really trying"?

But no, now, with Judge Haynsworth, that becomes offensive. "We have got to get rid of this wheeler-dealer."

Throughout, the "southern strategy" of President Nixon was rebuked. With headlines reading, "Haynsworth Selection Seen as Thurmond Payoff," one witness testified that the appointment was "one of the dirtiest and most sordid political games that has ever been played with judgeships as pawns and poker chips in the history of the Respublic."

It is contemplated that has all been agreed to in the home capital of the distinguished Presiding Officer now occupying the chair, Atlanta, Ga., long before the nomination. This is a criminal offense, if one promises public office in exchange for public support. "You have violated the statutory law of the United States of America." There it is. It is in the RECORD. It says that he promised THURMOND of South Carolina. He says "You can have the Supreme Court appointment. This has all been agreed to long before."

Amidst the foray, the Senator from Indiana, BIRCH BAYH, was leading the attack. The Senator's attack on Judge Haynsworth was calculated. With the Justice Fortas debacle and Bobby Baker shenanigans as a background, Senator BAYH quoted President Nixon as employing the test of "clean as a hound's tooth" in the appointment of judges. Then at the Judiciary Committee he came upon the judge as a cat with a canary, liberally sprinkling the record with words of "regret," "embarrassment," "I am sorry to have to ask you this," "We don't question your honesty"—then bam. He socked the judge with a nine-page bill of particulars dated October 8, 1969. There was no reference here to Justice Fortas or Bobby Baker but rather coldly calculated charges of crime, statutory violations, breaches of ethics, avariciousness, and lack of candor.

May I ask the distinguished occupant of the chair, the President pro tempore, would you please tell me, sir, considering the experience of a Presiding Officer, how one gets this nice talk about not questioning the honesty of a judge, how in

public experience and service, and particularly in the Senate, how can one smilingly say to everyone with supercourtesy and superdeference, charging that the fellow is a crook, and then saying, "Wait a minute—no, we are not questioning his honesty?"

Well, Mr. President, I do not know about this double talk. I cannot understand it.

The charge of employing his judicial position for personal gain in a vending business is not made lightly. So that the reader will understand, a full-page chart is drawn as dramatic proof of a business faltering until Mr. Haynsworth became judge and then volume soared, while the judge sat distributing favorable decisions to the company's customers. Mr. President, can you not just see the Senator trying to find an article, and then saying to his staff, "They might not get the picture," and so they get up this chart—so they get this out. This is followed with the innuendo that the judge lied to the Judiciary Committee about being an active officer, soliciting business. Five violations of section 28, U.S.C. 455 are charged. The violations of section 29 U.S.C. 301–308 with the stated sentence of 6 months' imprisonment or a fine of $1,000 or both is charged. So the Senator from Indiana comes now—everything is sweetness and light. The fellow cannot possibly recoup the truth at this hour. He should say it is true and then go ahead and indict him and send him to jail, or apologize publicly. One or the other is true. If this body of 100 men cannot find the truth, then we are in sad shape, indeed, in the United States of America.

Violations of canons 4, 13, 24, 25, 26, 29, 33, and 34 of the Judicial Canons of Ethics of the American Bar Association are charged with numerous violations of each. He said, "Don't worry about this one"—That is, canon 4, 12 times; canon 13, five times; canon 26, six times; canon 29, seven times. Thirty-seven violations of the Code of the Judicial Canons of Ethics. But, says Senator BAYH, the question is not whether the judge is dishonest but whether he has the right temperament.

Mr. President, the Senator does not question the fellow's honesty. But look at the bill of particulars. I do not know how you do it, but look at the special views stating that he does not question the judge's honesty but whether he has the right temperament.

I hope that the judge never gets the right temperament to understand the logic of that—neither do I.

With this understatement, Senator BAYH finalizes the onslaught with a picture of the Justice Department conspiring against the Senate Judiciary Committee to "sanitize the records" in order to keep the truth from the individual Senators. Thus inflamed, the reader of this bill has abandoned all thoughts of confirmation and wants to go out and wring the judge's neck. Senator BAYH, thereupon, refuses to debate the bill and from his pedestal of no discussion, he enunciates his regret at having to bring all of this up in the first place.

At this particular time, when the bill of particulars appeared and the Senator from Indiana was covered on television, I asked Senator BAYH for an opportunity to discuss it on television with him. He categorically refused. We were invited to go on the "Issues and Answers" show. We were invited to go on the Lawrence Spivak "Meet the Press" show. We were invited to go on the morning "Today" show, and numerous radio shows, but the Senator from Indiana said, "This is too serious a matter"—too serious a matter to discuss in the press and news. We should not get personal. We should reserve our comments for debate on the floor of the Senate.

Mr. President, that was a month ago, and the man is down the drain. He has gone. The debate is over with.

If he wanted fairness and the truth, he could be answered. I have the answers for him. But, they did not want that. They did not want anyone to answer anything. They do not want debate. They do not want the deliberative processes in the Senate.

Really what is wrong, says the Senator, is that the judge is insensitive. Thereupon, the Senator leads the lynching party with cries of, "Withdrawal, withdrawal."

I went around here for 5 days denying that the judge had withdrawn. I got no response at trying to get at the truth. All I got here was that he was trying to withdraw, "Is he going to withdraw?" "Have you talked to the judge? Did he sound good? Did he sound sad? Did he sound happy?"

Well, I said, "understandably, he did not sound so happy." Then, Senator HOLLINGS is quoted as saying, "Judge not happy." And so on down the line. They disagree about the truth on the bill of particulars. The lynching party was on.

While difficult to remember at this point, it is a fact that Judge Haynsworth came to his appointment with an impeccable record of integrity. Practically at the top of the judiciary as chief judge of the Fourth Judicial Circuit, the judge ranked immediately below the nine Supreme Court Justices. Described in the hearings as dynamic in his development of the administration of justice, the judge served as a consultant to the American Bar Association's Committee on Professional Ethics.

Obviously, when first appointed, Judge Haynsworth gave every appearance of propriety, so who created the appearance of impropriety—the judge or others? Did the judge violate the law and disregard the ethics? Did the judge's conduct warrant these impressions? Are they founded in truth?

Mr. President, since I have referred to Senator BAYH's bill of particulars, I ask unanimous consent to have printed in the RECORD at this point a copy of that bill of particulars.

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

SENATOR BIRCH BAYH'S BILL OF PARTICULARS AND SENATOR ERNEST F. HOLLINGS' DETAILED ANSWER WITH PAGE REFERENCES TO THE RECORD OF SENATE COMMITTEE ON JUDICIARY, NOVEMBER 18, 1969

In recent years our judicial system has come under increasing attack, not only by the citizenry at large, but by lawyers and members of the legislative branch of both national and state governments. As our ideas, opinions and judgments of law and its application have changed over the past 180 years, so have changed the expectations of the American public of our public officials. Particularly now, when public confidence in the integrity of the federal judiciary at the highest level has so recently been severely shaken, it is of the utmost importance that only men who are truly distinguished and truly above reproach sit on the bench of our highest court.

Since the nomination of Judge Clement F. Haynsworth to be Associate Justice of the Supreme Court, numerous facts that raise a serious question as to the propriety of his conduct while a member of the Federal Judiciary have come to my attention. An intensive investigation aimed at uncovering the truth has resulted in the following bill of particulars which has convinced me that Judge Haynsworth falls short of the demanding ethical standards required of an Associate Justice of the Supreme Court. I issue the bill of particulars with no malice toward Judge Haynsworth but with some considerable regret. The question is not whether Judge Haynsworth is dishonest but whether he has shown the temperment necessary to sit in the highest judicial council.

CAROLINA VEND-A-MATIC

Judge Haynsworth was an organizer and founder of Carolina Vend-A-Matic in 1950, with an original investment of $2,400.00.

(Charge 1) He was Vice President and a director of Carolina Vend-A-Matic until 1963. He stated that he orally resigned from the Vice Presidency in 1957, but the corporation records show he was listed as Vice President until 1963 and indeed regularly attended meetings of the Board of Directors and voted for slates of officers through the years. He was in fact paid director's fees in amounts as high as $2,600.00 per year, and the records show his wife, Dorothy M. Haynsworth, served as Secretary of the corporation for two years while he was on the Federal bench.

(Charge 2) Although the Judge claims he was an inactive officer, the minutes of the corporation indicate that such was not the case. Directors were active in locating new business and Judge Haynsworth took an active part in director's meetings, often making motions himself. While he was director of Carolina Vend-A-Matic, he took part in decisions to buy and sell land to himself and other directors and the profit sharing trust.

(Charge 3) Judge Haynsworth endorsed notes for the corporation in amounts as high as $501,987.00. Some of these notes were endorsed after he assumed the bench.

In 1963 more than three-fourths of CVAM's total business was with textile concerns.

(Charge 4) Thus any precedent setting decision affecting the textile industry would also affect CVAM through its customers.

For some years there had been an exodus of textile concerns from the North to the South in an effort to take advantage of lower wages as a result of strong regional pressures against collective bargaining in the South. The *Darlington Mfg. Co.* v. *NLRB* case was a landmark case in the textile industry because it enabled textile concerns to close plants attempting or organize. Thus, it gave them an important weapon.

The case of *Darlington Mfg. Co. v. NLRB* came before the Fourth Circuit Court of Judge Haynsworth in both 1961 and 1963, while CVAM had a vending contract with Deering Milliken Corp., Darlington's parent company, for $50,000 per year. (Charge 5) While the litigation was still pending, CVAM signed a new contract with Deering Milliken Corp., increasing their vending business with that company to $100,000 per year. The Darlington case was eventually decided in

favor of Darlington, with Judge Haynsworth casting the deciding vote and thus establishing an important legal precedent for the textile industry in a decision later substantially modified by the Supreme Court.

In 1957, after Judge Haynsworth assumed the bench, the gross sales of CVAM and its subsidiaries increased tremendously. Gross sales increased only slowly from $169,355 in 1951 to $296,413 in 1956. (Charge 6) But in 1957, the year Judge Haynsworth assumed the Federal bench, sales jumped to $435,110 and continued a precipitous climb, reaching $3,160,665 in 1963, the last full year in which Judge Haynsworth owned a major share of the company.

Gross annual sales of Carolina Vend-A-Matic Co., Inc.

1951–52	$169,355
1953	(1)
1954	171,774
1955	214,503
1956	296,413
1957	453,110
1958	491,166
1959	714,009
1960	941,370
1961	1,697,329
1962	2,552,240
1963	3,160,665

[1] Not available.

(Charge 7)—Between 1958 and 1963 Judge Haynsworth sat on at least six other cases involving customers of CVAM.

1. *Homelite v. Trywilk Realty Co., Inc.*, 272 F2d 688 (1959) Gross sales to Homelite by CVAM in 1959 totaled $15,957.22.

2. *Kent Mfg. Corp. v. Commissioner of Internal Revenue* 288 F2d 812 (1961). CVAM gross sales to Runneymeade, a subsidiary of Kent Mfg. Corp., in 1961 totaled $21,323.63.

3. *Textile Workers Union of America v. Cone Mills Corporation* 268 F2d 920 (1959). CVAM gross sales to Cone Mills and its subsidiaries Carlisle Mill and Union Bleachery in 1959 totaled $97,367.12.

4. *Leesona Corp. v. Cotwool Mfg. Corp., Deering Milliken Research Corp. and Whitin Machine Works* 315 F2d 895 (1963). CVAM gross sales to Deering Milliken plants in 1963 totaled $10,000,00.

5. *Leesona Corp. v. Cotwoll Mfg. Corp., Deering Milliken Research Corp. and Whitin Machine Works* 308 F2d 895 (1962). CVAM gross sales to Deering Milliken 1962 totaled $50,000.00.

6. *Textile Workers Union of America v. Cone Mills* 290 F2d 921 (1961). CVAM gross sales to Cone Mills and its subsidiaries in 1961 totaled $174,314.92.

OTHER CASES INVOLVING CONFLICT OF INTEREST

(Charge 8) There are at least five cases in which Judge Haynsworth held a financial interest in one of the litigants substantial enough to require disqualification under 28 USC 455 and to constitute impropriety under the Canons of judicial ethics.

Brunswick Corp. v. *Long*, 392 F. 2d 348 (1967)

Farrow v. *Gray Lines, Inc.*, 381 F. 2d 380 (1967)

Merck v. *Olin Mathieson Chemical Corp.* 253 F. 2d 156 (1958)

Darter v. *Greenville Community Hotel Corp.*, 301 F. 2d 70 (1962)

Donohue v. *Maryland Casualty Co.*, 363 F. 2d 442 (1966)

DEMONSTRATED LACK OF CANDOR

I. Denial of active participation in the business of CVAM.

In a letter to the Chairman of the Judiciary Committee dated September 6, 1969, Judge Haynsworth said:

(Paragraph 12) "The specific locations of vending machines were simply not a matter of interest to me and, as stated before, I was never involved in any way in securing new vending machine locations."

In testimony before the Judiciary Committee on September 16, 1969, the following exchange occurred:

CHAIRMAN. Did you have anything to do with the preparing of bids or soliciting business for Carolina Vend-A-Matic?

Judge HAYNSWORTH. Nothing whatsoever.

Senator TYDINGS. As a part of your work, or as a part of your association with Carolina Vend-A-Matic, did you formally or informally seek to obtain business for Carolina Vend-A-Matic?

Judge HAYNSWORTH. Never. I did not.

Fact. Judge Haynsworth was consistently and intimately involved with the operation of Carolina Vend-A-Matic from June 1957 until October 1963 and regularly accepted funds from CVAM during that period subsequent to a resolution by the Board of Directors which appears in the minute books of the corporation and states that:

"it was pointed out that the main sales and promotional work of CVAM had been done by its directors who are also the officers of the corporation and that any new locations were the result of many conversations, trips and various forms of entertainment of potential customers by one or more of the directors or officers over an extended period of time. A review was had of the various locations that had been acquired during the past several years and new locations that were being considered and practically without exception, these were the result of the Board of Directors."

(Charge 9) II. Denial of having sat on any cases in which he had a substantial financial relationship with one of the litigants.

In a letter to the Chairman of the Judiciary Committee, dated September 6, 1969, Judge Haynsworth said:

(Paragraph 13) "I have disqualified myself in all cases in which my former law firm or any of its members were counsel, cases in which certain relatives were counsel, and all cases in which I had a stock interest in a party or in one which would be directly affected by the outcome of the litigation."

(Charge 10) And in testimony before the Judiciary Committee on September 17, 1969, Judge Haynsworth said:

"And I suggest to you that I have not made or retained any investment in any concern which was likely to be involved with frequency in my court."

Fact: Judge Haynsworth sat on at least five cases in which he had a substantial stock interest in litigants before him:

Brunswick Corp. v. *Long* 392 F2d 348 (1967).

Farrow v. *Grace Lines Inc.* 381 F2d 380 (1967).

Merck v. *Olin Mathieson Chemical Corp.* 253 F2d 152 (1958).

Darter v. *Greenville Community Hotel Corp.* 301 F2d 70 (1962).

Donohue v. *Maryland Casulty Co.* 363 F2d 442 (1966).

(Charge 11) III. Denial of having retained positions as a director and officer in Carolina Vend-A-Matic and the Main Oak Corporation.

In testimony before the Subcommittee on Improvements in Judiciary Machinery on September 17, 1969, Judge Haynsworth said:

"Of course, when I went on the bench I resigned from all such business associations I had, directorships and things of that sort. The only one I retained is the trusteeship of this small foundation which I mentioned in my main statement, and I think that perhaps the best rule for a judge to go by now is stop doing even that."

Fact. Judge Haynsworth retained his position as director and officer of the Main Oak Corporation and CVAM when he went on the bench and until October, 1963.

He also had remained as a trustee of the Furman Charitable Trust from the time he went on the bench until today.

VIOLATION OF 29 USC 301–308

The Welfare and Pension Plan Disclosure Act provides that an administrator of a pension fund must file with the Secretary of Labor an initial description of the plan and annual reports thereafter. (Charge 12) Willful violation of the act can lead to six months imprisonment or a fine of $1,000 or both. Judge Haynsworth was a trustee of the CVAM profit sharing and retirement plan from 1961 until 1964 and qualified as an administrator with the Secretary of Labor. On September 17, 1969, the director of the Office of Labor-Management and Welfare-Pension Reports of the U.S. Department of Labor advised my office by letter, "Our records do not show that any reports have been received under the name of Carolina Vend A Matic Company, Inc., for a Profit Sharing and Retirement Plan."

VIOLATIONS OF THE CANONS OF ETHICS OF THE ABA

I. Canon 4 states:

"Avoidance of Impropriety. A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in his performance of judicial duties, but also in his everyday life, should be beyond reproach."

(Charge 13) Judge Haynsworth has violated 29 USC 301–308 by his failure to comply with the Welfare and Pension Plan Disclosure Act and has violated 28 USC 455 and the law of due process as interpreted by the U.S. Supreme Court in *Tumey* v. *Ohio* 273 US 510 (1927), *In Re Murchison* 349 US 133 (1955) and *Commonwealth Coatings Corp.* v. *Continental Casulty Co.* 393 US 145 (1968), no less than 13 times by sitting on cases involving customers of CVAM and in cases in which he held stock interest in a litigant as cited above.

II. Canon 13 states:

"Kinship or Influence. A judge should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person."

(Charge 14) By sitting on cases involving customers of CVAM and ruling in their favor at least five times in five years Judge Haynsworth conducted himself in such a manner as to "justify the impression" that he may have been improperly influenced.

III. Canon 24 states:

"Inconsistent Obligations. A judge should not accept inconsistent duties nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions."

(Charge 15) By acting as a director and Vice President of CVAM, Judge Haynsworth clearly accepted duties likely "to interfere or appear to interfere" with the proper administration of his official functions. Shortly after investigating bribery charges in the 4th Circuit Court of Appeals in 1963–64, Judge Simon Sobeloff, in an article for the *Federal Bar Journal* observed:

"One can readily see that if a judge serves as an officer or director of a commercial enterprise, not only is he disqualified in cases involving that enterprise, but his impartiality may also be consciously or unconsciously affected when persons having business relations with his company come before him."

IV. Canon 25 states:

"Business Promotions and Solicitations for Charity. A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his

name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relations which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties."

(Charge 16) Judge Haynsworth's financial interest and active participation in the affairs of CVAM constituted a clear breach of this standard. The remarkable rise in gross sales of CVAM after he assumed the Federal Bench justified the *suspicion* that the prestige of his office was used to promote his own interests as well as those of his fellow stockholders. In addition, his practice of taking part in cases involving customers of CVAM furnishes further grounds for the belief that his office was used to promote patronization of a business in which he had substantial interest.

V. Canon 26 states:

"Personal Investments and Relations. A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and after his succession to the Bench, he should not retain such investments previously made longer than a period sufficient to enable him to dispose of them without serioue loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin."

(Charge 17) Judge Haynsworth breached this Canon on at least six occasions. His largest investment has been Georgia Pacific Corp., which was the subject of a consent decree by the S.E.C. in 1966. The decree was entered in the Second Circuit, but fraudulent stock transfers could have led to litigation in the Fourth Circuit. In the Brunswick case, Judge Haynsworth bought stock in Brunswick while a case involving that company was before his court. Other investments made by Judge Haynsworth can be considered investments which "are apt to be involved in litigation in the court" since in fact W. R. Grace Co., Greenville Community Hotel Corporation, Maryland Casualty Ins., and Monsanto Chemical Corp. did appear before his court.

VI. Canon 29 states:

"Self-Interest. A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he bas personal litigation in the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy."

(Charge 18) By deciding cases involving customers of CVAM on at least seven occasions, he exercised judicial discretion which could have affected the business of CVAM and hence Judge Haynsworth, a clear breach of this canon. In interpreting Canon 29, Opinion #170 of the Ethics Committee of the ABA clearly states that a judge shall exercise no act of judicial discretion in cases where he owns stock in a corporate litigant. In the Brunswick case, by participating in the decision and denying the motion for an extension of time, Judge Haynsworth clearly violated Canon 29 as interpreted by the ABA. Similarly, by sitting in the W. R. Grace Co., Maryland Casualty Ins. Co., Greenville Community Hotel Corp., and Olin Mathieson Chemical Corp. cases the Canon was breached.

VII. Canon 33 states:

"Social Relations. It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the Bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct."

(Charge 19) By sitting in cases involving important customers of CVAM Judge Haynsworth gave grounds for the *suspicion* that business relations influenced his conduct

VIII. Canon 34 states:

"A Summary of Judicial Obligation. In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity."

(Charge 20) Judge Haynsworth in view of the facts detailed above has obviously not conducted himself in such a manner that bis conduct is above reproach "in every particular."

I would like to point out in closing that this bill of particulars is less complete and comprehensive than I would like due to the extreme difficulty we have experienced in gaining access to all of the material we have requested. It is unfortunate that the Justice Department has not only been less than candid with the Senate Judiciary Committee but appears to have embarked on a calculated effort to sanitize the records upon which individual members of the Senate must decide this important question. Some records are incomplete and because of countless delays we have had less time than we would like to assess the material that has recently become available. I consider this to be in the nature of a preliminary report which will be updated as we acquire more complete records and have the opportunity to study at greater length those we already have.

Mr. HOLLINGS. Mr. President, having put that in context and reprinted the bill of particulars under date of October 8, 1969, I shall now attempt to answer Senator BAYH'S bill of particulars with reference to each page of the actual record before the Senate Judiciary Committee that is appropriate, because I still have some questions that every Senator has read every page of this particular record or that every Senator read the record before he made up his mind on how he would vote on this nomination.

ANSWER TO SENATOR BAYH'S INDICTMENT OF JUDGE HAYNSWORTH—CAROLINA VEND-A-MATIC

Charge 1: The judge stated he orally resigned as vice president but the corporation records showed otherwise.

Truth: The judge told of his oral resignation and that he was carried as a vice president on the corporation records all in the same breath. He did not mislead the Judiciary Committee—page 91.

Charge 2: The judge claims he was an inactive officer when, in fact, he was active.

Truth: This charge of active participation and lack of candor on page 4 and 5, quotes questions out of context by both Chairman EASTLAND and Senator TYDINGS. The charge is made that the judge was soliciting business because he was "intimately involved," and this is supported by a quote from the minute books. A reading of the record shows that the judge answered every question with candor. The real point in interest was whether or not the judge solicited business. The quoted answer given Senator EASTLAND shows on page 42 the judge's denial that he prepared bids and solicited business. He stated his only interest was in financing. On page 60 he told Senator TYDINGS that he never contacted directly or indirectly Deering Milliken and never made telephone calls. He told of his director's fees and denied categorically that he never formally or informally sought to obtain business for Carolina Vend-A-Matic. This is undisputed.

They have had weeks and all kinds of minions and law clerks and everybody else in on this matter. If they could have gotten any inference from any citizen on that matter that was accurate, they would have brought it to the Senate committee and to the Senate itself. It is undisputed.

But an insidious inference is created by way the charge is set in the bill of particulars and by extracting an entry from the minutes 2 months after the judge took office in 1957. This entry was in justification of director's fees from a tax standpoint. To levy a charge of a lack of candor with a lack of candor is nothing less than vicious. This is an intentional deception and all the evidence shows that the judge had nothing to do with obtaining business.

Yet we still have Senators talking about "obtaining business." They have picked up the virus.

Charge 3: To add to the impression of a "wheeler-dealer," the judge is charged with signing notes as high as $501,987.

The inference is that there is a very big fraud here or that he is a big "wheeler-dealer."

Truth: The judge did sign several notes but no note exceeded $50,000 nor did the endorsed indebtedness of Carolina Vend-A-Matic exceed $55,550 at any one time.

But this is all coupled in one package; and, going into it in detail, they could, in all candor, have found this.

Charge 4: The judge cast the deciding vote in a precedent-setting decision in favor of the textile industry, the principal customer of CVAM.

Truth: The decision affected all industry—not just textiles—and there were three decisions rather than one.

The press is never going to report that.

In the first Darlington decision the judge ruled with the union. In the second Darlington decision the judge ruled with the company that it could close its business whenever it wanted to. This was the prevailing Supreme Court view at the time. On appeal the Supreme Court sustained this view, but set new law by stating if the the closing was a device to discourage union activity at other plants owned by the company involved, then the company could not close. The case was referred back for further testimony

on this point. The lower court found that it was a design to discourage activity at other plans and in the third Darlington decision Judge Haynsworth sustained the lower court which was affirmed by the Supreme Court.

If the President please, these were the same lawyers, the same group, and they are good lawyers. They had every opportunity to object. They could have objected, when the case was on appeal the first time. When they found, by an anonymous telephone call, that there was some question, they did not raise the point that the judge should step aside. The truth is, when they talk about Deering Milliken and a conspiracy, that there were other stockholders in this company, some 200, who did not own any other textile stock. Judge Haynsworth wrote a special opinion. He said those stockholders should not be penalized by a judgment calling for the back-payment of discharged employees. He said Deering Milliken should sustain the entire burden. That was a special opinion against Deering Milliken. It was not the judgment of the court. So, in fact and in law, the judge found against Deering Milliken.

Where are we going to find that in the press? We will never hear it.

Charge 5: While the case was pending, Deering Milliken doubled its business with the Judge's vending company.

Truth: In the spring of 1963 CVAM was invited to make a bid along with at least eight other companies. The proposal was submitted on June 27, 1963, and the contract was awarded on July 15. In June 1963, they were again invited to make a bid on another location, but were told that they lost in the competitive bidding in the early fall of 1963. Another bid was made in early fall 1963 on another contract and they were told on November 19, 1963, that they had lost that contract. The Darlington Mills case was decided on November 15, 1963. The inference here is that Deering Milliken was increasing its business with CVAM when the truth is it was actually losing business during this period.

Charge 6: CVAM enjoyed "remarkable rise in gross sales" because Clement Haynsworth became a judge.

Truth: On page 63 the Judge categorically denied the implication that he had anything to do with the industrial expansion, with soliciting industry for the South, or with the "precipitous climb" in sales. The judge stated, "I am a lawyer, not a salesman."

In January 1959 the State Development Board was reorganized. The Governor bought an airplane and started traveling weekly to New York and other cities soliciting industry for South Carolina. He traveled thousands and thousands of miles in that 4-year period from 1959 to 1963. He traveled to five countries in Latin America and seven countries in Europe. Just the other day, we announced a new industry, for which contact was made back in 1963, at Beaufort, S.C.—a $500 million industry—and I can tell of a pending or imminent announcement of a $700 million industry that is about to go in in the low country area of South Carolina, as a result of those same travels. You go, you solicit, and you grow. Between 1959 and 1963 over $1 billion in new industry located in South Carolina creating over 100,000 new jobs. In addition thereto, the impact of desegregation—and they do not want to talk about this, but this is a fact—the impact of desegregation upon the industry of South Carolina was met universally with desegregated eating facilities as provided by vending machines.

They had previously had an old "bum wagon," and went around the plant, and they would feed employees separately. Management was confronted with the problem of desegregation. With the vending machines, they would put all the machines in one room, the meals were hot, it was clean, it was serviceable—it has been the solution. Everyone gets what he wants, and they sit down as they want to, together. No one complains, and it has worked extremely well. Judge Haynsworth had nothing to do with the coming of the industry or the change to vending—and all vending companies in South Carolina experienced a "remarkable" rise in gross sales during the 4-year period of 1959–63. Judge Haynsworth disposed of his interest in 1964. The same precipitous climb continued for CVAM and all vending companies in South Carolina. It continued for that same company after the judge had sold all his stock. But they do not give the full picture. They do not give the truth, which is all the facts they know about.

Why did they not review what the principal competitor, in Greenville, S.C., The Atlas Vending Co.—Greenville's oldest and largest operator of vending machines—had to say. Its owner, Alex Kiriakides, Jr., wrote to Senator EASTLAND. I would like to include a letter of mine, which I received on September 5. I ask unanimous consent that the entire letter be printed in the RECORD at this point.

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

ATLAS VENDING CO., INC.,
Greenville, S.C., September 5, 1969.

Hon. ERNEST F. HOLLINGS,
U.S. Senator, South Carolina,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HOLLINGS: There have been a lot of rumors in our newspapers lately concerning Judge Haynsworth, his business connections and ethics. Let me take this opportunity to speak in his behalf.

It seems to me his having an interest in a vending company should not be a deterring factor in his being appointed to the Supreme Court. As in the past, any person who owned stock in a vending company seemed to leave a bad taste in the mouths of the people. Speaking as an independent operator and in behalf of independent operators like Carolina Vend-A-Matic, we are a business like any other business, part of a free enterprise. A business whose ethics are up to or surpass any other business in this nation and we resent being classified as a "Bobby Baker Case." I cannot, however, speak for the ethics of the national vending companies.

I am probably the oldest vendor in this area and probably know more about the operation of my then competitor, Carolina Vend-A-Matic than any other person in this area in which they operated. I own and operate Atlas Vending Company, Inc. here in Greenville, South Carolina and have been doing so for over thirty years. Carolina Vend-A-Matic was a competitor of ours and during the time this company was Carolina Vend-A-Matic the stockholders and the management did nothing unethical in obtaining new business or in holding old business. As you know, they are now known as A.R.A. Service and Judge Haynsworth is not a stockholder in the present company. I had the greatest regard for Carolina Vend-A-Matic, its employees, and its management for the ethical manner in which they conducted business. If all the other companies or competitors could come together around a conference table I am sure they would feel that the good points of Carolina, in the way in which they conducted business, would certainly overcome and outweigh any competitive "jealousy." All of the vendors in this area, which at that time were several in number, had equal opportunity to obtain business. We got some of the business, others got some, and Carolina got some. Judge Haynsworth to my knowledge was never an officer of Carolina Vend-A-Matic and at no time used his position to gain new business. To the best of my knowledge the Presidents of Carolina Vend-A-Matic were Francis Marion and Gene Bryant.

The persons who were the stockholders of Carolina are well known to me. They are men of great means who are honorable and respectable business men who would never stoop to gaining wealth by using their position or their influence in unethical measures.

The reason that Carolina and myself and others have grown and gained in the vending industry is due largely and for the most part to the change in the times in the textile industry. The textile plants approached vending seeking more modern means to feed their people. They needed better quality food, with less time involved in feeding in order to gain through production. The textile plants are looking out for their people. The business is gained through competitive bidding. A textile firm will often have as many as five to twenty bids on which to base their decision. These bids are reviewed by employee committees, personnel, and management in order to come to a decision in the best interest of all concerned. This leaves little room for personal or political gain.

My reason for writing this letter is that I can no longer sit still and see the charges being made by the news media and the attempts by them and others to dig into the past and use facts in such a way as to throw reflection on Judge Haynsworth with no knowledge of the person whom they are talking against or the great injustice which they are doing to our nation. It seems that personal and political gain is clouding the minds of some and closing their eyes to the truth. Now is not the time for self, we must put our nation first and our nation needs a good Supreme Court.

We have been visited recently by a Charlotte reporter who asked questions regarding Judge Haynsworth's past vending affiliations. One of his questions dealt with whether or not Carolina Vend-A-Matic had the vending for the Deering-Milliken Plant in Darlington, South Carolina. My reply to him was that at that time neither I nor Carolina could go beyond our own county because of our volume of business and that it was some years later that we were able to spread into other areas within our state.

The dignity and reputation of a man like Judge Haynsworth must and will be spoken with truth. The people of this nation should be proud to have a man of his character in the Supreme Court. I, personally and wholeheartedly, support President Nixon's choice of this man; but, Senator, it will be a grave injustice if his record is not wiped clean before his appointment and it must be done by people who know him and who have been in contact with him. People from other states and in other capacities should not be judging a man for their own benefits.

My only aim in writing this letter is to see that the reputation of this man does not fall into the hands of a few and to do my part to see that he becomes a part of the Supreme

Court of the United States. I would be willing for and would urge you to use this letter, any or all of it, at your discretion before the Judiciary Committee or in any other way it might be beneficial to Judge Haynsworth's appointment and this nation. I will also be available, at my own expense, to come to Washington and appear before the committee on this matter. We need Judge Haynsworth in the Supreme Court and we need the slate wiped clean. Please use this letter to that end.

Sincerely,

ALEX KIRIAKIDES, Jr.

Mr. HOLLINGS. I refer specifically to paragraph 3, and read a couple of sentences there:

I am probably the oldest vendor in this area, and probably know more about the operation of my then competitor, Carolina Vend-A-Matic, than any other person in this area in which they operated. I own and operate Atlas Vending Company, Inc., here in Greenville, S.C., and have been doing so for over 30 years . . .

Carolina Vend-A-Matic, the stockholders and the management, did nothing unethical in obtaining this business, or in holding the business.

Well, where did they get the charge? They do not have a person connected with the vending business, and there have been many of them there. They have been competing. Where is the testimony? Where is the record?

They say, "Oh, the inference is there." Is there a fair inference, when all the companies were growing, when all the companies experienced this precipitous climb in sales?

Quoting further, Mr. President, from the letter from Alex Kiriakides, Jr., he does not say "because I have got me a judge over on the fourth circuit, and he started getting business for me"; instead, he says:

The reason Carolina and myself and others have grown and gained in the vending industry is primarily and for the most part due to a change in times in the textile industry. The textile industry changed to vending machines as a more modern way to feed the people.

That is a nice way of saying they needed to desegregate their eating facilities. The letter continues:

A textile firm will often have as many as five to twenty bids on which to base their decision. These bids are reviewed by employee committees, personnel, and management, in order to come to a decision in the best interests of all concerned. This leaves little room for personal or political gain.

Mr. President, I reiterate, Judge Haynsworth had nothing to do with the coming of the industry or the change to vending. All vending companies in South Carolina experienced the remarkable rise in gross sales during the 4-year period from 1959 to 1963, and all companies, Mr. President, have experienced a similar rise since 1963 to the present date, 1969—ergo, the increase of a million dollars in the Carolina Vend-A-Matic stock that Judge Haynsworth sold. If he had held it, he would have made a million dollars more. These are the facts in the case, and the truth.

The same chart can be drawn for the 4 years after Judge Haynsworth left CVAM as for the 4-year period 1959–63. And the same chart can be drawn for all vending companies in South Carolina for the last 10 years. If the insinuation intended by this charge is true, Judge Haynsworth should be tried as a criminal. If not, then the insinuation itself constitutes a violation of canon 1 of the Professional Ethics of the American Bar Association.

Charge 7: Between 1958–63 Judge Haynsworth sat on six cases involving customers of CVAM, inferring, of course, that the judge had a substantial interest as provided under 28 U.S.C. 455, which section required his disqualification.

Truth: In none of the six was the judge a stockholder in a party litigant and in none of the six did he have a substantial interest as outlined under the statute. In each of the six, under the finding of the American Bar Association, Judge Walsh's testimony—pages 151, 153, and 160—and under the decision of Prof. John Frank—pages 115, 117, and 128—the leading authority on judicial disqualification, Judge Haynsworth would have had a duty to sit in each of these cases. CVAM made no sales for Kent Manufacturing Co. listed in case No. 2 on page 4 of Senator BAYH's bill of particulars. The charge is false.

Charge 8: Judge Haynsworth had a financial interest in the party litigant of five listed cases thereby violating the statute and also the canons.

Truth: Case 1: In the Brunswick case the judge heard the appeal on November 10, 1967, joined in the unanimous decision to affirm on that same day and 6 weeks later his broker bought 1,000 shares of Brunswick stock. The printed opinion was not rendered until February 2, 1968. The judge admits this mistake and says it was wrong; however, there is no inference or suggestion that the subsequent purchase of stock had any bearing on the judge's decision in the case. No one contends that. Judge Harrison Winter who rendered the decision testified accordingly. The American Bar investigated this and reaffirmed its highest recommendation of Judge Haynsworth to be an Associate Justice of the U.S. Supreme Court.

Mr. President, I respectfully submit that this was a lapse of memory, and not a lapse of ethics.

They have been talking and talking, and never got the facts on Carolina Vend-A-Matic, and did not want to put in all the picture; but they have been talking about the Brunswick case. What about that case? What did the lawyer think who handled the Brunswick case, the Honorable Edward D. Buckley, a member of the firm of Bailey and Buckley? I talked with him about it, and as a result, he wrote a letter to me.

Now, can he not assume that as counsel for one of the parties, he would really have wanted to know all the facts about it? Especially, as counsel for the losing party in the Brunswick case. The letter read as follows:

DEAR FRITZ: Enjoyed talking with you today. As counsel for the losing party in the "Brunswick Case" I welcome the opportunity to comment on Judge Haynsworth's propriety. It will interest you to know that yours is the only inquiry I have received from anyone in the Senate.

Let me preface my remarks by saying I have conferred with my client and he has told me I was free to express my opinion of Judge Haynsworth's handling of this case.

In my judgment, Judge Haynsworth's stock ownership had nothing to do with any ruling he was called upon to make.

Let me repeat: "Nothing to do with any ruling he was called upon to make." And we have literally thousands of headlines and letters and much debate. However, the person involved says that it had nothing to do with it.

I continue to read from the letter:

Although I did not agree with the decision in this case, the entire panel of three judges ruled against my position. I do not think a thousand shares of Brunswick stock is a large enough interest to be of any consequence, nor do I feel there was any conflict of interest on Judge Haynsworth's part.

I have never heard the least word of criticism of Judge Haynsworth for his conduct on the bench in the twelve years he has sat on the 4th Circuit.

Where is that group that were talking about appearances? I wish they in the Chamber. They were hollering about lack of sensitivity and lack of judgment and not giving the appearance of being right.

This is a letter from the lawyer for Brunswick. That is what he says. They create all kinds of appearances themselves and then blame the judge for it.

I continue to read the letter:

I appeared in the Brunswick case with complete confidence my client would receive a fair and just hearing. I believe we received such all the way, and I would not have the slightest qualm to appear before Judge Haynsworth on any other matter.

I hope that this letter may place the "Brunswick Case" in its proper perspective. I trust that this case will no longer cloud the issues.

With kind personal regards, I am,

Sincerely,

EDWARD D. BUCKLEY.

Here it is with all the appearances involved. But we have to measure this in the court. What about confidence in the good commonsense and judgment of the U.S. Senate as a deliberative body finding the truth and really responding to the truth?

Cases Nos. 2, 3, 4, and 5 on that charge No. 8 in the bill of particulars.

In the remaining four cases, the charge is absolutely false. The judge did not own any stock in the party litigants. In the Grace Lines case, the judge owned 300 shares out of 18,252,335 outstanding shares in W. R. Grace & Co. Grace Line, Inc. was one of 53 subsidiaries of W. R. Grace & Co. The case involved a $50 verdict for an injured workman, which verdict was affirmed unanimously in a per curiam opinion. Under the statute, he had a duty to sit.

I have been reading the comments made by some Senators to the effect that this was a case of a poor little defendant with a $50 verdict looking at the tipping of the scales of justice. They ask how he could escape the feeling that he was affected by this minimum stock holding by Judge Haynsworth. They ask how he could escape feeling that he had not had his day in court.

He had a lawyer. That $50 verdict was a $15,12 verdict rendered by 12 of his own peers. They did not think very much of

that $30,000 claim for the sprained wrist.

The trial judge said, "If you are going to give anything, give something a little nearer to what is fair."

The jury went back, the jury of his 12 peers in this case, and rendered a verdict of $50.

I make the statement as a plaintiff's lawyer. There was a $50 verdict handed down in a $30,000 claim. We have that kind of case sometimes. They present any kind of claim with no substance to back it up. The jury found that there was no substance. The judge found in the per curiam opinion that there was no error in the law to disturb the jury verdict.

The Merck-Olin Mathieson case is false out of hand. The judge never had any stock in either party.

Talk about charging a man and then after having ruined him, coming around here and saying that the judge was not charged at all. They just put down a whole lot of charges.

In the Greenville Community Hotel case, the judge 4 years previously had owned one share of stock worth $21, which he had disposed of 4 years before the case was heard. He did not have it at the time. The stock had been gone for 4 years.

In the Donohue case, the judge owned 200 shares of preferred stock out of 3.2 million outstanding shares, and 67 shares of common stock out of 4.5 million shares outstanding American General Insurance Co., a corporation in which Maryland Casualty was one of the numerous subsidiaries. He joined in a unanimous three-sentence per curiam opinion.

Herein, the judge is charged with five violations of the statute and five violations of numerous canons, when the record before the Judiciary Committee shows that the judge had a duty to sit in each of these cases.

Mr. President, charge 9 is that the judge lacked candor in denying that he sat on any case in which he had a substantial financial interest.

The truth is that the denial is sustained by the record. The judge is not embarrassed now—pages 91 and 92—that he sat then. Under the same circumstances today, he believes it is his duty to sit and he would sit—page 99.

When the judge was testifying, they said, "I don't want to ask this. It may be embarrassing. But what about so-and-so?" The judge made it clear in the record, that he was not "embarrassed." "Ask the question, and I will give you the truth."

Under the same circumstances today, the judge says he believes it is his duty to sit and that he would sit.

There is no question of temperament or sensitivity. The judge is either right or wrong. Either he violated the statute that Congress, and particularly the Senate, enacted into law or he did not. But there are so many charges here, how can one discern or distinguish them?

Charge 10, the judge lacked candor in stating that he had not made or retained any investment with a concern likely to be involved in his court.

The truth is that the record sustains the judge's position. These five cases have been discussed. And there is no evidence that any of his stockholdings were apt to be involved. And, with the exception of Brunswick, none were involved as parties before him. And the Brunswick Co. was not involved as a party before him at the time the case was heard and decided.

Charge No. 11, the judge denied retaining positions as a director and/or officer of Carolina Vend-A-Matic and Main Oak Corp.

The truth is that on page 42, the judge referred to public corporations and the accuracy of a statement rendered at another hearing before Senator TYDINGS in June 1969. He clarified this at Senator TYDING'S request and stated on page 66 that he was a director and officer of the two companies.

Charge 12 is that there was a violation of section 29 U.S.C. 301–308 by the judge's failing to file information about a pension fund with the Secretary of Labor.

Mr. President, this charge includes the ominous 6 months' imprisonment and a fine of $1,000 as if we have a criminal rather than a chief judge under consideration.

I want to make this clear. This is the printed bill of particulars of the Senator from Indiana. Let us not take it lightly. There is a mention of 6 months' imprisonment in jail. We either have a crook or a judge, one or the other.

The truth is that all information required under the Welfare and Pension Plan Disclosure Act was rendered in writing to each of the employees and beneficiaries of the plan. In order to constitute a violation, the employee filed a claim with the Department of Labor.

We both went to the Department of Labor on this matter. The staff of the Senator from Indiana went. My staff went. And I went.

In order to constitute a violation, the employee filed a claim with the Department of Labor. No employee ever did, and the spirit and letter of the law was carried out. All the information was filed.

Judge Haynsworth, if it interests anyone, was the trustee and not the manager. The manager failed to file the paper, but the employees were fully informed and protected. Moreover, a check with the Labor Department shows that this particular section was never enforced and obviously no one considers anyone in violation in the administration of the CVAM retirement plan. To list this seemingly as having caught the judge in a crime is, in itself, a demonstration of lack of candor.

It is intimated one time that the judge was "running" the business, and "wheeling and dealing." And when he does not do this, he is a criminal because he violated this statute, when actually a manager ran this particular pension plan and the manager failed to file the paper; but the employees were fully informed and protected.

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

Mr. HOLLINGS. I yield.

Mr. DOLE. I have been concerned about this one charge. It is a very serious charge, and the Senator from South Carolina makes it clear that we are talking about either a criminal or a judge.

I am wondering whether the Senator from South Carolina knows if any action has been taken by any of the accusers or those who have raised this question. Have they asked the Justice Department to proceed? Have they signed a complaint? Are they saying, in effect, that the judge is a criminal and should be prosecuted?

Mr. HOLLINGS. No.

Mr. DOLE. They make the charge very clearly in the bill of particulars.

Mr. HOLLINGS. What actually is occurring is that they are trying to fill the air with charges and crimes. When I wanted to answer, they continued to charge. They just kept on charging. That is the strategy: Do not stop, do not answer, do not discuss, keep on charging; "we have him on the run." Then they come up, after he is rulned, and say, "We don't question his honesty." How do you do that? I do not know, but that is what they do.

Mr. DOLE. It shows a certain amount of insensitivity, if nothing else, when a man is charged one day with violating a criminal statute and the next day to say he is an honest man; and with the cooperation of certain media, they have put the judge in a bad light. If they are serious about the charge, they should be required to go forward with it and not just raise a smokescreen, as the Senator from Tennessee said yesterday—engage in smoke shoveling.

Mr. HOLLINGS. It gets down to the Newsweek article of yesterday, which said the trouble with supporters of Judge Haynsworth is that they have not gone into why he ought to be a judge and what his attributes are, and if he is outstanding, why do they not say so? How can we? I had news conference after news conference, and they would not write it. They said they talked to HOLLINGS, and HOLLINGS said the judge looked sick when he saw him this morning. That is all they included of my trying to tell of his fine record.

This is the whole creation. There are so many charges, and one tries to bring out the truth and meet the charge.

On the desk of each Senator is a copy of my prepared remarks. I do not fault the distinguished Senator from Indiana for asking any questions. We have a responsibility, as individual Senators and as a body, to have the minutest, detailed investigation of Judge Haynsworth or any other Associate Justice of the Supreme Court of the United States, because once confirmed, he is there for life. So I do not fault that at all. But, in fairness, I do not really believe that the opposition believes that Judge Haynsworth is a criminal; yet, they continue to charge him with a crime.

Mr. DOLE. The question has been raised. I have not seen anybody rise to lay it to rest other than those supporting him. As a freshman Member of this body, it is important that we resolve the question of whether or not there was a violation of title 29, United States Code. If there was not, they should say so, and this charge should be withdrawn, because it may be affecting the opinions and judgments of some Senators. It is serious, and I am glad that the Senator has raised the question.

Mr. HOLLINGS. I agree with the Senator that the way in which this has been brought about, and after we have tried to clear it up, in itself is a demonstration of a lack of candor.

Charge 13: The violation of canon 4 by the judge's conduct creating impropriety or the appearance of impropriety.

The truth is, Mr. President, that until the judge came to the Senate hearings, there was no appearance of impropriety; and the attempt to create such an appearance in the face of the testimony of Judge Walsh of the American Bar Association, Prof. John Frank, Prof. William Foster, and the controlling decisions is unfair and unfounded. It was pointed out that the statute was merely a restatement of the canon.

There was a long discussion in the Judiciary Committee of what is canon and what is law. All the authorities who appeared—Professor Frank, Judge Walsh, and all others—said that, really, the statute itself encompassed every requirement of the canons of ethics. Of the 12 times that the judge is charged with violating canon 4, all are cases in which the judge had a duty to sit, under the statute and in conformance with the ruling of the U.S. Supreme Court.

Charge 14: The violation of canon 13 by justifying the impression that the judge may have been improperly influenced.

The truth is that in each of these cases the judge had a duty to sit. In the Carolina Vend-A-Matic case, the impression was found not to be justified by Judge Simon Scheloff and affirmed by Attorney General Robert Kennedy. The impression is continually rendered to Senators that the investigation of Judge Sobeloff never considered propriety or disqualification but only considered the criminal charge of bribery.

If you want to see some of the friends of our distinguished late colleague, the Senator from New York, become annoyed, let us start bringing up this matter right now, and they come out of the desks fighting, as to what Attorney General Robert Kennedy meant when he wrote his letter in which he sustained the finding of Judge Sobeloff.

I do not yield friendship with Robert Kennedy to any. I knew him longer than most Members of this body, and I had the greatest respect and admiration for Robert Kennedy. I met him when he was a labor investigator.

He was cited as one of the outstanding young men of America for his erudition in investigating labor abuses in America. Robert Kennedy, as Attorney General, made his record with the Teamsters and in organized labor and was very sensitive to this point I cannot conceive of Senator Kennedy—I do not know; none of us really knows, because Senator Kennedy is not here to tell us—in a labor matter, in which a Federal judge is charged with hanky-panky and a crime in building up his business, treating it lightly, like a paper across his desk. I cannot conceive of that. I think Attorney General Robert Kennedy treated this matter and this charge very seriously. And what does the record show? They tried to divide it: this is a crime, and that is injustice, and over here is propriety. And the contention is that Attorney General Kennedy never had propriety in his mind. With that I disagree as strongly as I know how. No one had a keener sense of propriety than Senator Robert Kennedy.

So let us go to the record, to which the opponents do not want to refer. Thanks to the distinguished chairman of the Judiciary Committee and the membership of that committee, let us go to the record and see whether we just talked of a crime, or whether it also included the matter of propriety.

In the original letter from the attorney for the Textile Workers Union of America, which appears on pages 6–7 of the record, the question is raised as to whether or not Judge Haynsworth should have disqualified himself from participating in the decision. I quote from the original letter:

> Whether or not a criminal violation has occurred, we certainly believe that if the Deering-Milliken contract was thrown to Carolina Vend-A-Matic, Judge Haynsworth should be disqualified from participating in the decision. . . .

So, Mr. President, the question of disqualification came up in the original instance, in the original letter, in which they say it was not even considered. But there it is.

Now let us refer to page 11 and see what occurred. I refer to the bottom of page 11, in the letter to Judge Sobeloff by Mr. Updike: "when there should issue from the court a vindication of Judge Haynsworth and a flat rejection of the union's suggestion that he should be disqualified."

Again, the question of disqualification in the original correspondence.

Later, on page 13 of the record, in another letter to Judge Sobeloff, from Patricia Eames, Assistant General Counsel of TWVA:

> With that basic fact established, it becomes clear that my collateral concerns, as expressed to you in the last paragraph on the second page of my letter to you of December 17, became inappropriate.

So it was not just a crime under consideration, but collateral concerns, as well. It was not just a crime but a question of disqualification, as well.

Mr. President, no one has documented this information fully in the RECORD. I dislike taking this extensive time, but it has to be answered somewhere in the permanent RECORD of this body.

On page 15, at the top of the page, in a letter from Judge Sobeloff to the assistant general counsel of the Textile Workers Union of America it is stated:

> He also remained on the board of Carolina Vend-A-Matic, which is not publicly owned, for he thought that the considerations which led him to resign from the boards of the other corporations were inapplicable to it and the small, passive corporation.
>
> Some months ago it became known that judges in other sections of the country were serving on the boards of large, active, publicly owned corporations. They had not done what Judge Haynsworth had done in the first instance. Their service on the boards of such corporations led to criticism, with the result that last fall the Judicial Conference of the United States adopted a resolution that—
>
> "No justice or judge of the United States shall serve in the capacity of an officer, director or employee of a corporation organized for profit."
>
> Incidentally, we are assured that Judge Haynsworth has had no active participation in the affairs of Carolina Vend-A-Matic, has never sought business for it or discussed procurement of locations for it with the officials or employees of any other company.
>
> Sincerely,
>
> SIMON E. SOBELOFF.

They even went into the solicitation question.

The letter continues:

> However unwarranted the allegation, since the propriety of the conduct of a member of this court has been in question—

Not just crime but propriety, as well; and they get as irritated as they can be and go right through the roof and say this was a matter before Attorney General Kennedy.

Again, the letter by Judge Sobeloff to the Attorney General, at the bottom of page 15, relates to the alleged conduct, the assertions, and insinuations about Judge Haynsworth.

Finally, on page 19 the Attorney General himself states:

> FEBRUARY 28, 1964.
>
> HON. SIMON E. SOBELOFF,
> *U.S. Court of Appeals for the Fourth Circuit, Baltimore, Md.*
>
> DEAR MR. CHIEF JUDGE: This will acknowledge receipt of your letter dated February 18, 1964, enclosing the file that reflects your investigation of certain assertions and insinuations about Judge Clement F. Haynsworth, Jr.
>
> Your thorough and complete investigation reflects that the charges were without foundation. I share your expression of complete confidence in Judge Haynsworth.
>
> Sincerely,
>
> ROBERT F. KENNEDY,
> *Attorney General.*

When that letter was shown to Members there were some who became highly incensed that the inference was made that Attorney General Kennedy considered anything other than crime; that he considered insinuations, that he considered assertions, propriety, conduct, disqualification—which was unfair to the memory of that great man.

Let us look at the inner-office memorandum on page 17 from Gelchen to John Duffener:

> John, as I began at the beginning and read this I thought "shades of Bobby Baker" with the vending machine aspects.
>
> Having read it all I agree this matter has been fully and satisfactorily * * * by Judge Sobeloff.

Mr. President, that is exactly a literal reading. I guess it would be "agreed to" or whatever it might have been, but there it is. No one knows. We cannot know but it gives no basis and foundation to be highly irritated when the best evidence is knowing the character of Robert Kennedy; his sensitivity on labor matters, and having appear before him a charge that a judge in a labor case used his position to feather his own nest—that Robert Kennedy did not consider propriety.

Charge 15: Violation of canon 24 because the Judge's duties were interfered with by acting as a director and vice president of CVAM.

Truth: This is completely unfounded. They never interfered and even the union which knew of the office that Judge Haynsworth held in CVAM did not ask the Judge to disqualify. In 1963, 1964, and 1965 the parties that complain now never complained.

They went on with the judge. They did not ask about appearances. Who believes that? These labor lawyers and the chief counsel of the Textile Workers Union of America, as keen as they are, did not think of it.

In 1963, while the Darlington case was on appeal, the TWUA knew of the judge's affiliation with CVAM and did not ask him to disqualify. In 1964, when the new hearing was held and appeal had, no request was made for disqualification. The article by Judge Simon Sobeloff is an intentional deception with the intent to give the impression that Judge Sobeloff would have found Judge Haynsworth in violation of this particular canon of ethics. The contrary is true, regardless of insinuations. Judge Sobeloff investigated the charge as is outlined above and discharged not only the charge but the assertions and insinuations—and expressed complete confidence in Judge Haynsworth. The article of Judge Sobeloff was written in July 1964 subsequent to his finding of complete confidence on February 18, 1964. A reading of this complete article shows approval of the conduct of Judge Haynsworth, citing with approval the holding of an insubstantial stock holding by a judge in a party litigant. Again, it must be emphasized that Darlington Manufacturing Co. had no machines of CVAM and was not doing business with CVAM.

If there could be any doubt, after all of this was charged and headlined, and testified to, what happened but a telegram from Judge Sobeloff and Judge Sobeloff himself said:

> I have every confidence in you, Judge Haynsworth, as to ethics, as to law, . . .

And Judge Sobeloff's telegram is a matter of record by the Committee on the Judiciary. So there is no innuendo here to contend with, but rather the actual fact.

Charge 16: The violation of canon 25 that the judge used his office to promote the vending business.

Truth: Once again, the suspicion or appearance is nothing more than an impression received from some of the facts. Once all of the facts have been developed, then appearance and suspicions are dispelled and one speaks of the fact. No suspicions developed before Judge Haynsworth's nomination to the Supreme Court other than the anonymous call case where the union joined in the position that the judge should not be disqualified and the record before the Judiciary Committee gives exactly the opposite appearance than the suspicion charged. The investigation of Judge Haynsworth in the minutest detail shows no violation of this ethic.

Charge 17: Violation of canoff 26 by investing in enterprises apt to be involved in litigation.

Truth: Georgia Pacific, just like Carolina Vend-A-Matic never has been involved in a case before Judge Haynsworth. The citation of the consent decree by the SEC would mean no investment of stock whatsoever in the first 500 of American corporations listed with Fortune magazine. They are constantly involved in some proceedings. In other words, you could not own stock in General Motors because you are bound to find a case filed against General Motors somewhere each year. In the Brunswick case it was an investment after the fact and a mistake; and, in the Grace, Greenville Hotel and Maryland Casualty cases, the judge was not a stockholder of the party litigant and Monsanto has never appeared before Judge Haynsworth.

Charge 18: Violation of canon 29 by exercising an act of judicial discretion while owning stock in the party litigant.

Truth: Again, back to the mistake of the Brunswick case, no judicial discretion was exercised after the stock was purchased. The decision had been made 6 weeks before. The ABA has investigated this and the other cases, citing and reaffirming its highest endorsement of Judge Haynsworth's appointment.

Charge 18: Violation of canon 33 by sitting in cases involving customers of CVAM.

Truth: Once again the Darlington case and the other customer cases of CVAM were thoroughly investigated with the finding before the Judiciary Committee that the judge had a duty to sit and the ABA—the promulgator of the canons—absolved—Judge Haynsworth of any suspicion.

Charge 20: Violation of canon 34 about the general conduct of Judge Haynsworth not being above reproach in any particular.

Truth: On charge 20, I think from source of the charge and I think from the facts, that literally the judge has been third-degreed, from income tax returns to every stock holding, to every stock purchase and sales slip, plus the minute books, every decision reviewed with field investigations of citizens in the South Carolina area, plus labor leaders, members of the ABA, the NAACP, AFL–CIO and, finally, most thoroughly on a sound review by the special committee of the American Bar Association which reaffirmed its highest endorsement.

Mr. President, if you please, when it comes to the Brunswick case, they complain, but what does the lawyer for Brunswick say on the losing side, "Never, any time, did I ever question Judge Haynsworth. In the 12 years, never has there been an appearance of impropriety." That is what the lawyer for Brunswick said. There is no reason to disqualify. Did not agree with the judge's finding. No appearance of impropriety or reason for disqualification. Yet, they seem to find it and talk about the "appearance" when the lawyer for Brunswick himself says there is none there. They find nothing unethical. The ones who handled the case, the American Bar Association, who wrote the canons, who continue to know and understand the import of the canons and who have continued to study the matter, have all given Judge Haynsworth their highest recommendation.

But, no, there are those who wish to continue their innuendo, the inference, the "appearance," and then blame the judge for it.

What is the truth and the effect of this assault? The truth is best contained in the conclusion of an opponent, Senator JOSEPH TYDINGS of Maryland, who said, when he first heard the nomination, that he was ready to approve him, would work with him, and would testify in his behalf; but the situation now is that the Senator from Maryland (Mr. TYDINGS), in his special findings, says:

> I do not believe that any one of the decisions of actions of Judge Haynsworth to which I have alluded is of a gravity which requires the denial of the seat to which he aspires.

But the effect is devastating, as is also stated by Senator TYDINGS when he found, viewed in the aggregate:

> One clearly discerns a pattern of repeated judgments, which, unfortunately, create the impression that Judge Haynsworth is insensitive or oblivious to the subtle requirements of judicial ethics especially that cardinal rule which admonishes judges to avoid even the appearance of impropriety.

Mr. President, Lord help future appointees to the Supreme Court, because there will be "appearances." Let them come up here and from now on one of the 100 Senators will find some kind of appearance. They will get it, or they will create it, one way or the other, so that there is bound to be an appearance.

We have had a lot of charges. We have had a lot of investigations. We have had witnesses repeating most of the evidence. We have read the headlines. And after careful study, the Senator from Maryland says that the judge should be rejected.

But what is the effect? In the same Senator's report, the effect is devastating. These appearances, reasons Senator TYDINGS, have cast a shadow upon the Supreme Court. More importantly, I respectfully submit, a shadow has been cast upon the U.S. Senate as a deliberate body. The opposition, like the trapped octopus, has darkened the waters of reason with his black ink of poison and escaped, chortling while Senators run in circles shouting "withdrawal," "insensitivity," "lack of judgment," "shadows," and "lack of candor." By now the strategy of the opposition is complete. Charges of antilabor have blended into the background. Even the special reports of the Senators in opposition do not find Haynsworth antilabor.

Is that not amusing, almost, if one can get amused by this serious situation? All the charges of antilabor, all the hearings and all of the findings, none find him antilabor. Some individual Senators have been candid enough to get up and speak on the basis of saying, "That is exactly what I disagree with. I cannot agree with the judge's philosophy," but there are those also astute enough not even to mention that.

Now the Senator, like the politician in Cato's famous couplet makes his own little laws, and sits attentive to his own applause.

For the record, it must be stated that, true to its charge, the Senate has been deliberate in its process. No rule has been

violated and no rush has been experienced. Upon receipt of the appointment, the very system established—the rules, the committee system, and so forth—to insure that the Senate deliberate was adhered to. Referred to a hearing with due notice, witnesses were summoned and all kinds of testimony was received. No one faults the thoroughness with which Senator BAYH or any others investigated. Since a confirmation is for life, it is the duty of the Senate to examine every facet of an appointment. Due time was given to make further investigations after the hearings. Sufficient time was allowed to file majority and minority reports. But this deliberate process has been preempted by the doubletime of the news media.

When a Senator returned in September, on the very day the appointment was received, before reflection could be had, and hearings held, and evidence taken, he had already received headlines. Reporters jumped all over him and wanted to know his comment on the $1.5 million stock deal. I just returned to Washington and reporters were jumping around with notebooks. A Senator is supposed to be intelligent. He is not supposed to be dumb. So he looks at the reporters and says, "That is a very serious thing. I want to consider it." The Senator does not know what they are talking about, because he has not seen the Washington Post. That was the first time he was confronted with it. He is asked, "What about the $1.5 million stock deal? What about the AFL–CIO charge of conflict of interest and bribery? What about Bobby Baker? What about the Brunswick case? What about the Darlington case? What about the Grace case? Did you hear that the judge was corespondent in two divorce cases in Richmond and the records have been withdrawn from the courthouse?" Several reporters called me one evening and wanted a comment on that particular matter. "We have just learned that the judge has withdrawn. What's your comment?"

Senators like to be leaders; they like to be decisive. Faced with labor pressure, faced with press pressure, they were also faced with a lack of leadership in the Republican Party. Senator GRIFFIN, the Republican whip, asked the President—in fact, the leadership was in the other direction—to withdraw the nomination. Senator SMITH, chairman of the Republican conference, asked that the nomination be withdrawn; and Senator SCOTT, the Republican leader, stated he had not made up his mind. He refused to declare his support.

Is there anything more damaging than that? If so, I do not know what it is, when one's party has an appointment and the Senator says he is still studying it. If that does not give the message that there is something wrong or that it may be withdrawn or something is not quite right, I do not know how a message could be more effective.

Now if you are a Democrat under these circumstances, you want to credit yourself with foreseeing the imminent, so you prepare a statement of "insensitivity" or "lack of judgment" and you declare against; and, if you are a Republican, you get the message that the party's divided, and so for the good of the party, you oppose. This was happening all around me when I addressed myself to this subject on October 7. I explained then that Judge Haynsworth was the victim of sensitivity.

I want to emphasize that. He actually was the victim of sensitivity.

There is no law against the judge owning stock. In fact, the law does not prohibit the shareholding by a judge of a party litigant appearing before him. Only 3 weeks ago, in October, two Federal judges in the fifth circuit refused to disqualify themselves in a case where they held stock in a party litigant of $35,000 and $600,000 respectively.

Mr. President, can you imagine that? That is the fact and that is the law.

When Judge Haynsworth ascended to the bench in 1957, the law provided that you could be an officer or director in a public corporation as well as a stockholder. At that time, due to his sensitivity to the ethics, Judge Haynsworth resigned his directorship in publicly held corporations. When the Judicial Conference in 1963 requested that all judges do likewise, Judge Haynsworth, due to his sensitivity, went a step further. He sold all of his stock. No one would claim that the judge sold his stock in order to obtain an appointment to the U.S. Supreme Court. This was almost 7 years ago and any hope for promotion of Judge Haynsworth was remote. He did this as a leader in the administration of justice.

When Judge Sobeloff completed his investigation, Judge Haynsworth, due to his sensitivity, asked that it be made a public record; not simply have the judges judge the judge, but send it to the impartial Justice Department and the Attorney General and have them review it—due to his sensitivity.

Remember, Senator TYDINGS described his leadership in the administration of justice as dynamic. But Judge Haynsworth's troubles occurred when he attempted to correct one of the most frequent abuses of judicial procedure.

As the Presiding Officer knows, as a former distinguished attorney general of his State, a story about random selection of judges would have to take about one page as a news story. I agree that a city editor would scratch it out because it would take a page.

The hanky panky of appellate procedures, the adulteration of a fair appeal occurs when certain judges are assigned to certain cases. As a trial lawyer of 20 years admitted to practice before the circuit court of appeals, I can tell you that the principal concern in the fourth circuit prior to Judge Haynsworth taking over as Chief Judge, was that somehow certain judges seemed to receive certain types of cases. This is a matter of concern here in Washington in the District Court of Appeals at the present time, but no longer in the fourth circuit court of appeals.

It hit the press in June of this past year. Judges in the district court of appeals had been receiving certain types of cases each time, and lawyers had appeared and complained publicly about it.

Judge Haynsworth, sensitive to the basic precepts of justice, directed that hereafter the panel of judges be selected at random.

As an aside, 3 years ago I had occasion to be involved in an appeal before that court—and Judge Haynsworth was not on the panel—from a verdict of $265,000 awarded to an injured employee, a worker, whom I represented. I do not stand second to anyone on the matter of labor. I respect labor and I respect unions. I cannot help it if there are defalcations in the union movement because of the lack of leadership. I represented organized labor in my own hometown. I did not represent insurance companies. I represented injured workers and plaintiffs.

In taking that case up on appeal, I was told by the lawyers for the opposition, "We will get a panel that will never confirm that $265,000 verdict for an injured client." I may say facetiously that my choice was Judge Oren Lewis, of Virginia, who confirmed my $265,000 verdict. I would like to see him promoted, and I told him so. But the fact is that I was told time and again—and he was investigated as thoroughly as I know he could be—that it was Judge Haynsworth who instituted the policy of random selection of judges and adhered to it. Lawyers are not concerned about a judge's stock holding in a party litigant. The holding can be easily determined. The lawyer can let it go with a favorable judge, and call it into question with an unfavorable.

There is no mystery about that, if a lawyer is worth half his salt. If the judge has some stock, let him sit. That is what the average lawyer would say, if he told the truth. If the judge is unfavorable, and he has that stock, and his inclinations and persuasions are otherwise, call him in turn. The practice works. It is when the judge himself can jockey for position in certain types of cases, by claiming an interest, no matter how insubstantial; then there is nothing the trial attorney can do but sit by and watch it happen to him. There is absolutely nothing he can do. He cannot say anything. He does not have to, in fact; he just knows it; he feels it. If the lawyer tries to charge him with it, or rather infers it, it does become a charge, and he is liable to get in contempt. In any event, he is going to ruin the chances of his client. So he shuts up and listens.

The only way to correct this vice is to adhere to a random selection of panels of judges and not allow a judge to disqualify unless he has a substantial interest, because that is the way they jockey, and they had better not sit.

Judges know how far they can go. Back in chambers, they can maneuver. They know how to get in place. They know what is coming. The only way to correct that is to have a random selection. But a judge will not disqualify unless he has a substantial interest. That is the way the law reads, and that is the finding of the U.S. Supreme Court. That is the law of the land today. Unless a judge has a substantial interest, he has a duty to sit. The so-called being in violation of the canons of ethics for 10 years should rather have read: adhering to the law in conformance to the highest standards of ethics for the past 10 years. But when have we ever read that headline? Never.

Where did you ever see that headline? Nowhere. Never, Mr. President.

I offered a bill back in October to try to clarify this situation. It extends further than the efforts of the distinguished chairman of the House Judiciary Committee (Mr. EMANUEL CELLER) who at least tried to take the matter up with respect to being an officer in a corporation. He offered bills in the House Judiciary Committee, and they have failed. They have failed to pass the House of Representatives.

So I proposed this particular bill, S. 2994. No one wants to cosponsor it. No; they want to beat a judge on the head with the present law, because it vests in the judge a discretion. The law now uses the words "unless there is a substantial interest in." Otherwise, a judge has a duty to sit.

I said, "Let us clear that up." I rather agree with Professor Frank and Dean Foster of the University of Wisconsin School of Law, and the majority opinion among judges and among judicial circuits, that "any interest" is the only way to make sure, so they cannot ask questions. I believe that is the best answer.

So my bill reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 455 of title 28, United States Code, is amended by adding at the end of such section the following: "Ownership by a judge of stock in a corporation which is a party litigant or which owns any interest in a party litigant shall be deemed substantial for the purposes of this section; and a judge shall abstain from participation in any case involving a party litigant in which he has any investment whatever."

That would include realty holdings as well as stock holdings—any investment—and it would make it clear. But Congress does not want it clear. They like to beat the judge over the head with it, when he obeys the law. Is that in a manner consistent with a sense of fairplay?

Mr. President, who has ever heard of Prof. William van Alstyne, of Duke University?

Yesterday I was talking with a Senator. I have been trying to get votes. I said to him, "Oh, no, read what Van Alstyne said."

"Van Alstyne, the professor from Duke University."

"Never heard of him. What kind of funny thing is that?"

I said, "Look, that fellow served as counsel for the American Civil Liberties Union." The New York Times got him irritated and he wrote the New York Times a letter.

He came to testify, but by then, George Meany had to be heard, and he interrupted the whole thing and took it over, so Professor van Alstyne had to go back down to Duke University, and they told him to file his statement.

So, when does the press cover a filed statement? That is not news, so they do not cover it.

But what did he say about Judge Haynsworth? Let me read this—it is not long—because they want to have something positive and understandable as to why Judge Haynsworth was ever considered by President Nixon.

He says:

It is not surprising that a Supreme Court appointment from the South, by a President who campaigned with some degree of criticism of the Warren Court, should attract a measured amount of liberal skepticism. The degree of reaction to Clement Haynsworth's nomination, however, is in fact unworthy of some of the truly fine people who have too quickly given it currency. In those areas of statutory interpretation and constitutional adjudication where the issue is so unsettled that judicial discretion must necessarily play a major role, Judge Haynsworth's record cannot be seen as illiberal.

In Hawkins v. North Carolina Dental Society, Judge Haynsworth authored the court of appeals opinion which desegregated the North Carolina Dental Association—

Here is old anti-civil rights Haynsworth. I do not know where they got this; did he ever desegregate anything?

rejecting its claim that it was not subject to the equal protection clause of the 14th Amendment. He joined as well in North Carolina Teachers Association v. Asheboro City Board of Education, reversing a lower federal court which had upheld the displacement of Negro teachers who had lost their jobs to whites when schools were integrated. He also shared the court's decision in Newman v. Piggy Park Enterprises, applying the Civil Rights Act against a claim that insufficient food was sold for consumption on the premises to bring the business within the statute.

In the field of criminal justice, he authored an extraordinarily careful opinion in Rowe v. Peyton, extending the right of prisoners to have their convictions reviewed on habeas corpus—a new development later affirmed by the Supreme Court. He joined (sic) in Crawford v. Bounds to protect defendants in capital cases from being sentenced by death-prone juries from which all expressing any reservation to capital punishment had been excluded—a new development also subsequently affirmed by the Supreme Court in a related case.

Has anyone here heard of the Supreme Court following Judge Haynsworth? My distinguished colleague from Montana (Mr. METCALF) yesterday said that the trouble with the judge was that he was following 10-year-old civil rights law. There he is leading the Supreme Court; but where would my distinguished friend ever hear of this?

In Pearce v. North Carolina, he applied a constitutional principle newly developed at the federal level in his own circuit to protect defendants from harsher sentences following retrial—again in advance of the Supreme Court which affirmed the decision several months later.

Here is Judge Haynsworth again leading the Supreme Court, in the development of the law in the light of changing times.

Quoting further from Van Alstyne:

In respect to First Amendment rights, he joined in the first federal decision which struck down a state law restricting the right of university students to hear guest speakers on campus—a principle later expanded by a half-dozen other federal courts and indirectly approved by the Supreme Court in a related case just this year.

Thus says Professor Van Alstyne. Again every leader around here of a liberal bent, walking arm in arm with moratoriums and students says: "Get with it; get identified." Judge Haynsworth got with it a year ago.

But they say, when they rise to speak, "This thing is disturbing to me. This man has got blinders. He is ruling on civil rights, union, and student matters, as of 10 years ago."

What is the fact? What does the record show? Quoting further from Van Alstyne:

On occasion when his opinion has differed conservatively from that of more liberal jurists, it has not been without care or reason. Thus, his conclusion in Baines v. City of Danville that only an extraordinary kind of civil rights case could be removed from a state court to a federal court was accompanied by a painstaking analysis with which a majority of the Supreme Court subsequently agreed in Peacock v. City of Greenville. Similarly, his conclusion in Warden v. Hayden that an otherwise constitutional search is not unreasonable because its object is only to secure evidence of a crime was also subsequently shared by a majority of the Supreme Court.

I do not submit that these decisions warrant that Judge Haynsworth will be a 'liberal' justice. His record on the court of appeals does not—and in the nature of things could not—enable us to predict his votes in the substantially different role of associate supreme court justice. They do indicate, however, that he is an able and conscientious man who will approach his duties on the Supreme Court with a spirit of open-mindedness as well as an appreciation of the difficulties of the judicial process.

Who knows that man who has dedicated his book to Chief Justice Warren? This same man carried Thurgood Marshall's briefcase in the original school desegregation case of Sweat against Painter.

Remember Chief Justice Fred Vinson talking about the value of association. Who was Solicitor General and handled the appeals, and who wrote the briefs and who carried Thurgood Marshall's briefcase? He was co-counsel in the case of Miranda against Arizona, on the prevailing side. Last year the Judiciary Committee confirmed him as a Federal judge, but he never was appointed.

I was complimented that the press asked about that. This statement was released shortly before I took the floor. I am complimented that the press read the facts. That is a fact. They checked with the Judiciary Committee. In the closing days, President Johnson was to send up the appointment. The committee was notified. The appointment was discussed, and it was agreed that the gentleman would be confirmed. However, the appointment never came.

John Frank of Arizona, the leading authority on judicial disqualification, came out of conscience. He came out of conscience, because actually he testified that he thought that if we confirmed in the Judiciary Committee, one person it was Judge Arthur Goldberg. All of the witnesses said they were for Arthur Goldberg. Personally I have the highest regard for former Justice Goldberg and would not hesitate to vote for his confirmation. But Judge Frank came out of conscience. He stated to the Judiciary Committee that, under the Canons of Professional Ethics, the judge should not be unjustly charged. He came to defend Judge Haynsworth and this is what he said:

Obviously given my point of view and experience I would without doubt have pre-

ferred a different administration to be appointing a more liberal Justice. But my side lost an election, and the fact of the matter is that as a member of the bar we are called upon by canon 8 to rise to the defense of judges unjustly criticized, and it is my abiding conviction, sir, that the criticism directed to the disqualification or nondisqualification of Judge Haynsworth is a truly unjust criticism which cannot be fairly made.

Where have we heard of that amidst of this onslaught? I remember one night when they had the poor judge in the Mayflower Hotel. He has an impediment in his speech and a high sensitivity to the canons of ethics. He knows that it would be better not to say anything to the public. A judge should not engage in polemics or public debates.

He refused "Meet the Press" this week. They had him there. The reporter had him in the picture. They said, "We have a picture of the judge coming in, but he would not talk."

Did anyone think of the canons of ethics which require that a judge is not supposed to engage in this kind of conduct? That is why he did not do so.

Do you know who wrote the desegregation guidelines in 1965 for the Department of Health, Education, and Welfare—Associate Dean G. W. Foster, Jr., of the University of Wisconsin School of Law. And what did he say of Judge Haynsworth? He said:

In the area of racially sensitive cases, I have followed closely the work of the federal courts in the South over the entire span of time Judge Haynsworth has been on the Court of Appeals for the Fourth Circuit. I have thought of his work, not as that of a segregationist-inclined Judge, but as that of an intelligent and open-minded man with practical knack for seeking workable answers to hard questions. Here and there, to be sure, were cases I might have decided another way. I am not aware, though, of any opinion associated with Judge Haynsworth that could not be sustained by reasonable views of reasonable men.

To sum up: Judge Haynsworth is an intelligent, sensitive, reasoning man.

And I hope that the press will cover some of this. I continue to quote:

His record as a judge shows him to be a man capable of continuing growth and responsive to the needs for change where needs are persuasively shown to exist. And in my judgment, the question posed by his nomination is not whether you or I might have made a different nomination but whether Judge Haynsworth possesses the qualitles required to become a fine Justice of the Supreme Court. My answer, based on Judge Haynsworth's record and the reputation I know him to have among the federal judges with whom he has worked, is that he will make a first-rate Associate Justice of the United States.

Mr. President, this gentleman came to Washington. But he was not reached. He was not examined. They had already disrupted the routine. And as a result, they told him to file his statement and they would hear him later.

When they summed up in Newsweek, they said:

Why don't the supporters of Haynsworth say something positive about the fellow and cut out this ying-yang about charging everybody with a smokescreen and saying this charge is wrong and everything else?

We have tried our best to bring out the truth. The distinguished Senator from Missouri said, "Where do you get this second coming of Brandeis? I have never heard of these accolades."

Mr. President, Who is the leading liberal scholar who taught for several years at the University of Minnesota and Yale and Harvard? Who wrote cases on Federal courts and the revision to the seven volume set of Barron and Holtzoff Treatise on Federal Practice and Procedure? Who is the man who read every decision, not just the ones he wrote, but every decision ever participated in by Judge Haynsworth, covering 167 volumes of the Federal Reporter—Prof. Charles Alan Wright, McCormick professor of law at the University of Texas. What did he say of Judge Haynsworth?

He read all the decisions. He had to sit there day in and day out to keep up with his profession and his particular skill, to keep up with all of the decisions in writing the various treaties. He said:

With this professional interest, and with these writing commitments, I necessarily study with care all of the decisions of the federal courts, and inevitably form judgments about the personnel of these courts. We are fortunate that federal judges are, on the whole, men of very high caliber and great ability.

I am trying to find the second coming of Brandeis for a distinguished colleague of mine.

I continue to read:

Among even so able a group, Clement Haynsworth stands out.

That is not Fritz Hollings talking. That is not a personal friend from South Carolina. I wish I were from elsewhere so that I could tell the Senate from a different viewpoint. Everything I say is compromised. He said that even among so able a group of legal scholars, Clement Haynsworth stands out.

He said further:

Long before I ever met him, I had come to admire him from his writings as I had seen them in the *Federal Reporter*.

Professor Wright further stated:

It would be very hard to characterize Judge Haynsworth as a "conservative" or a "liberal"—whatever these terms may mean—because the most striking impression one gets from his writing is of a highly disciplined attempt to apply the law as he understands it, rather than to yield to his own policy preferences.

Mr. President, I know of no greater compliment to a man of the legal profession, particularly to a presiding judge.

I wish to emphasize the fact that Professor Wright is not a Johnny-come-lately embroiled in the Nixon nomination of Judge Haynsworth. Professor Wright emphasized this in a letter to me on November 13, and I quote from that letter:

You have referred several times to my remark at page 592 of the hearings that long before I ever met him, I had come to admire him from his writings as I had seen them in the Federal Reporter. I did not cite any authority or any example because in early September I did not realize it would be needed and I naively supposed that Senators would regard me as competent to have an expert opinion on the abilities of Federal judges and as honest when I express that opinion.

Professor Wright, used to the due process, as is Judge Haynsworth, came to Washington and naively thought that Senators would regard him as competent and know of his opinion and credit him with honesty.

Professor Wright continues:

My hornbook on Federal courts was published in 1963, nine months before I first met Judge Haynsworth. I enclosed a Xerox of page 151 of the hornbook in which I describe the Fourth Circuit's opinion in Markham vs. the City of Newport News as a notable opinion, and say that the argument for a contrary result was effectively refuted by the Fourth Circuit. I think you know my work and my book well enough to know that it is sparing in its praise, and there are few occasions in which I call an opinion notable. The opinion in Markham was by Clement Haynsworth.

There are many other instances that I could cite, but this is the one in which my praise for his work has been a matter of public record for seven years.

Professor Wright came to Washington three times and never had an opportunity to testify, but only filed his written statement. If he had testified, he could have been cross-examined on his high regard for Judge Haynsworth. He would have gone into it thoroughly, it would have impressed the news media, and we would have positive facts appearing in behalf of Judge Haynsworth as to why we regard him as outstanding.

Mr. President, what makes a good judge? I have my own ideas, but I never heard it so clearly, succinctly, cogently, and impressively stated in an extemporaneous fashion as was done by Professor Wright on a TV program some 2 weeks ago. After the program, I could not get a transcript, so I spoke to him over the telephone and he dictated substantially what he said. One of the reporters asked, "What makes a good judge?" And this is what Professor Wright said referring to Judge Haynsworth:

He is able to write opinions that proceed logically, so that you can see what the Court's reasoning process was and why it decided as it did.

Second, he does not not talk about things that are not involved in the case. He avoids the temptation to express his views on a lot of issues that do not have to be talked about in order to have the case decided.

Third, he makes a discriminating use of precedent. He is able to recognize which cases are really authoritative and ought to be followed and which cases do not directly bear on the case.

Fourth, he has a breadth of viewpoint in humanity.

Do Senators recall the statement in the New York Times? He just was not quite humane; he was insensitive. He is on that front porch rocker on the weekend—how to make money without really trying, with his slave servant cooling him off, and reading the Wall Street Journal.

Is this the man Professor Wright was talking about, having come to his opinion from the writings of Judge Haynsworth?

I quote further what Professor Wright said makes a good judge:

Judge Haynsworth recognizes the context in which cases come in two ways. First,

he is quite conscious that these are not just numbers he is dealing with; these are real people. This can be seen especially in criminal cases. There are many cases in which, for example, a person is under a death sentence or a long prison sentence and there is considerable doubt about whether a person is sane. Judge Haynsworth is not going to worry about technical barriers. He insists that such a person can get a fair hearing, and he finds out whether he is actually sane before he is electrocuted or sent up to prison for life.

If you read and heard that, you would think that is a sort of callous thing—actually sending people to be electrocuted and admitting them to insane asylums. They are. We of the profession, the lawyer of experience knows it. Here is a real scholar writing of it. He said this is not a fellow sitting on the porch, waving a fan and reading the Wall Street Journal, but he insists that a person get a fair hearing, and he finds out whether the person is actually insane before he is electrocuted or sent to prison.

Second, he realizes that the law grows. You can't decide a restriction on habeas corpus today simply on what happened 200 years ago. You have to approach it in light of today's problems rather than simply by sterile history.

Where are the colleagues who say that Judge Haynsworth's decisions are those of 10 or 15 years ago? Where are they who say he is in yesteryear? I have related what the man says who reads all his decisions. He says that Judge Haynsworth is true to the charge that you must approach these problems in the light of today's problems rather than simply by sterile history .

Professor Wright asks:

What about his true sensitivity? There is only a limited amount to what a good judge can do in respect to the movements in our society. An awful lot of that has come from Congress and from the Executive Branch, but foremost is the attitude of a judge on free speech. Those parts of society which are unhappy should have an opportunity which the Constitution guarantees to voice their grievances as long as they do so in a peaceful manner. Judge Haynsworth's First Amendment cases, though they are not numerous, show that Judge Haynsworth is much aware of that. In fact, he goes a little further than I would.

This is from a liberal legal scholar who perhaps would have recommended someone else, as he said in his statement and discussions. He said that on the first amendment, on freedom of speech. "he goes a little further than I would."

Second is the administration of the criminal law, and this is one of the ways in which the poor and minority groups feel downtrodden, that the police are their enemies. Here Judge Haynsworth's record is outstanding.

Where have my colleagues heard that? This is what Professor Wright has said:

Here his record is outstanding. His full record on criminal law shows that he is very responsive to this concern.

Finally, a judge makes sure that the courts are always open so the people can vent their grievances in a lawful way rather than resort to—

There is no judge in the country who has been more insistent that you do not keep cases out of court simply on technical grounds.

If a person has a grievance, you ought to hear it and see if there is any substance to it instead of saying, "You did not draw up the papers right."

Mr. President, that language is very persuasive. That was not a prepared statement by Professor Wright but a statement given extemporaneously on the television program on which I appeared with him.

Who among the Senators has ever heard of Louis B. Fine, for 12 years an officer of the American Trial Lawyers Association and a member of the Board of Governors? What did he say?

I feel that the criticism that has been made by labor is unfounded, and I feel that the representation that has been made here that he is anti-Negro is not true, and I say that on the same basis that I am not anti-Semitic being of the Jewish faith.

On page 230 of the hearings before the Committee on the Judiciary a previous witness had talked about civil rights and anti-Negro. Here comes Louis B. Fine, of Norfolk, Va., and he said:

Now, let us take his personal character which I will tell you gentlemen about.

As a member of the Judicial Conference of the Fourth Circuit, it is necessary to be appointed to that, and if you are appointed and selected for 3 consecutive years you become a permanent member, and during the time that Judge Haynsworth was Chief Judge he personally had more black men on the judicial conference who attended the Homestead and the Greenbrier at Virginia, not only as a member of the bar but socially to determine what was good and best for the fourth judicial circuit. This is a matter that he did not have to do. It was a matter of discretion, and I say that to you as a matter of personal conduct on the part of the judge.

Later in his testimony he made other references. He was the first person to introduce black participation in the Fourth Circuit Judicial Conference. But Judge Haynsworth insisted that black members participate.

But whoever heard of that? Was that in the news? Was this covered where colleagues could study it?

And how many know Frederick F. Leister, Jr., No. 34802, inmate at the Federal Prison at Lewisburg, Pa. He was in the leading case, that landmark decision, where Judge Haynsworth adopted the American Law Institute test for insanity, *United States* v. *Leister*, 393 Fed. 2d. 920 (1968). Frederick F. Leister, Jr. ,wrote to the judge on October 26:

HON. CLEMENT HAYNSWORTH,
Chief U.S. District Judge,
Fourth Circuit Court of Appeals,
Greenville, S.C.

DEAR JUDGE HAYNSWORTH: If you were to give up now you would be unworthy of the man who wrote the decision in my appeal. The man who saw that I had no attorney and appointed one of high calibre, the man who saw the need for treatment for the mentally ill but who gave society first priority: The man who condemned me to prision and who was right in doing so.

Because of the decision you wrote and your words, I began to strike back gainst the problems that I myself created. And I'm winning the battle.

This is probably the first time that you have ever been under serious attack for anything and I know how it hurts. Oh how it hurts! I have been under attack since I slipped from my mother's womb but I am not about to give up. Admittedly, I almost did a few times, but somewhere, someone always gave me the strength not to.

Your words helped me. They weren't fancy or glittering words but they were sensible words and I listened to them.

I am on my way back from the road that I once traveled, for the first time in my life. I will become a law-abiding citizen. I am not there yet but I am fast approaching my destination.

If you were to give up now, it would be a disappointment and shock to me that would certainly encourage me (and men like me) to detour if not to do so.

Stand firm, your honor, and stand proud. You have done nothing wrong, only human (and we are *all* human, aren't we?)

Keep in mind the tribulations that Christ and his followers encountered and yours will be easier to bear, and I am as positive as I am that I sit in this prison cell, that (1) you *will* be confirmed, and (2) that you will become one of the greatest Supreme Court Justices of all times . . .

May God bless you.

Respectfully,
FREDERICK F. LEISTER, Jr.,
PMB 34802, Federal Prison.
LEWISBURG, PA.

This is a man writing from the penitentiary and he was committed to the penitentiary by Judge Haynsworth. I think this is the highest testimonial for a man who has been through the wringer.

Mr. President, "Seek and ye shall find; knock and it shall be opened unto you." How many have really sought the truth and who have refused it.

When I presented Judge Haynsworth on September 6, I laid down the challenge. I stated at that time that while the opposition was working feverously in Judge Haynsworth's backyard, that from South Carolina labor would not have a labor attorney or official appear in opposition to the judge. The NAACP would not have an NAACP attorney or official appear in opposition to the judge and the ADA would not have an attorney or official of the ADA appear in opposition to the judge. Today I stand with my charge unchallenged. They could not bring you anyone. On the contrary, we brought the TWUA lawyer who testified in the judge's behalf.

Only a couple of weeks ago, while this hearing was being held, the direction from the local was, "Get rid of that lawyer." He faced them in Rock Hill, S.C. He was the Textile Workers' Union lawyer in South Carolina and he was proud of his support of Judge Haynsworth. We brought him here. He came voluntarily of his own accord. He feels strongly in this case about the witnesses presented. The fact is, he came voluntarily. We brought the attorney for Longshoremen's Union who testified in the judge's behalf. We brought the dean of the ADA who testified in the judge's behalf. Every Bar Association in the judge's circuit has endorsed him. Every U.S. District Judge of the Fourth Circuit subsequent to the adverse headlines and charge of violation of ethics has endorsed the judge's position.

Every U.S. Circuit Judge in the Fourth Circuit represented in the telegram on October 9 which was sent to the Senator from Mississippi (Mr. EASTLAND), chairman of the Committee on the Judiciary, and seven past presidents of the Ameri-

can Bar Association, that they endorsed him since the holocaust.

Deliberate process—who has deliberated these facts? Questions of impropriety—the judge came without question. The mere fact that questions are asked must not disqualify. We must not approve the strategy of the opposition that if we charge falsely, loud enough and long enough, and keep charging, then the nominee, for the good of the Court, should withdraw from the field. That is what this is, a matter of confidence in the judge, and confidence in the court.

We must reject the idea that even though the attacks are unfounded, the very fact that they have raised such misunderstanding is in itself reason for refusing confirmation. Such a contention is contrary to the American tradition of fair play. To accede to this view would be to place the nominee's fate not in the hands of senators charged by the Constitution with advising and consenting to the nomination, but in the hands of his accusers. For those who find the judge not guilty of either a violation of ethics or law, for those who find the judge honest yet still question appearances, talk of shadows and allude to insensitivities, then I can only say that they malign their responsibilities as members of the most deliberative body and aid in impugning the integrity of the U.S. Senate. For our responsibility as Senators cannot be more clearly stated than in John 7:24:

> Judge not by appearance but give just judgment.

As we reach the vote, a popularity poll on yesterday indicates that only 38 percent of the people support the judge and 53 percent oppose him.

What about that? Are we going to elect judges popularly? Are we really protecting the Union and preserving the role of advise and consent? Are we to yield to popularity polls?

The story alongside tells of the leader of the Republican Party in the U.S. Senate recommendation of another southern jurist. No one would claim Clement Haynsworth indispensable. But I shall continue to claim as indispensable the uniqueness of this body as being the most deliberative of all democratic institutions. John C. Calhoun, one of John F. Kennedy's "Profiles in Courage," once asked:

> Are we bound in all cases to do what is popular? Have the people of this country snatched the power of deliberation from this body?

I believe this is an hour for sensitivity. I believe this is the hour for candor. Where is the candor and the courage that Kennedy spoke of in his profiles? Does any one really believe this is the Fortas case all over again?

We know the philosophical differences. Justice Fortas did not elect to come back before the Judiciary Committee. "Explain or resign" was the charge. Justice Fortas chose to resign.

But when Judge Haynsworth comes to explain, they fault him for it, because his very explanation gives the appearance of explaining and discussing charges of impropriety.

This is something we always say "After Fortas, you know how it is in the Senate. Fine. We welcome the improvement of the detail and concern that we have." Justice Burger was appointed after the Fortas case. Was he subjected to this scrutiny, this inquisition, this trial by headline? Justice Burger is of the same philosophy as Judge Haynsworth. Why was he not opposed with equal vigor? Judgment—poor judgment. The fact is that Judge Haynsworth's poor judgment consists purely of allowing himself to be born in the South. That is his poor judgment. Senators know that.

Could it be because Chief Justice Burger is from Minnesota, and Judge Haynsworth is from South Carolina?

The shaken confidence in the Court itself—is it really the individual conduct of the Justices that shakes the confidence, or the Court's philosophy in unleashing known convicts upon a defenseless public, tying the hands of law enforcement officers, allowing Communists to run rampant in defense plants, and denying prayer in the public schools, as the Court's bailiff chants:

> God save the United States and this honorable Court.

That is the shaking of confidence—not in individuals—but in the Court itself.

No, the crying need of the hour in America today is for leadership. As in the administration before, this administration continues to deal with the politics of problems rather than with the problems themselves. This country is being polarized, and those who call for soft tones are leading in the shouting. In this atmosphere, it is next to impossible to consider anything divorced from politics and pressures. The popular is tempting. Let it be said that Judge Haynsworth did not seek this office. He was recommended by a Democratic Senator who took note of his balanced judgment and his capacity to grow in these changing times. Amidst the change, the demonstration, the charge, the headline, and the devastating pressure upon Senators, it would behoove this body soberly to reflect, deliberate, and confirm.

Mr. President, I yield the floor.

THE CIVIL RIGHTS OF JUDGE HAYNSWORTH

Mr. BAKER. Mr. President, I have previously made known my strong support for the nomination of Judge Clement Haynsworth to the Supreme Court. Yesterday I stated in some detail my belief that Judge Haynsworth has diligently followed the rulings of the Supreme Court in civil rights cases and that his decisions in this area have been objective, fair-minded, and without bias.

On Friday last the distinguished senior Senator from New York (Mr. JAVITS) addressed himself to the civil rights record of Judge Haynsworth, concluding that he has demonstrated an insensitivity to the constitutional rights of Negroes. While I was not on the Senate floor at the time these remarks were made, I have since had the opportunity to read and consider them in detail.

In discussing this important question Senator JAVITS relied only on the cases in which Judge Haynsworth filed a written opinion either for the court or concurring or in dissent. While there can be no doubt that the written opinion is of great significance in ascertaining the philosophy of a particular judge, I believe it is a serious error not to consider the entire record, which obviously provides a more complete reflection of a judge's judicial philosophy.

There have been numerous civil rights cases in which Judge Haynsworth had joined in opinions written by his colleagues upholding the guarantees of Federal rights of minority groups and voting against the party charged with engaging in discriminatory practice. I discussed these cases yesterday, but in light of the conclusions of Senator JAVITS, I would like to restate some of them briefly today.

I refer, first, to the case styled *McCoy* v. *Greensboro City Board of Education*, 283 F. 2d 677, in which Judge Haynsworth joined Judges Sobeloff and Soper in holding that Negro students need not exhaust their State administrative remedies where a local board had acted in obvious violation of their constitutional duty to end school desegregation.

Cummings v. *City of Charleston*, 288 F. 2d. 817: In that case there was per curiam opinion in which Judges Haynsworth, Sobeloff, and Boreman found no reason for postponing the integration of a public golf course beyond the 6-month period agreed to by the plaintiffs.

Wheeler v. *Durham City Board of Education*, 309 F. 2d 630: This was a unanimous en banc decision enjoining the Durham School Board from continuing to administer the North Carolina Pupil Enrollment Act in a discriminatory manner.

Brooks v. *County School Board of Arlington*, 324 F. 2d 303: Judge Haynsworth joined Judges Sobeloff and Boreman in holding that the district judge had prematurely and erroneously dissolved an injunction against the board's discriminatory practices.

Wheeler v. *Durham City Board of Education*, 346 F. 2d 768: A unanimous court ordered that the district court reexamine the actions taken by the board to eliminate the dual system which had existed in the city of Durham. The board's suggestion that its plan should be approved by the court of appeals was rejected.

Felder v. *Harnett County Board of Education*, 348 F. 2d 366: This was another en banc decision, a per curiam decision, upholding the district court's order that the school cease its discriminatory application of North Carolina's assignment and enrollment of pupils act.

Wanner v. *County School Board of Arlington County*, 357 F. 2d 452: Judge Haynsworth joined Judge Sobeloff, Judge Boreman, and Judge Bell in reversing the district court, which had enjoined the board, at the insistence of white parents, from putting certain desegregation plans into effect. The court of appeals found that the board was proceeding in an appropriate manner in its attempt to comply with earlier desegregation decrees and, therefore, should not have been enjoined.

Franklin v. *County School Board of Giles County*, 360 F. 2d 325: In this unanimous en banc decision the court held that teachers who have been discriminatorily discharged are entitled to "reemployment in any vacancy which occurs

for which they are qualified by certificate or experience."

Smith v. *Hampton Training Schools for Nurses*, 360 F. 2d 577: Several Negro nurses at a hospital receiving Hill-Burton funds were discharged for entering an all-white cafeteria after being ordered not to do so. They brought an action under the Civil Rights Act. While the litigation was pending, the Fourth Circuit held that hospitals receiving Hill-Burton assistance are engaged in "State action" and, therefore, may not discriminate. A question in this case was whether the plaintiffs here could rely on that precedent. The court unanimously held that they could and that it followed that they had been unconstitutionally discharged. The nurses were ordered reinstated.

Wheeler v. *Durham City Board of Education*, 363 F. 2d 738: The court unanimously reversed the district court's holding that racial considerations had not been a factor in the board's employment and placement of teachers. An order requiring the board to desegregate facilities was entered.

Chambers v. *Hendersonville City Board of Education*, 364 F. 2d 189: Judge Haynsworth was the "swing" vote in this case. He joined Judges Sobeloff and Bell in applying the principle that where there is a long history of discrimination, the local board is under a duty to show by clear and convincing evidence that its acts were not discriminatory. Concluding that the board had not made such a showing, the three judges held that the plaintiffs were entitled to relief.

Cypress v. *Newport News General and Nonsectarian Hospital Association*, 375 F. 2d 648: The court, sitting en banc, held that the defendant hospital had discriminatorily denied the plaintiff Negro physician's request for admission to the staff and also that it had engaged in the practice of taking race into consideration in making room assignments to patients.

Wall v. *Stanly County Board of Education*, 378 F. 2d 275: A unanimous en banc court reversed the district court's denial of relief to a Negro teacher who had been discharged by the defendant board. The appellate court ordered an award of money damages as well as a cessation of the board's discriminatory practices.

Wooten v. *Moore*, 400 F. 2d 239: Judges Haynsworth, Butzner, and Merhige held a restaurant subject to the 1964 Civil Rights Act. The court rejected claims that the restaurant did not offer to serve interstate travelers and did not have a substantial effect on commerce.

Felder v. *Harnett County Board of Education*, 409 F. 2d 1070: Judge Haynsworth joined a majority of the court in holding a school desegregation plan constitutionally deficient because its effects on segregation had not been determined. The district court's order that the board furnish a plan that would promise realistically to end the dual school system was affirmed.

These are some; there are others. In each of these decisions, Mr. President, Judge Haynsworth voted in favor of the party claiming the deprivation of a federally guaranteed right. A reading of this record will clearly indicate that Judge Haynsworth has been most sensitive to the civil rights of all of our citizens.

It is undeniable, as pointed out by Senator JAVITS, that there have been three cases involving civil rights issues in which a written opinion by Judge Haynsworth has been reversed by the Supreme Court. In my judgment, a fair reading of these opinions indicates that each involved points on which reasonable men could and did differ, and while the Supreme Court disagreed with the viewpoint espoused by Judge Haynsworth, these three opinions do not evidence any bias or unreasonableness.

Senator JAVITS was particularly critical of the opinion of Judge Haynsworth in *Brewer* v. *School Board of the City of Norfolk*, 392 F.2d 37, a decision in which Judge Haynsworth dissented in part and in which it is alleged that by mentioning freedom of choice with favor Judge Haynsworth acted contrary to a decision of the Supreme Court rendered 4 days prior thereto.

It is, of course, correct that the Supreme Court in *Green* v. *County School of New Kent County*, 391 U.S. 430, held that a freedom-of-choice plan which does not work is unconstitutional. The Court expressly stated, however, that a freedom-of-choice plan which promises to result in the dismantling of a dual school system is constitutional. The Court said:

> There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system "at the earliest practicable date," then the plan may be said to provide effective relief.
>
> * * * * *
>
> We do not hold that "freedom of choice" can have no place in such a plan. We do not hold that a "freedom-of-choice" plan might of itself be unconstitutional, although that argument has been urged upon us. Rather, all we decide today is that in desegregating a dual system a plan utilizing "freedom of choice" is not an end in itself.

It is apparent that Judge Haynsworth's statements on freedom of choice were, therefore, not at variance with the Supreme Court's pronouncement.

In his remarks Senator JAVITS did mention several decisions in which Judge Haynsworth held for plaintiffs claiming deprivation of their constitutional rights. These cases include *Hawkins* v. *North Carolina Dental Society*, 355 F. 2d 718, a case in which a Negro dentist brought suit against the North Carolina Dental Society contending that the society in excluding him from its membership had violated the equal protection clause of the 14th amendment. In reversing the district court in an opinion written by Judge Haynsworth, the Fourth Circuit held that "the activities of the society being 'State action,' its practice of racial exclusivity is patently unconstitutional."

Another written opinion by Judge Haynsworth in favor of a black plaintiff in a school desegregation case is *Coppedge* v. *Franklin County Board of Education*, 394 F. 2d 410, in which the Fourth Circuit upheld a district court order to abandon a freedom-of-choice plan.

A case of significance that Senator JAVITS failed to include in this latter group of cases in which Judge Haynsworth wrote an opinion holding for plaintiffs claiming a deprivation of their rights involved the same parties that were in an earlier action, *Coppedge* v. *Franklin County Board of Education*, 404 F. 2d 1177. In that case a Federal district court had ordered compliance with a school desegregation plan. The board of education appealed claiming it would be administratively impracticable for it to comply and claiming also that it had not been given an ample opportunity to present evidence on this claim. The court in an opinion written by Judge Haynsworth rejected the board's claim and regarding the appeal as devoid of merit, ordered the board to reimburse the plaintiffs for the costs incurred by them in the litigation of it. As I have said, this case involved the same parties that had been before the Fourth Circuit in an earlier case in which the court had struck down a freedom-of-choice plan with the opinion in the earlier action also written by Judge Haynsworth.

Mr. President, I believe that the following points can be accurately made in summarizing the entire civil rights record of Judge Haynsworth:

In 12 years on the court of appeals his decisions on civil rights matters have been reversed on only three occasions.

On the three occasions when he was reversed the decisions of Judge Haynsworth do not evidence any bias or unreasonableness.

There is not one case in which Judge Haynsworth has refused to apply a mandate of the Supreme Court.

The entire civil rights record of Judge Haynsworth demonstrates that he is an intelligent, fair-minded man with a serious concern for obtaining practical answers to difficult questions.

Mr. President, while Judge Haynsworth has not in every civil rights case that has come before him always attributed to the Supreme Court's decisions the broadest possible scope of application and while he has not always correctly anticipated later rulings of the high court, I do not believe that the full record of Judge Haynsworth on civil rights cases will justify a vote against confirmation.

COMMENTS OF SENATOR JAVITS CONCERNING REMARKS OF SENATOR BAKER WITH RESPECT TO JUDGE HAYNSWORTH'S CIVIL RIGHTS DECISION

Mr. JAVITS. Mr. President, I have reviewed the remarks of Senator BAKER concerning certain civil rights decisions in which Judge Haynsworth has participated, and I find nothing in those remarks which would contradict the analysis I submitted to the Senate last Fri-

day, November 14, and which appears in the CONGRESSIONAL RECORD beginning on page 34275.

Senator BAKER cites 15 cases—the same 15 cases cited on pages 17 and 18 of the Judiciary Committee Report, Senate Executive Report No. 91–12, and the same 15 cases discussed yesterday on the Senate floor by Senator BAKER in a previous statement by him. These cases are: *McCoy* v. *Greensboro City Board of Education*, 283 F. 2d 677 (4th Cir. 1960); *Cummings* v. *City of Charleston*, 288 F. 2d 817 (4th Cir. 1961); *Wheeler* v. *Durham City Board of Education*, 309 F. 2d 630 (4th Cir. 1961); *Brooks* v. *County School Board of Arlington*, 324 F. 2d 303 (4th Cir. 1963); *Wheeler* v. *Durham City Board of Education*, 346 F. 2d 768 (4th Cir. 1965); *Felder* v. *Harnett County Board of Education*, 349 F. 2d 366 (4th Cir. 1965); *Wanner* v. *County School Board of Arlington County*, 357 F. 2d 452 (4th Cir. 1966); *Franklin* v. *County School Board of Giles County*, 360 F. 2d 325 (4th Cir. 1966); *Smith* v. *Hampton Training Schools for Nurses*, 360 F. 2d 577 (4th Cir. 1966; *Wheeler* v. *Durham City Board of Education*, 363 F. 2d 738 (4th Cir. 1966); *Chambers* v. *Hendersonville City Board of Education*, 364 F. 2d 189 (4th Cir. 1966); *Cypress* v. *Newport News General and Nonsectarian Hospital Association*, 375 F. 2d 648 (4th Cir. 1967); *Wall* v. *Stanly County Board of Education*, 378 F. 2d 275 (4th Cir. 1967); *Wooten* v. *Moore*, 400 F. 2d 239 (4th Cir. 1968); and *Felder* v. *Harnett County Board of Education*.

Of these 15 cases cited by Senator BAKER, 13 were decided unanimously by the Court of Appeals—all except the second Felder case and the Chambers case. Those 13 cases, in my judgment, show Judge Haynsworth's conclusions, not his ideas; he wrote no opinions in them; and the cases raised no difficult or novel questions about which any of the Fourth Circuit judges could find anything to disagree.

The 14th case is the second *Felder* case, 409 F.2d 1070. The only real issue in that case, however, was whether to award counsel fees because of a "frivolous appeal" and it was Judge Craven's opinion, with which Judge Haynsworth joined, which denied counsel fees. Judges Sobeloff and Winter dissented and would have found the appeal frivolous. Thus, Judge Haynsworth's stand in this case could hardly be defined as siding with the black plaintiffs, as he decided against them on such a central point.

In the 15th of the cases cited by Senator BAKER, *Chambers* v. *Hendersonville City Board of Education*, 364 F.2d 189 (4th Cir. 1966), Senator BAKER refers to Judge Haynsworth as casting the "swing" vote in that he joined Judges Sobeloff and Bell while two other judges dissented. My own reading of the case, however, convinces me that the majority opinion, in which Judge Haynsworth joined, was "amended" to absorb the views of the dissenters and make the decision substantially unanimous. The dissenters—Judges Bryan and Boreman—complained that the court was ordering the school board to rehire teachers without regard to their ability to meet minimum qualifications. In the words of the dissenters, appearing in 364 F.2d at 194—

> Whatever Constitutional guidelines are recognized the bald facts here plainly reveal that at least 15 of the 16 unretained teachers were not kept because of their own preference, their physical incapacity or their failure to meet minimum criteria.

Obviously in an effort to meet this point after becoming aware of the dissenters' views, the majority opinion contains, at the end, a footnote, 364 F.2d at 193 n. 3, as follows:

> While all of the improperly discharged teachers are entitled to re-employment, we do not think any practical benefit would be derived by requiring the Board to offer re-employment to a teacher who failed to meet definite, objective minimum standards.

Putting the footnoted majority opinion together with the objections of the dissenters, I fail to see how Judge Haynsworth was really a "swing" vote to all; we have here what amounts to another unanimous decision.

In sum, of the 15 cases cited by the committee report and repeated by Senator BAKER, not one reflects Judge Haynsworth's views in his own words; 14 of the 15 were clear-cut cases; and the 15th, the Felder case, was one in which Judge Haynsworth opposed the award of counsel fees to the black plaintiff.

In addition to citing these 15 cases, Senator BAKER has suggested that I did not mention "several decisions in which Judge Haynsworth held for plaintiffs claiming deprivation of their constitutional rights."

The first such case, Senator BAKER argues, is *Hawkins* v. *North Carolina Dental Society*, 355 F. 2d 718 (4th Cir. 1966). I believe the Senator is in error, as I mentioned that case in my analysis, appearing on page 34276 of the CONGRESSIONAL RECORD of November 14, 1969, and pointed out that the case was clear-cut, as the State dental society in that case had, in effect, been given the State's licensing power.

The next case which Senator BAKER says I overlooked was *Coppedge* v. *Franklin County Board of Education*, 394 F. 2d 410 (4th Cir. 1968). In point of fact, I did mention that case, also on page 34276, and pointed out that Judge Haynsworth did in fact find no "freedom of choice" in that case, but only after Ku Klux Klan bombings of those who chose to exercise their "freedom," and I remarked that, short of a bombing, Judge Haynsworth seems to adhere, to this day, to his preference for so-called "freedom of choice" plans, now overruled by the Supreme Court.

Senator BAKER does, however, correctly note that I overlooked one decision, the second half of the very same case, *Coppedge* v. *Franklin County Board of Education*, 404 F. 2d 1177 (4th Cir. 1968). My oversight was a result of the fact that the case bears the same title as the one discussed above, which I did mention. But the second Coppedge case does not, in any event, appear to me to support any argument that Judge Haynsworth was "pro" civil rights. In this instance, Judge Haynsworth held, writing for an unanimous court, that Coppedge was entitled to attorneys' fees because the school board had taken a frivolous appeal. The school board contended that compliance with the court's order would present "insurmountable administrative problems," 404 F. 2d at 1179. The basis for award of counsel fees, as the court put it, was, "the school board carried on with its appeal notwithstanding the fact that, meanwhile, it had fully complied with the district court's order," 404 F. 2d at 1179. What could be more of an open-and-shut case of frivolous appeal than urging a court of appeals to reverse on the ground that the district court's order could not be complied with, while all the while the order had already been complied with? I see nothing in that decision to suggest that Judge Haynsworth was sensitive to civil rights, but I have never suggested that he was blind as a judge.

In sum, I stand by my original analysis. Judge Haynsworth's decisions in those instances cited which were not open and shut, and particularly in those in which he expressed his own views in his own words, are outside the context of our time in history on this most important civil rights question. I find nothing in the cases cited by Senator BAKER or the committee report to shake me in that conclusion.

I ask unanimous consent that I may speak out of order for 10 minutes.

The PRESIDING OFFICER (Mr. BOGGS in the chair). Is there objection? The Chair hears none, and it is so ordered.

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

Mr. JAVITS. I yield.

Mr. BAYH. Mr. President, inasmuch as my distinguished colleague from South Carolina aimed a good portion of his very eloquent remarks at me and the impropriety of my acts, I want to serve notice to the Senate, now, that I intend to supply, at some later date, whenever convenient to the Senate, what I feel to be an adequate rebuttal to the remarks of the Senator from South Carolina. However, I certainly will not interfere with the Senator from New York at this moment.

Mr. JAVITS. If the Senator from Indiana would find it more convenient. I would be pleased to yield the floor and let him get the floor and then he could yield to me for a few minutes. I just wish to introduce a bill.

Mr. BAYH. The Senator from New York already has the floor. Why does he not proceed?

Mr. JAVITS. All right. I shall be just a few minutes. I think the Senator from Indiana is quite right, that I should go right ahead.

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

Mr. JAVITS. I yield.

Mr. HOLLINGS. I would like the RECORD to show that I took approximately 2½ hours. My distinguished colleague from Indiana has had that much time on television since this debate started, I would gladly swap those 2½ hours for half the time he asked for.

I shall be glad to support the facts as I have given them to the U.S. Senate.

I thank the Senator from New York for yielding to me.

Mr. JAVITS. Mr. President, I yield to the Senator from Indiana.

Mr. BAYH. Mr. President, I have the greatest respect for the Senator from South Carolina, but I must say I have never seen a man better able to set up a strawman that is so far afield from the issue. This, the floor of the Senate, is the place to debate this issue.

I sincerely hope that my colleague from South Carolina and I can disagree without his impugning my motives, because I have not impugned his. If it ever gets to the point where 100 Members of the Senate cannot face issues and arrive at different conclusions, we might as well close up shop and let someone else conduct our business.

I give my friend—I call him my friend; I call him that and hope he still is—full faith and credit for everything he has said. I feel a little sensitive in that I do not think he is giving me and others who take the opposite side that same full faith and credit.

Mr. JAVITS. Mr. President, I yield to the Senator from South Carolina. [Laughter in the galleries.]

The PRESIDING OFFICER. There will be order in the galleries. The Chair must remind the occupants of the galleries that they are guests of the Senate and must be quiet.

Mr. HOLLINGS. Mr. President, let it be said that it is not the intent of the Senator from South Carolina to be personal, but to be factual. There is no intent to impugn. There is only the intent to reflect properly the facts and to have prepared, written answers to his own bill of particulars, and to tell this country exactly what is going on, what we have been experiencing, what are the real issues, and trying to bring them into focus. This is in fairness to Judge Haynsworth, in fairness to the U.S. Supreme Court, and, most of all, in fairness to the U.S. Senate as a deliberative body.

I know that in parliamentary tactics—and I have debated before—the immediate thing, when one gets on the weak side, is to say, "Oh, let us not be personal." I am not going to be personal, but I am going to be factual in everything I have lined up and everything the Senator from Indiana has lined up.

Reference was made to a straw man. The Senator from Indiana has been the leader of the opposition. I have tried my best to get in the ring with him and to get into debate with him. He knows that. We have been in correspondence. We have talked.

I have lost elections by 100,000 votes before getting elected, so I do not come here as a babe in the woods.

I think perhaps a majority would not confirm the nomination if they voted this very minute. I say that sincerely. But I am hoping to persuade members of the committee, so we can have it by a good majority.

There is no personal feeling about this matter whatsoever, but there is a personal, strong conviction. I have tried to establish, as strongly as I know how, that the Senate has been true to its charge in receiving evidence, hearing witnesses, making reports. The majority leader has not shoved or delayed or tried to influence; but, due to the news media and the rush of the news media, the debate was over before it began. I believe it is very, very important to realize that, in order to preserve the integrity of the Senate, the most deliberative body of all the democratic institutions, we should be able to debate and discuss an issue of this kind without being charged with various things.

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

Mr. JAVITS. I yield to the Senator from Indiana.

Mr. BAYH. I am glad to have that clarification from the Senator from South Carolina. I hope that all Senators will read these remarks in light of what he said in his formal statement. It was my desire not to get personal and to disagree with the Senator from South Carolina only on the facts. I have been with him on other facts and issues, and I am going to be with him on issues in the future because he has been a good Senator.

I thank the Senator from New York. I shall continue later.

Mr. BAYH subsequently said: Mr. President, I thought I might make one or two observations in light of the statements of the distinguished Senator from South Carolina.

Mr. President, as I mentioned earlier, I hope we can have differences of opinion in this body. I noticed that the Senator from Montana (Mr. METCALF) had a lengthy and detailed critique which reached conclusions different from those of the Senator from South Carolina (Mr. HOLLINGS) with respect to the assessment of the nominee in the field of labor. Similarly, the Senator from New York gave the Senate a long and detailed assessment of the nominee's civil rights record which differs from the report given by the Senator from South Carolina.

I think there is also room for disagreement so far as ethical questions are concerned. Each of us sets out the criteria that he thinks should be met. Seven members of the judiciary joined in the conclusion that this nomination should not be confirmed, so I do not stand alone.

My position has not been an easy one. I started out by asking questions apologetically, hoping that the answers would be forthcoming. They were not.

Two or three of the allegations I made were mistaken, and I sent personal letters to our colleagues pointing out these errors. In one instance, the mistake was made by one of my staff who misread certain records; and in the other instance, certain records had not been made available to us.

I do not intend to reiterate point by point some of the charges made because I share the concern of the Senator from Iowa that some allegations made by the press have not had any merit. I do not intend to add dignity to those allegations by repeating them in the Senate. I have not made these charges and do not intend to do so.

I think the standard of conduct of one nominated to the Court is an important factor to be considered by the Senate.

Mr. President, in order to save time, I ask unanimous consent to have printed in the RECORD at this point the minority views which I submitted when the nomination was reported from the Committee on the Judiciary.

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

INDIVIDUAL VIEWS OF MR. BAYH

It is a fundamental principle that in order to govern effectively, a government must have the confidence of the people. That confidence is quickly eroded when those in positions of public responsibility fail to meet the standards expected of them by the public. Thus, Government has long been concerned with insuring the even handed and disinterested administration of the functions and powers given it by the governed.

The judicial branches of our State and Federal Governments have been most diligent in safeguarding the integrity of their officers. Among public officers, judges occupy a unique position. Unlike legislative and executive officials who are constantly judged by their political choices and decisions and by the practical success of their proposals and programs, Supreme Court judges are lifetime appointees and are primarily appraised by a test of trust: Are their decisions impartial, just, and in accordance with the law? To meet this test, rules have been established in case law, statutes, and canons of ethics, calling for judges to disqualify themselves from cases in which their personal interests might knowingly or unknowingly influence their decisions. Though these rules may appear strict, they are especially important today. For the first time in history, the U.S. Senate is asked to confirm a nominee for a Supreme Court seat which was vacated by the resignation of a sitting justice accused of conduct involving the appearance of impropriety.

In exercising its constitutional power to advise and consent to the present nomination, the Senate thus has the added responsibility, at this time, of shoring up public confidence in the Federal judiciary in general, and, more specifically, in the Supreme Court itself. Supreme Court Justices truly must be beyond reproach and must be sensitive to the ethical standards which have been established in order to guarantee propriety, the appearance of propriety, and equal justice to all who come before them.

In light of the judicial rules which have been laid down over the years governing the conduct of judges and the pressing concern of the people to see these standards adhered to, it would be a mistake for the Senate to confirm the nomination of Clement F. Haynsworth, Jr., to the Supreme Court of the United States. It is true, as the majority of this committee has said, that Judge Haynsworth is basically an honest man. It is also true that the nominee has been a tremendously successful businessman and member of the bar in his home community. But these are not the sole standards on which the Senate must base its decision in determining whether or not to confirm the nomination of a Supreme Court Justice. The Senate must also consider the standards of ethical conduct which the nominee has established for himself while serving on the Federal bench. Has the nominee taken those precautions in his personal and financial relationships which are necessary to avoid even the appearance of impropriety in the eyes of those who might appear before him as litigants and in the eyes of the public as a whole?

Unfortunately, Judge Haynsworth has not taken these necessary precautions and, as a result his record has been blemished by a pattern of insensitivity to the appearance of impropriety:

1. On at least four occasions, Judge Haynsworth sat on cases involving corporations in which he had a financial interest.

2. Judge Haynsworth invested in companies which were apt to be subjects of litigation in his court.

3. Judge Haynsworth sat on cases, at least six times, involving customers of Carolina Vend-A-Matic Co., a company in which he had a one-seventh interest worth $450,000.

4. Judge Haynsworth violated Federal law in his administration of the Carolina Vend-A-Matic Co. profit sharing and retirement plan.

5. Judge Haynsworth has displayed a marked lack of candor with this committee and with the Subcommittee on Improvements in Judicial Machinery.

Some of these failings would be relatively minor if each stood alone. But they do not stand alone. Together they produce a profile of a judge who consistently failed to give ethical questions the weighty consideration they deserved.

Proprietary interests in litigants

On at least four occasions, Judge Haynsworth sat on cases involving corporations in which he had a financial interest and in doing so he violated both the disqualification law and the canons of judicial ethics. The cases are: *Brunswick* v. *Long* 393 F. 2d 337 (1968); *Farrow* v. *Grace Lines Inc.* 381 F. 2d 380 (1967); *Donohue* v. *Maryland Casualty Co* 363 F. 2d 442 (1966); and *Maryland Casualty Co. v. Baldwin* 357 F. 2d 338 (1966).

Judge Haynsworth purchased 1,000 shares of Brunswick Corp, for $16,230 while *Brunswick* v. *Long* was pending. At the time of the *Grace Lines* decision, Judge Haynsworth owned 300 shares of W. R. Grace and Co., which wholly owned Grace Lines. That stock was worth $13,875. Similarly, Judge Haynsworth owned 66⅔ shares of common stock and 200 shares of convertible preferred stock of American General Insurance Co., which owned over 95 percent of Maryland Casualty Co., when the *Donohue* and *Baldwin* cases were decided by his court. Maryland Casualty was a major subsidiary of American General Insurance. On the days of *Donohue* and *Baldwin* cases were decided, the value of Judge Haynsworth's stock in American General Insurance was $10,201 and $10,734, respectivelv.

The sources of the law on judicial disqualification are in the common law, constitutional law, and statutory law. Each source indicates that a judge should not sit in cases where he holds stock in a litigant. As John P. Frank, whom President Nixon has described as the country's leading expert on disqualification law, has stated:

"The law of disqualification, in the heavy majority and clearly better view, treats a shareholder as though he individually were the concern in which he holds shares. In other words, if a judge holds shares in a corporation which is in fact a party before him, he should disqualify as much as if he himself were a party. [Footnote: This is the heavy majority rule; see cases collected at note, 48 A.L.R. 617, updated in a comprehensive collection at 25 A.L.R. 3d 1331. There is some refinement where the holding is very small * * * (20 shares on 13,881,016). See also my own article at 56 Yale L.J. 605, 637 (1947), reporting that in 33 State and Federal courts there is disqualifications in such circumstances, but that two State and two Federal courts reported that disqualification might be waived where the holding was very slight, and one Federal court reported that a judge had sat where the holding was very slight. Nonetheless, the view is overwhelming. * * *] As my study shows, every State and Federal court reporting agrees that if a judge has a pecuniary interest in the party, he may not sit * * *. (Letter from John P. Frank to Hon. James O. Eastland, Sept. 3, 1969, hearings, p. 119.)"

Mr. Frank amplified his written statement in the following colloquy concerning the Federal disqualification statute.

"Senator BAYH. How large is a substantial interest [for the purposes of 28 U.S.C. 455, which governs disqualifications of Federal judges]?

"Mr. FRANK. I think that generally the better view, Senator, but not the only view is that if there is any interest it ought to be regarded as a disqualifier. But the word "substantial" is used here to cover the marginal situation of the small stockholdings, let us say, in a corporation, somebody has a few shares of G.M., that sort of thing * * *

"Senator BAYH. Then general nationwide authority on substantial interest would be that if you hold stock of any appreciable value in any corporation that is before you, you should automatically disqualify yourself?

"Mr. FRANK. Yes, that is certainly my view of it. (Hearings, p. 127.)"

As Mr. Frank noted, there is a minority view that when a judge's holdings in a corporation are small and there is a vast amount of stock outstanding, the judge need not disqualify himself. This minority view, however, does not apply to the cases involving Judge Haynsworth for several reasons.

First, the minority view is flatly contrary to the cases decided by the Supreme Court. As the Court noted in *Commonwealth Coatings* v. *Continental Casualty Co.*, 393 U.S. 145, 148 (1968):

"For in *Tumey* [v. *Ohio* 273 U.S. 510, 524] the Court held that a decision should be set aside where there is 'the slightest pecuniary interest on the part of the judge, and specifically rejected the State's contention that the compensation involved there was 'so small that it is not to be regarded as likely to influence improperly a judicial officer in the discharge of his duty * * *' * * * in the case of courts this is a constitutional principle * * *"

Second, the minority view was accepted by the Fourth Circuit only to the extent that a judge disclosed his interests to the parties before his court. As Judge Haynsworth stated the practice of his court:

"Even here, we, on the Fourth Circuit, regard a proportionately insignificant interest in a party as not disqualifying if, after being informed of it, the lawyers do not request the substitution of another judge. (Letter from Clement F. Haynsworth to Hon. James O. Eastland, Sept. 6, 1969.)"

There is no evidence that Judge Haynsworth ever disclosed his interests to the parties in the four cases cited above.

Finally, Judge Haynsworth himself espoused the majority view of ethical standards as described by Mr. Frank. In the September letter to Chairman Eastland, he stated,

"I have disqualified myself in all cases * * * in which I had a stock interest in a party or in one which would be directly affected by the outcome of the litigation."

As the record clearly shows, he ignored the rules he set for himself by sitting in *Brunswick, Grace Lines,* and the two *Maryland Casualty* cases. Indeed, Judge Haynsworth testified:

"Senator MATHIAS. You consider that your interest [in Brunswick] was substantial then?

"Judge HAYNSWORTH. Yes, I do, without question, though it was not in the outcome in terms of that, but much more substantial than I think a judge should run the risk of being criticized. (Hearing p. 305.)"

It has been contended that it was not improper for Judge Haynsworth to sit on the *Farrow, Donohue* and *Baldwin* cases because he held stock in the parent companies of the subsidiaries which were before him, and not the subsidiaries themselves. It is obvious that this defense makes no practical sense. It improperly emphasizes a form of corporate structure as opposed to substantial ownership interest which is the basis of the law. In June 1964, the judge purchased 200 shares of Maryland Casualty Co. and in August 1964, upon a corporate reorganization, he exchanged that stock for 200 shares of convertible preferred stock and 66⅔ shares of common stock of American General Insurance Co., the parent company of Maryand Casualty. Both before and after that exchange he had a substantial ownership interest in Maryland Casualty. Thus, there is no reason to apply one rule to the June-to-August period and another to the period after August.

It is true that there is one State court case supporting the proposition that ownership in the parent of a subsidiary does not require disqualification. However, there is no Federal authority for such a rule of law. As Mr. Frank has pointed out, the California case which supports this distinction, *Central Pacific Railway Co.* v. *Superior Court,* 211 Cal. 706, 296 P. 883 (1931), is based on the theory "that the judge must be capable of being made an actual party to the case . . ." in question. Mr. Frank concluded that "this is not the better view . . . The proper test is whether the third party has a 'present proprietary interest in the subject matter." (See letter from John P. Frank to Hon. James O. Eastland, Sept. 3, 1969.)

Requiring disqualification in cases involving subsidiaries of corporations in which a judge holds stock can at times be a difficult standard to adhere to. As Judge Harrison L. Winter testified during the hearings of the Judiciary Committee:

"Certainly, Senator, with the growth of conglomerates and the tendency of so many companies to diversify, this presents a real problem. I know myself that inadvertently once or twice I have almost sat in cases where parties were subsidiaries of something on [sic] which I had an investment, and quite frankly I did not recognize it until the very 11th hour. I just do not know what the answer is. It becomes almost impossible to learn all the trade names and all the subsidiary names and what have you, if you are about to make an investment, so that you are fully advised if you are in judicial office, when one of the parties in which you may have an interest or do have an interest is before you. (Hearings p. 259.)"

Judge Haynsworth cannot plead ignorance to the parent-subsidiary relationship, however. His interest in American General Insurance Co. was acquired in 1964 in exchange for 200 shares of Maryland Casualty Co. when the companies merged. He had purchased the Maryland Casualty stock a few months earlier for over $12,000, a fact he would certainly remember. He also should have known W. R. Grace & Co. wholly owned Grace Lines Inc., since W. R. Grace had been a client of Judge Haynsworth's law firm before he assumed the bench. The evidence indicates, therefore, that Judge Haynsworth's disregard for the rule requiring disqualification for interest was either willful or grossly negligent.

Judge Haynsworth's defenders protest that his failure to disqualify himself in *Brunswick* v. *Long* was proper on the ground that he made his investment in Brunswick after the case had been heard. The essential facts are these: The case was heard on November 10, 1967, by a panel of circuit judges composed of Judge Haynsworth, Judge Winter, and District Judge Woodrow Wilson Jones. The judges met in conference after hearing the case and arrived at the conclusion that a judgment in favor of Brunswick should be affirmed in an opinion to he written by Judge Winter. On or about December 15, 1967, Judge Haynsworth had his regular year-end meeting with stockbroker, Arthur C. McCall, who recommended that the judge buy Brunswick stock. The judge agreed, and his order for 1,000 shares of Brunswick stock was executed on December 26 at $16 a share. A confirmation notice was sent to Judge Haynsworth on December 26, and on the 27th the judge signed and sent his check

in payment to Mr. McCall, who received it on December 28. Judge Haynsworth testified that the Brunswick case did not enter his mind during his discussion with Mr. McCall or at the time he received the confirmation and signed his check as payment for the stock.

On December 27, 1967, Judge Winter circulated his written opinion in *Brunswick* v. *Long* to Judges Haynsworth and Jones by mail. During the first full week of January 1968, during a term of court in Richmond, Va., Judge Haynsworth and Judge Winter discussed that opinion. Judge Haynsworth noted his concurrence in the opinion and also suggested the possible need for changes due to certain points of South Carolina law noticed by his law clerk. Judge Winter accepted these changes and recirculated the amended opinion on January 17, 1969. The amended opinion was finally approved by the other judges of the court, and on February 2, 1968, after a judgment had been prepared, the opinion and judgment were filed.

The Federal rules provide for 30 days in which a party may ask for rehearing. On March 12, 1968, counsel for Long filed a petition to extend the time for filing a petition for rehearing. Counsel argued that the extension should be granted because he had not been furnished a copy of the opinion by the clerk until February 27, 1968. This petition was considered on the merits, it being agreed that the court had jurisdiction to do so, by Judges Winter, Haynsworth, and Jones who decided to deny it. On April 3, 1968, another petition for rehearing was filed. On August 26, it was denied in an order prepared by Judge Haynsworth.

Judge Haynsworth testified:

"The * * * [first] time [after the hearing], of course, that the [Brunswick] case entered my mind was when I received the proposed opinion from Judge Winter. At that stage, I realized it had not been completely disposed of, and at that time I thought what I should do. I had now become a stockholder.

"My conclusion was that I should endorse it since Judge Winter had written an opinion precisely as we had agreed, since Judge Jones concurred, since no one had any douht about it, and nothing else occurred to return the case to the discussion stage * * *. (Hearings pp. 271–272.)

"I considered what I should do and I made up my own mind * * *.

"I did not consult them at the time. (Hearings pp. 286–287.)"

It is plain that the judge performed the following judicial acts while he was a stockholder: reviewing and joining in the judgment and opinion, reviewing and rejecting two petitions for an extension of time to file a petition for rehearing. None of these acts was ministerial—indeed, the reasoned exposition of the result reached by a court is the very essence of the judicial process.

As Judge Winter testified:

"I think it may be fairly stated that a case is never decided finally or never put to rest until an opinion has been filed, all post opinion motions have been denied, and the Supreme Court has denied certiorari * * * (Hearings, p. 243.)"

This being so, Judge Haynsworth's failure to disqualify himself or even to notify the parties or his fellow judges of the situation was improper.

The canons of judicial ethics, though they do not have the force of law, have established accepted guidelines for the conduct of judges. Like the law on disqualification, the canons hold that a judge should not sit on cases where he has an interest. Canon 29 states:

"A Judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy."

In interpreting Canon 29, the American Bar Association's Committee on Professional Ethics stated in Opinion 170:

"A Judge should not perform a judicial act, involving the exercise of judicial discretion, in a cause in which one of the parties is a corporation in which the judge is a stockholder."

Judge Winter recognized the significance of this Opinion in his testimony before the Judiciary Committee:

"The American Bar Association committee at least has taken the position that if you own any stock, that is it. You ought not to sit at all. (Hearings, p. 248.)"

Judge Haynsworth's financial interests were involved in the *Brunswick, Grace Lines,* and *Maryland Casualty cases,* yet he did not refrain from performing judicial acts in these controversies. To argue that Canon 29 does not apply in situations where the litigant is a subsidiary of a corporation in which a judge owns stock is unreasonable. The Canon states that a judge should not sit in a case "in which his personal interests are involved," and Opinion 170 further indicates that even one share of stock in a corporate litigant is an interest. Certainly direct interest in a litigant through ownership in the parent corporation should be treated no differently.

Canons 4 and 34 also come into play when a judge sits on cases in which he has personal interests. They state:

"Canon 4—Avoidance of Impropriety.—A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

"Canon 34—A Summary of Judicial Obligations.—In every particular his conduct should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity."

Judge Haynsworth's conduct was not "beyond reproach." He disregarded the precedents on disqualification which have been so carefully established to avoid the appearances of impropriety. While not dishonest, he has callously ignored the ethical rules which the great majority of judges follow meticulously.

Investments in corporations apt to be subject to litigation

"Canon 26—Personal Investments and Relations.—A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and after his succession to the Bench, he should not retain such investmente previously made longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relationship warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

"He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin."

On several occasions, Judge Haynsworth totally disregarded Canon 26. As was pointed out earlier, he purchased Brunswick stock while the case was still pending before his court. No business was more apt to be involved in litigation in his court than a company which was before the Court at the time he purchased its stock.

The investments in Maryland Casualty Co. and Nationwide Corp. were similarly in violation of Canon 26. It is common knowledge, even among laymen, that casualty companies are continuously involved in litigation. Judge Winter pointed this out to Senator Ervin during the hearings:

"Senator ERVIN. And this canon 26 which provides in part that a judge should abstain from making personal investments in enterprises which are apt, and I digress to say that my dictionary says the word "apt" means "likely," to be involved in litigation. Of course, does that not imply in the first place that he is apt to be involved in some litigation before his court, not that of some other judge? Isn't that implied?

"Judge WINTER. Well, I think it generally—I would read it to mean to him, before him.

"Senator ERVIN. Yes.

"Judge WINTER. I mean a typical example of this, at least in my estimation, is if you are a district judge, you do what I did, and that is sell stock in casualty insurers, because you cannot tell who is defending, who is the insurer behind the defender or who is not, and you refrain from going out and buying any other stock in casualty insurers.

"Senator ERVIN. Now, I would say not only a judge should abstain from buying interest in a business that is likely to be involved in litigation, but I would say just as a layman he would be a plumb fool if he would buy stock in an organization that is going to be involved in litigation.

"Judge WINTER. Except with casualty companies, litigation is a part of their business. (Hearings p. 255.)"

Finally, Judge Haynsworth maintained his holding in W. R. Grace & Co., even after Grace had appeared before the judge's court on one occasion. That litigation should have warned Judge Haynsworth that the company was apt to appear again. A sufficiently sensitive judge would have disposed of this holding.

Cases involving customers of Carolina Vend-A-Matic

The poor judgment and insensitivity shown by Judge Haynsworth in sitting on cases where he had a pecuniary interest in the litigant and his investments in corporations apt to be subjects of litigation do not stand alone. There are other commissions and omissions of the judge which raise further questions concerning his sensitivity to judicial ethics. Foremost among these is Judge Haynsworth's relationship with Carolina Vend-A-Matic Co. and the textile industry.

Judge Haynsworth was an organizer and founder of Carolina Vend-A-Matic in 1950, with an original investment of $2,400. He was a director and vice president of Carolina Vend-A-Matic until 1963. Although the judge stated that he orally resigned from the vice presidency in 1957, the corporation records show he was listed as vice president until 1963 and show further that he regularly attended meetings of the board of directors and voted for slates of officers including himself through the years, 1957–63. He was, in fact, paid director's fees amounting to $12,270 (including director's fees of $3,100 in 1960) during the years of 1957 to 1963 and the records show his wife, Dorothy M. Haynsworth, served as secretary of the corporation for 2 years (1962–63) while he was on the Federal bench.

Although the judge claims he was an inactive officer, the only information available from the minutes of the corporation indicates that the directors were active in locating new business. A resolution by the board

of directors of Carolina Vend-A-Matic which appears in the minute books of the corporation states that:

"It was pointed out that the main sales and promotional work of Carolina Vend-A-Matic had been done by its directors who are also the officers of the corporation and that any new locations were the result of many conversations, trips and various forms of entertainment of potential customers by one or more of the directors or officers over an extended period of time. A review was had of the various locations that had been acquired during the past several years and new locations that were being considered and practically without exception, these were the result of the board of directors. (Minutes, June 3, 1957.)"

Judge Haynsworth took an active part in directors' meetings, often making motions himself. While he was director of Carolina Vend-A-Matic, he took part in decisions to buy and sell land to himself and other directors and the profit sharing trust. Judge Haynsworth also endorsed notes for the corporation both before and after his appointment to the Federal bench.

In 1957, after Judge Haynsworth assumed the bench, the gross sales of Carolina Vend-A-Matic and its subsidiaries increased tremendously. In contrast, gross sales had only increased from $169,335 in 1951 to $296,413 in 1956. But in 1957, the year Judge Haynsworth assumed the Federal bench, sales jumped to $435,110 and continued a precipitous climb, reaching $3,160,865 in 1963, the last full year in which Judge Haynsworth owned a major share of the company. Between the end of 1956 and 1963, Carolina Vend-A-Matic sales increased by 966 percent, while sales of the vending machine industry as a whole increased by only 69 percent.

PERCENTAGE OF INCREASE IN SALES BY YEAR AS REPORTED BY VEND MAGAZINE

	Vending machine industry	Carolina Vend-A-Matic
1957	7.8	52.8
1958	3.9	8.0
1959	11.7	45.0
1960	8.8	31.1
1961	5.8	80.3
1962	8.0	50.4
1963	8.8	23.8

In 1963, more than three-fourth's of Carolina Vend-A-Matic's total business was with textile concerns. The textile oriented nature of Vend-A-Matic's business did not reflect the business in the area. Census figures show only 28.9 percent of the Greenville, S.C. working force was employed in textile mills. (See Census of Population: 1960, vol. I, pt. 42, p. 132)

It is also interesting to note that Judge Haynsworth's investments in textile companies amounted to $49,557.60 in 1963. Thus any precedent setting decisions in the Southern textile industry would directly affect Haynsworth's financial position through Carolina Vend-A-Matic and through his textile stocks.

For some years there had been an exodus of textile concerns from north to south in an effort to take advantage of lower wages as a result of strong regional pressures against collective bargaining in the South. The *Darlington Mfg. Co.* v. *NLRB* case was a landmark case for the industry because it enabled textile companies to close their plante in the face of union attempts to organize the workers.

The case of *Darlington Mfg. Co.* v. *NLRB* came before the Fourth Circuit Court of Judge Haynsworth in both 1961 and 1963, while Carolina Vend-A-Matic had vending contracts with plants of Deering Milliken Corp., Darlington's parent company, bringing in $50,000 per year. While the litigation was pending, Carolina Vend-A-Matic signed a new contract with a Deering Milliken plant, increasing their vending business with that company to $100,000 per year. The case was eventually decided in favor of Darlington in a 3 to 2 decision with Judge Haynsworth casting the deciding vote, thus establishing an important legal precedent for the textile industry. The decision was later substantially modified by the Supreme Court.

Between 1958 and 1963 Judge Haynsworth sat on at least five other cases involving customers of Carolina Vend-A-Matic.

1. *Homelite* v. *Trywilk Realty Co., Inc.*, 272 F2d 688 (1959).

2. *Textile Workers Union of America* v. *Cone Mills Corporation* 268 F2d 920 (1959).

3. *Textile Workers Union Workers of America* v. *Cone Mills* 290 F2d 921 (1961).

4. *Leesona Corp.* v. *Cotwool Mfg. Corp., Deering Milliken Research Corp. and Whitin Machine Works* 308 F2d 895 (1962).

5. *Leesona Corp.* v. *Cotwool Mfg. Corp., Deering Milliken Research Corp. and Whitin Machine Works* 315 F2d 538 (1963).

Judge Haynsworth's failure to disqualify himself from the *Darlington* case and from other cases involving customers of Carolina Vend-A-Matic and his failure even to disclose his interests in CVAM again violates the strong precedents of disqualification law and the canons of judicial ethics on this subject.

These views do not suggest that Judge Haynsworth intentionally decided cases in a manner designed to enhance his financial interests. Such a charge would be unreasonable. However, the judge opened himself to legitimate criticism and the appearance of impropriety by permitting such a commingling of his judicial responsibility and his financial interests.

Although John Frank has testified that he believes Judge Haynsworth's interest in the litigation was too remote to require disqualification, Supreme Court cases indicate that the law of disqualification extends to cases of even relatively remote financial relationships.

The basic standard a judge is required to follow in deciding whether or not to hear a case is set out in *In Re Murchison* 349 U.S. 133 (1955), where the Supreme Court reversed contempt convictions handed out by a Michigan State judge who had investigated the underlying offense as a one-man grand jury. The Court stated:

"This Court has said, however, that 'every procedure which would offer a possible temptation to the average man as a judge * * * not to hold the balance nice, clear, and true between the State and the accused, denies the latter due process of law.' *Tumey* v. *Ohio*, 273 U.S. 510, 532. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the apperance of justice.' *Offutt* v. *United States*, 348 U.S. 11, 14 (349 U.S. 133, 136)."

This standard was clarified in *Commonwealth Coatings Corp.* v. *Continental Casualty Co.*, 393 U.S. 145 (1968). In that case, one of the parties to an arbitration proceeding had done business with one of three arbitrators, a consulting engineer. The relationship between the party and the arbitrator had been sporadic over the years and amounted to less than 1 percent of the arbitrator's business. In fact, there had been no business dealings between the two for over a year. The financial relationships in Commonwealth Coatings, obviously, was far more remote than Carolina Vend-A-Matic's relationship with Darlington. There, the relationship was current, and the business amounted to 3 percent of Carolina Vend-A-Matic's sales. Yet, the Court set aside the judgment of the arbitrators and applied the constitutional rules of judicial disqualification. Justice Black stated:

"It is true that petitioner does not charge before us that the third arbitrator was actually guilty of fraud or bias in deciding this case, and we have no reason, apart from the undisclosed *business* relationships, to suspect him of any improper motives. But neither this arbitrator nor the prime contractor gave to petitioner even an intimation of the close *financial* relations that had existed between them for a period of years. *We have no doubt that if a litigant could show that a foreman of a jury or a judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would be subject to challenge.* This is shown beyond doubt by *Tumey* v. *Ohio*, 273 U.S. 510 (1947), where this Court held that a conviction could not stand because a small part of the judge's income consisted of court fee collected from convicted defendants. Although in *Tumey* it appeared the amount of the judge's compensation actually depended on whether he decided for one side or the other, that is too small a distinction to allow this manifest violation of the strict morality and fairness Congress would have expected on the part of the arbitrator and the other party in this case. *Nor should it be at all relevant, as the Court of Appeals apparently thought it was here, that "(t)he payments received were a very small part of (the arbitrator's) income * * *"* For in *Tumey* the Court held that a decision should be set aside where there is "the slightest pecuniary interest" on the part of the judge, and specifically rejected the State's contention that the compensation involved there was "so small that it is not to be regarded as likely to influence improperly a judicial officer in the discharge of his duty * * *" (393 U.S. 145, 147–48). [Emphasis added.]"

The opinion concluded by noting the similarity in rule 18 of the American Arbitration Association and the pertinent section of the 33d Canon of Judicial Ethics which states:

"Canon 33—Social Relations.—* * * [A judge] should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships, constitute an element in influencing his judicial conduct."

The Court suggested further that the standard required for ethical conduct rested on a broader and more fundamental constitutional concept. In the words of Justice Black:

"This rule of arbitration and this canon of judicial ethics rest on the premise that any tribunal permitted by law to try cases and controversies must not only be unbiased, but must avoid even the appearance of bias. (393 U.S. 145, 150)"

By sitting in the litigation when Carolina Vend-A-Matic was doing business with a litigant, Judge Haynsworth breached the standards established by the Supreme Court. His testimony before the Judiciary Committee indicated his disregard for ethical standards would continue in the future. In answering a question concerning the propriety of his relationship with Carolina Vend-A-Matic, Judge Haynsworth admitted he would act in the same manner were the situation to arise again.

"Senator BAYH. * * * Now, you have been quoted, and I wonder if it is accurate, that if you had that *Darlington-Deering Milliken* case to do over gain, that you would still feel that you did not have a sufficient conflict of interest.

"Judge HAYNSWOATH. Even if I knew at the time all that I know about it now, I would feel compelled to sit. (Hearings, p. 99.)"

Similarly, in answer to Senator Tydings' question of whether Judge Haynsworth disclosed his interests to the parties, the Judge stated, "No, sir; because I did not regard my-

self as having any financial interest in the outcome, and I still do not." (Hearings, p. 65.) It is unfortunate that Judge Haynsworth either refuses or is incapable of grasping the principle that the appearance of bias is as important as actual bias.

As in the cases where Judge Haynsworth owned stock in a corporate litigant or its parent, the Canons of ethics apply to the Judge's conduct in deciding cases involving customers of Carolina Vend-A-Matic, and were clearly stated throughout his term on the bench.

The applicable Canons

"*I. Canon 4—Avoidance of Impropriety.*—A judge's official conduct should be free from impropriety and the appearance of impropriety: he should avoid infractions of law; and his personal behavior, not only upon the Bench and in his performance of judicial duties, but also in his everyday life, should be beyond reproach."

By sitting on cases involving customers of Carolina Vend-A-Matic Co. Judge Haynsworth allowed his conduct to suffer the appearance of impropriety.

"*II. Canon 13—Kinship or Influence.*—A judge should not act in a controversy where a near relative is a party; *he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person.* [Italic added.]"

By sitting on cases involving customers of Carolina Vend-A-Matic and ruling in their favor at least four times in 5 years, Judge Haynsworth conducted himself in such a manner as to "justify the impression" that he may have been improperly influenced.

"*III. Canon 24—Inconsistent Obligations.*—A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions."

By acting as a director and vice president of Carolina Vend-A-Matic, Judge Haynsworth clearly accepted duties likely to "interfere or appear to interfere" with the proper administration of his official judicial functions. Shortly after investigating bribery charges in the Fourth Circuit Court of Appeals in 1963–64, Judge Simon Sobeloff, in an article for the Federal Bar Journal, observed:

"One can readily see that if a judge serves as an officer or director of a commercial enterprise, not only is he disqualified in cases involving that enterprise, but his impartiality may also be consciously or unconsciously affected when persons having business relations with his company come before him. (Sobeloff, *Striving for Impartiality in the Federal Courts*, 24 Fed. Bar J. 286, 293 (1964)).

"*IV. Canon 25—Business Promotions and Solicitations for Charity.*—A Judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relations which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties."

Judge Haynsworth's continued financial interest and active participation in the affairs of Carolina Vend-A-Matic constituted a clear breach of this standard.

"*V. Canon 29—Self-Interest.*—A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation on the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy."

By deciding cases involving customers of Carolina Vend-A-Matic on at least six occasions, he performed judicial acts which clearly violated this canon.

"*VI. Canon 33—Social Relations.*—It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the Bar. *He should, however, in pending or prospective litigation before him, be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct.* [Italic added.]"

By sitting in cases involving important customers of Carolina Vend-A-Matic, Judge Haynsworth gave grounds for the appearance that business relations influenced his conduct.

"*VII. Canon 34—A Summary of Judicial Obligation.—In every particular his conduct should be above reproach.* He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity. [Italic added.]"

Judge Haynsworth, in view of the facts detailed above, has obviously not conducted himself in such a manner that his conduct is above reproach "in every particular."

Violation of 29 U.S.C. 301–308

Another matter deserves notice. Judge Haynsworth was a trustee of the Carolina Vend-A-Matic Co. profit sharing and retirement plan from 1961 until 1964 and qualified as an administrator by law. The Welfare and Pension Plan Disclosure Act provides that an administrator of a pension fund must file with the Secretary of Labor an initial description of the plan and annual reports thereafter. Willful violation of the act can lead to 6 months imprisonment or a fine of $1,000 or both. On September 17, 1969, the director of the Office of Labor-Management and Welfare-Pension Reports of the U.S. Department of Labor advised by letter, "Our records do not show that any reports have been received under the name of Carolina Vend-A-Matic Co., Inc., for a profit sharing and retirement plan."

The omission by the judge was in all probability an oversight and not an intentional violation. However, the facts are cited to reinforce the obvious conclusion that complicated financial relationships and judicial responsibility can become a dangerous mixture.

Lack of candor

The statements made by Judge Haynsworth to the Judiciary Committee have shown an amazing lack of candor. Senator Griffin has aptly pointed these out in his report, and there is no need to repeat these contradictions here.

Conclusion

The central theme of the canons of judicial ethics and the law of disqualification is that judges must be extremely careful to avoid bias or even the appearance of bias in administering their judicial functions. Judge Haynsworth entered into and maintained numerous relationships which, in view of the fact that he continued to perform judicial acts affecting other parties to those relationships, give the appearances of bias and thus constitute breaches of the canons of ethics and violations of the disqualification law.

He sat on cases involving litigants in which he had a financial interest; he purchased stock in corporations apt to appear before his court; he sat on cases involving customers of a corporation in which he was a major stockholder and for which he served as a director and vice president. Moreover, he failed to comply with Federal law in administering a profitsharing trust, and he displayed a lack of candor in testimony before this committee.

This is not acceptable conduct for a nominee to the Supreme Court.

The Supreme Court is the final determinant of the standard of judicial conduct not only for itself but also for every court in the land. The Court requires men sensitive to the many ethical problems which often arise. The Senate must await such a nominee before exercising its power to consent.

Mr. BAYH. Mr. President, I believe the individual views point out the reasons for my concern about the Brunswick case, the Grace Lines case, and the cases involving Maryland Casualty. The report points out how Judge Frank had questions about these cases although he disagreed with me as far as Carolina Vend-A-Matic is concerned.

I also ask unanimous consent to have a letter printed in the RECORD. It is a letter from Professor Mellinkoff of UCLA, who is very concerned about Judge Haynsworth's conduct in performing judicial acts affecting litigants in which the judge had financial interests.

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

UNIVERSITY OF CALIFORNIA, LOS ANGELES, SCHOOL OF LAW,
Los Angeles, Calif., October 20, 1969.

Hon. JAMES O. EASTLAND,
U.S. Senate, Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

MY DEAR SENATOR EASTLAND: As a professor of law teaching legal ethics to future lawyers, I write to invite your further attention to what I believe to be the central issue in the consideration of the fitness of Mr. Justice Haynsworth for appointment to the Supreme Court of the United States.

Three instances of apparent conflict of interest have been given prominence in the press: the Justice's purchase of Brunswick Corporation stock before announcement of his Court's decision in favor of Brunswick; his substantial ownership of Carolina Vend-O-Matic, a company having a valuable business relationship with a successful litigant before the Court; and his small stock holding in the W. R. Grace Co. at the time of a decision favorable to its subsidiary Grace Lines. According to report, Justice Haynsworth has explained that the Brunswick case had been decided and forgotten before he bought any Brunswick stock, and that financial interest did not influence his vote in any of these cases. As a member of the bar for 30 years I accept Justice Haynsworth's explanation.

At the same time I cannot but observe that to the unsuccessful litigant in Justice Haynsworth's Court the explanation would ring hollow. At best losing s lawsuit is a disheartening, at worst a crushing experience

to anyone convinced rightly or wrongly of the justice of his cause. The disappointment is endurable only under a system of justice in which the loser knows that the process by which he lost was a fair one.

In a grosser age, when the brilliant Francis Bacon was forced from office and forced to acknowledge that as Lord Chancellor of England he had been taking gifts from litigants, he was still able to assert, ". . . I am as innocent as any born upon St. Innocent's day: I never had a bribe or reward in my eye or thought when pronouncing sentence or order." It may have been true, but it was hardly satisfying, least of all to the man who lost his case in the Lord Chancellor's court.

In a United States district court a jury awards an injured seaman $50.00 on a claim against Grace Lines he thought worth $30,000.00. Saddened, he takes his case to the United States Circuit Court of Appeals. It is not difficult to imagine the bitterness in the heart of the injured seaman when he learns that one of the judges to whom he appealed in vain to right the supposed wrong of the Grace Lines was even a small owner of the company that owns Grace Lines. By the standard of the marketplace Justice Haynsworth's stockholding was trifling. It looms large in the mind of the unhappy litigant searching to discover just what it was that tipped the scales of justice against him.

To avoid such avoidable strains on the legal system, it has long been a maxim of the law that courts shall not only do justice but that they shall seem to do justice. This ancient wisdom finds expression in the Canons of Judicial Ethics of the American Bar Association providing that a judge's conduct should not only be "free from impropriety" but from "the appearance of impropriety." (Canon 4). The importance of the appearance of things is stressed again and again (Canons 13, 24, 26, 33), culminating in the injunction that "In every particular his conduct should be above reproach." (Canon 34).

These Canons apply to judges at every level. They apply most stringently to the men who are to grace the court which sets an example of right to the rest of the nation. I hope, Senator, that you will consider the nomination of Mr. Justice Haynsworth in this light. If you do, I believe you will come to share my conclusion that his confirmation would not promote that necessary public respect for our system of justice which each of us in his own way seeks to preserve.

Very truly yours,

DAVID MELLINKOFF,
Professor of Law.

Mr. BAYH. Mr. President, the matter of substantial interest is covered in the minority views which I have already asked unanimous consent to have printed in the RECORD. I will not labor that point any further.

Mr. President, I ask unanimous consent to have printed in the RECORD the remarks from the hearings of the Senator from Massachusetts (Mr. KENNEDY) relative to the Sobeloff letter since he cannot be here due to a tragic loss he sustained today. The Sobeloff letter has been a matter of controversy throughout this debate.

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

Senator KENNEDY. Would the Senator yield?

Senator BAYH. Let me just pursue this one point. He based it on a letter of Judge Sobeloff. And in reading Judge Sobeloff's letter I have had no inclination to find, so no indication that the judge——

The CHAIRMAN. You better read it again.

Senator ERVIN. It's got all the facts.

The CHAIRMAN. It does raise a question, in fairness to this nominee.

Senator BAYH. I have read it, Mr. Chairman.

The CHAIRMAN. It does raise a question of conflict of interest.

Senator ERVIN. I have to say what Phillip said to the Ethiopians: "Understandeth what thou readeth."

Senator KENNEDY. Would the Senator yield?

Senator BAYH. Let me just pursue this one point.

Does the chairman find in the Sobeloff letter—and he has had a chance to study it a great deal more than I—the fact that Judge Haynsworth claimed a half million dollars in Vend-A-Matic?

The CHAIRMAN. I think the question of conflict of interest was raised in the Sobeloff letter, and I think it was raised in Miss Eames' letter. The letters are part of the record. They will speak for themselves.

Yes; I think that.

Senator KENNEDY. Will the Senator yield?

Senator BAYH. I yield.

Senator KENNEDY. I think we can clear it up. Mr. Duffner is here. He is familiar with that case. I have had a chance to review the file on it, and it is certainly my impression from reviewing the file that the only question that was brought up to Judge Sobeloff, the basis of the allegation of Patricia Eames was a criminal violation, whether a criminal violation had occurred because of the alleged "throwing" of the contracts.

In reading——

The CHAIRMAN. I think the——

Senator KENNEDY. Would the Senator permit me to continue?

The CHAIRMAN. Excuse me.

Senator KENNEDY. Nowhere either in the allegation that was raised by Patricia Eames or in Judge Sobeloff's records or comments did they ever reach the question about the initial propriety of Judge Haynsworth sitting on that case. And if any of my distinguished colleagues can find that within the record, then I would like to hear that now, because I have not seen that. And we have Mr. Duffner here, who is from the Justice Department, who can respond.

We can look.

The matter that came to the Justice Department was sent to the Criminal Division, referred to the Criminal Division of the Justice Department for the investigation of any criminal liability. It did not come before the Attorney General on a preexisting conflict of interest.

Senator HRUSKA. Would the Senator yield?

The matter was referred to the Criminal Division, and properly so, because the text of 28 U.S.C. 455 has to do with that, and it requires a judge to disqualify himself in a case in which he has a substantial interest, and so forth.

However, Judge Sobeloff's letter clearly indicates in the first two paragraphs that he is treating as completely unfounded the charge of bribery or corruption in connection with the award of contracts. Then he proceeds for the balance of the several page letter to devote himself to the task of describing the stockholdings of the nominee, and the fact of his resignation from these boards of directors long before any court rule was established requiring that that be done.

He arrives at the general conclusion that the court, having all of these facts in reference upon which any possible conflict of interest could be based, has declared itself as having full confidence in Judge Haynsworth.

Now, I doubt very much that when the record of stock ownership and the membership on the board of directors and all of these other things are so plainly evident to the members of the court as well as to the Department of Justice, that the Department would say: "Wait a minute. We are not going to deal with anything but Miss Eames' charge that there was corruption and bribery."

When they take charge of a case for the purpose of determining the violation of a statute on conflict of interest because of a substantial interest in a case and a failure to disqualify they take charge of it for all purposes. To deny that would put the argument on the basis of a narrow legalistic proposition: A charge of bribery was made; it was dimissed; and that's all.

That's not true interpretation. And the full import of all of that record will clearly substantiate. It was the basis of the memorandum which the chairman and this Senator issued and which is in the record. That conclusion is based upon a full and complete and fair consideration of the record.

Senator ERVIN. And I would like to add——

Senator KENNEDY. We have——

The CHAIRMAN. Would the Senator yield?

Senator KENNEDY. Would the Senator yield? I think I still have——

The CHAIRMAN. I say, will you yield?

Senator KENNEDY. Well, I would just like to repond to this question.

The letter that the Senator from Nebraska refers to does not state what he alleges is a part of the record. It is two paragraphs long and I will read it at this time.

"Dear Mr. Attorney General:

"Enclosed is the file of correspondence passing between our court and counsel for the Textile Workers Union of America and Deering Milliken Corporation following the argument of an appeal in our court. Inasmuch as this relates to alleged conduct of one of our colleagues, we think it appropriate to pass the file on to the Department of Justice."

In that record—and I cease reading the letter from Mr. Sobeloff—or in that letter, there are the charges on page 3 from Patricia Eames of whether or not a criminal violation has occurred, and in reading through the record what was suggested based upon the anonymous phone call is that as a result of this decision, that the vending contract was thrown to Carolina Vend-A-Matic. And you just can't get away from that, and I will stand by this record:

"We think it appropriate to pass the file on to the Department of Justice.

"Happily, Miss Eames, who wrote the initial letter to the court on December 17, 1963, has herself acknowledged that the assertions and insinuations about Judge Haynsworth, made to her by some anonymous person in a telephone call, are without foundation; but I wish to add on behalf of the members of the court that our independent—

and once again the telephone call came on the basis of the "throwing" of the contract and it is all the way through this file—

"are without foundation; but I wish to add on behalf of the members of the court that our independent investigation has convinced us that there is no warrant whatever for these assertions and insinuations, and we express our complete confidence in Judge Haynsworth."

The only point that we have raised both by Judge Sobeloff's letter, which is a part of the record, and is very clear and available to all of us—is that the question that was reached—and I think we have Mr. Duffner here who was in the Department of Justice at the time and can clear up this matter if there is any open question—that the question that was reached was about the criminal liability if the contract was "thrown." I don't see any place within the assertions by the Attorney General at that time that in any

or the ethical question about Judge Haynsworth's originally sitting on that case.

I don't believe that it was raised. And I way it reached the question of the propriety don't believe that the question was reached.

Senator ERVIN. Will the Senator yield?

The CHAIRMAN. The Attorney General said that he had complete confidence in Judge Haynsworth. I do not believe that Attorney General Kennedy would have made such a statement had he thought there had been a conflict of interest.

Senator KENNEDY. Well, I read that same file and I am completely confident that there was no criminality involved in it, and I share Attorney General Kennedy's expression as well as Mr. Sobeloff's expression of complete confidence in Judge Haynsworth.

The CHAIRMAN. There was no criminality involved in it and no conflict of interest.

Senator KENNEDY. That's not—where does it say that?

Senator ERVIN. Well, I can tell you, If you yield to me I will show you.

Senator KENNEDY. No, I am yielding to—I am asking——

The CHAIRMAN. That's the meaning of the letter the Attorney General wrote, and above it, above it in the file it had the initials.

Senator ERVIN. If the Senator will yield, I will show where the question was put.

The CHAIRMAN. All right.

Senator KENNEDY. If you stand up, does it help——

Senator ERVIN. I will tell the Senator from Massachusetts I always stand up, even when I am sitting down.

This whole investigation was set in motion by a letter of December 17, 1963, written by Miss Patricia Eames to Judge Sobeloff, the Chief Judge of the U.S. Court of Appeals. After setting forth this rumor which had been conveyed to her by an anonymous telephone call charging bribery, she wrote the three-page letter, and she put this in the closing paragraph:

"We believe that an investigation should be made immediately. We do not know whether we ourselves should ask the Justice Department to investigate or whether we should leave the handling of this matter entirely up to you. It is clear to us that you are the first person to whom the matter should be referred."

Now, here are the words I invite attention to:

"Whether or not a criminal violation has occurred, we certainly believe that if the Deering Milliken contract was thrown to Carolina Vend-A-Matic, Judge Haynsworth should be disqualified from participating in the decision in this case, and that the resulting two-to-two decision should lead to the sustaining of the NLRB decision below."

Now, so this statement coupled with the acknowledgement that Judge Haynsworth was a vice president of Carolina Vend-A-Matic contained earlier in the letter, conveyed the alleged criminal charge and also the charge of a conflict of interest. And that was investigated by Judge Sobeloff, and Judge Sobeloff sent a copy of a letter, wrote a letter on December 18, 1964, which is contained in the Department of Justice file. In the letter, Judge Haynsworth reviews all of these facts about Judge Haynsworth——

The CHAIRMAN. Let's have order.

Senator ERVIN (continuing). In connection with Carolina Vend-A-Matic, and he closed with a statement that "However unwarranted the allegation"—this is the first allegation—"since the propriety of the conduct of a member of this court has been questioned"—and it is questioned in two respects——

Senator KENNEDY. Does it say two respects?

Senator ERVIN. No, but I interpolate it was a question in two respects: First, whether there was evidence of a bribe and, second, whether there had been impropriety by reason of Judge Haynsworth holding office in Carolina Vend-A-Matic.

Senator BAYH. Will the Senator yield?

Senator ERVIN. Not yet; wait until I finish this.

"However unwarranted the allegation, since the propriety of the conduct of a member of this court has been questioned, I am today, at Judge Haynsworth's request and with the concurrence of the entire court, sending the file to the Department of Justice, together with an expression of our full confidence in Judge Haynsworth."

He sent the whole file, including Patricia Eames' letter stating that he ought to disqualify himself, irrespective of the other charge, the main charge. This was considered in the Department of Justice and a very brilliant Attorney General of the United States, Robert F. Kennedy, after getting this file and Judge Soboloff's, the file from Judge Sobeloff, he says—

"DEAR MR. CHIEF JUDGE: This will acknowledge receipt of your letter dated February 19, 1964, enclosing the file that reflects your investigation of certain assertions and insinuations about Judge Clement F. Haynsworth, Jr."

And I pause to interpolate that one of those assertions was that he should be disqualified by reason of his holding office in Carolina Vend-A-Matic.

Then he concludes with this paragraph:

"Your thorough and complete investigation reflects that the charges were without foundation. I share your expression of complete confidence in Judge Haynsworth.

"Thanks for bringing this matter to my attention.

"Sincerely,

"ROBERT F. KENNEDY,
Attorney General."

Both things were brought to his attention.

Mr. BAYH. Mr. President, I think that anyone who reads the views and the remarks I have made will understand the differences of opinion I have with my distinguished colleague from South Carolina.

I am certain that the Senate will work its will and that we will abide by the decision it makes.

Mr. DOLE. Mr. President, will the Senator from Indiana yield?

Mr. BAYH. I yield.

Mr. DOLE. I was in the Chamber throughout the very fine statement made by the Senator from South Carolina (Mr. HOLLINGS) today and I have since read his remarks again, especially the charges made in the Senator from Indiana's bill of particulars and the responses thereto.

I agree with the Senator that we can have differences of opinion and reach different conclusions without being disagreeable or impugning the motives of anyone. Surely that is not the purpose of any Senator here.

As stated during the remarks of the Senator from South Carolina, I have been concerned about one charge because it is, in effect, a violation of the criminal statutes as set forth in the Senator's bill of particulars; namely, violations of title 29 United States Code, sections 301–308, which refer specifically to the Welfare Pension Plan Disclosure Act. The charge of violation was leveled, at least the inference was drawn; therefore, if we look at the charge, violation of title 29 United States Code, it goes on to say: "Willful violation, 6-months' imprisonment or a fine of $1,000, or both."

This is, as a matter of fact, contained in the Senator's bill of particulars. It is not a matter of refuting anyone's opinion.

I am wondering, seriously, if the Senator believes in that charge, and, if so, has he pursued it or was it something in his bill of particulars that should have been withdrawn or should not have been made?

Mr. BAYH. Let me read from page 39 of the report of the Judiciary Committee. I think that the matter the Senator from Kansas brought out is a valid point.

I want the Senator from Kansas to have my thoughts on this.

Violation of 29 U.S.C. 301–308

Another matter deserves notice. Judge Haynsworth was a trustee of the Carolina Vend-A-Matic Co. profit sharing and retirement plan from 1961 until 1964 and qualified as an administrator by law. The Welfare and Pension Plan Disclosure Act provides that an administrator of a pension fund must file with the Secretary of Labor an initial description of the plan and annual reports thereafter. Willful violation of the act can lead to 6 months imprisonment or a fine of $1,000 or both. On September 17, 1969, the director of the Office of Labor-Management and Welfare-Pension Reports of the U.S. Department of Labor advised by letter, "Our records do not show that any reports have been received under the name of Carolina Vend-A-Matic Co., Inc., for a profit sharing and retirement plan."

The omission by the judge was in all probability an oversight and not an intentional violation. However, the facts are cited to reinforce the obvious conclusion that complicated financial relationships and judicial responsibility can become a dangerous mixture.

I would ask if the Senator from Kansas would have any objection to having the act printed in the RECORD, so that we will know what the facts are.

Mr. DOLE. No objection.

Mr. BAYH. Mr. President, I ask unanimous consent to have a copy of the act printed in the RECORD.

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

REFERENCES IN TEXT

The Fair Labor Standards Act, as amended, referred to in text, is classified to chapter 8 of this title.

Chapter 10.—DISCLOSURE OF WELFARE AND PENSION PLANS

Sec.
301. Findings and policy.
302. Definitions.
303. Plans within chapter.
304. Administrator.
(a) Duty to publish description of plan and annual financial report.
(b) Definition of "administrator".
305. Description of plan.
(a) Time for publication.
(b) Contents.
306. Annual reports.
(a) Time for publication.
(b) Contents.
(c) Unfunded plans.
(d) Additional information required where benefits are provided by insurance carrier or other service or organization.
(e) Holding or investing of funds.
(f) Plans funded through trust; plans

§ 301. Findings and policy.

(a) The Congress finds that the growth in size, scope, and numbers of employees welfare and pension benefit plans in recent years has been rapid and substantial; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have bscome an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that owing to the lack of employee information concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made with respect to the operation and administration of such plans.

(b) It is declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee welfare and pension benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto. (Pub. L. 85–836, § 2, Aug. 28, 1958, 72 Stat. 997.)

EFFECTIVE DATE

Section 18, formerly § 12, of Pub. L. 85–836, renumbered by Pub. L. 85–420, § 16(a), Mar. 20, 1962, 76 Stat. 38, provided that: "The provisions of this Act [this chapter] shall become effective January 1, 1959."

SHORT TITLE

Section 1 of Pub. L. 85–836 provided that Pub. L. 85–836, which comprises this chapter, should be popularly known as the "Welfare and Pension Plans Disclosure Act".

SEPARABILITY OF PROVISIONS

Section 17, formerly § 11, of Pub. L. 85–836, renumbered by Pub. L. 87–420 § 16(a), Mar. 20, 1962, 76 Stat. 38, provided that: "If any provision of this Act [this chapter] or the application of such provision to any person or circumstance is held invalid, the remainder of this Act [this chapter] and the application of such provision to other persons or circumstances shall not be affected."

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

Offer, acceptance, or solicitation to influence operations of employee benefit plan, see section 1954 of Title 16.

Theft or embezzlement from employee benefit plan, see section 664 of Title 18.

§ 302. Definitions.

(a) When used in this chapter—

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

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

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

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

(5) The term "employee" means any individual employed by an employer.

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

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

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

(9) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

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

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

(12) The term "Secretary" means the Secretary of Labor.

(13) The term "party in interest" means any administrator, officer, trustee, custodian, counsel, or employee of any employee welfare benefit plan or employee pension benefit plan, or a person providing benefit plan services to any such plan, or an employer any of whose employees are covered by such a plan or officer or employee or agent of such employer, or an officer or agent or employee of an employee organization having members covered by such plan.

(Pub. L. 85–836, § 3, Aug. 28, 1958, 72 Stat. 997; Pub. L. 86–624, § 21(d), July 12, 1960, 74 Stat. 417; Pub. L. 87–420, §§ 2–5, Mar. 20, 1962, 76 Stat. 35.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in par. (9), is classified to sections 1331—1343 of Title 43, Public Lands.

The Labor-Management Relations Act 1947, referred to in par. (11), is classified to chapter 7 of this title.

The Railway Labor Act, referred to in par. (11), is classified to chapter 8 of Title 45, Railroads.

CODIFICATION

Section was enacted without a subsec. (b).

AMENDMENTS

1962—Pub. L. 87–420 substituted "communicated or its benefits" for "communicated for its benefits" in par. (1), included American Samoa, Guam, Wake Island and the Outer Continental Shelf lands in par. (9), substituted the definition of "industry or

activity affecting commerce" for provisions which defined "affecting commerce" as meaning in commerce, or burdening or obstructing commerce or the free flow of commerce, in par. (11), and added pars. (12) and (13).

1960—Subsec. (a)(9). Pub. L. 86–624 eliminated "Hawaii," preceding "Puerto Rico."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 19 of Pub. L. 87–420 provided that: "The amendments made by this Act [adding sections 308a–308f of this title and sections 664, 1027, and 1954 of title 18, Crimes and Criminal Procedure, amending this section and sections 303–309 of this title, and, renumbering sections 10–12 of Pub. L. 85–536, classified to section 309 of this title and as notes under section 301 of this title] shall take effect ninety days after the enactment of this Act [Mar. 20, 1962], except that section 13 of the Welfare and Pension Plans Disclosure Act [section 308d of this title] shall take effect one hundred eighty days after such date of enactment [Mar. 20, 1962].

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 18 of Pub. L. 85–836, set out as a note under section 301 of this title.

SHORT TITLE

Section 1 of Pub. L. 87–420 provided that Pub. L. 87–420, which enacted sections 308a–308f of this title and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, amended this section and sections 303–309 of this title, and renumbered sections 10–12 of Pub. L. 85–536, classified to section 309 of this title and as notes under section 301 of this title, may be cited as the "Welfare and Pension Plans Disclosure Act Amendments of 1962."

§ 303. Plans within chapter.

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

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

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

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

(3) such plan is administered by an organization which is exempt from taxation under the provisions of section 501(a) of Title 26 and is administered as a corollary to membership in a fraternal benefit society described in section 501(c)(8) of Title 26 or by organizations described in sections 501(c)(3) and 501(c)(4) of Title 26: *Provided*, That the provisions of this paragraph shall not exempt any plan administered by a fraternal benefit society or organization which represents its members for purposes of collective bargaining; or

(4) such plan covers not more than twenty-five participants.

(Pub. L. 85–836, § 4, Aug. 28, 1958, 72 Stat. 998; Pub. L. 87–420, § 6, Mar 20, 1962, 76 Stat. 35.)

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–420 substituted, in par. (3), "such plan is administered by an organization which is exempt" for "such plan is exempt" and inserted proviso stating that such paragraph shall not exempt any plan administered by a fraternal benefit society or organization which represents its members for purposes of collective bargaining, and in par. (4) substituted "participants" for "employees."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 18 of Pub. L. 85–836, set out as a note under section 301 of this title.

§ 304. Administrator.

(a) Duty to publish description of plan and annual financial report.

The administrator of an employee welfare benefit plan or an employee pension benefit plan shall publish in accordance with section 307 of this title to each participant or beneficiary covered thereunder (1) a description of the plan and (2) an annual financial report. Such description and such report shall contain the information required by sections 305 and 306 of this title in such form and detail as the Secretary shall by regulations prescribe and copies thereof shall be executed, published, and filed in accordance with the provisions of this chapter and the Secretary's regulations thereunder. No regulation shall be issued under the preceding sentence which relieves any administrator of the obligation to include in such description or report any information relative to his plan which is required by section 305 or 306 of this title. Notwithstanding the foregoing, if the Secretary finds, on the record after giving interested persons an opportunity to be heard, that specific information on plans of certain kinds or on any class or classes of benefits described in section 302 (1) and (2) of this title which are provided by such plans cannot, in the normal method of operation of such plans, be practicably ascertained or made available for publication in the manner or for the period prescribed in any provision of this chapter, or that the information if published in such manner or for such period would be duplicative or uninformative, the Secretary may by regulations prescribe such other manner or such other period for the publication of such information as he may determine to be necessary and appropriate to carry out the purposes of this chapter.

(b) Definition of "administrator".

The term "administrator" whenever used in this chapter, refers to—

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

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

(Pub. L. 85–836, § 5, Aug. 28, 1958, 72 Stat. 998; Pub. L. 87–420, § 7, Mar. 20, 1962, 76 Stat. 36.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–420 empowered the Secretary to prescribe the form and detail in which the information shall be reported, provided for filing copies of the report, prohibited issuance of a regulation which relieves any administrator of the obligation to include in the description or report any information relative to his plan which is required by section 305 or 306 of this title, and authorized the Secretary to prescribe the manner or period for the publication of information in cases where specific information on plans of certain kinds or on any class or classes of benefits described in section 302 (1) and (2) of this title which are provided by such plans cannot, in the normal method of operation of such plans, be practicably ascertained or made available in the manner or for the period prescribed, or that the information if published would be duplicative or uninformative.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 18 of Pub. L. 85–836, set out as a note under section 301 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

Offer, acceptance, or solicitation to influence operations of employee benefit plan, see section 1954 of Title 18.

Theft or embezzlement from employee benefit plan, see section 664 of Title 18.

§ 305. Description of plan.

(a) Time for publication.

Except as provided in section 303 of this title, the description of any employee welfare or pension benefit plan shall be published as required herein within ninety days of the effective date of this chapter or within ninety days after the establishment of such plan, whichever is later.

(b) Contents.

The description of the plan shall be published, signed, and sworn to by the person or persons defined as the "administrator" in section 304 of this title, and shall include their names and addresses, their official positions with respect to the plan, and their relationship, if any, to the employer or to any employee organizations, and any other offices, positions, or employment held by them; the name, address, and description of the plan and the type of administration; the schedule of benefits; the names, titles, and addresses of any trustee or trustees (if such persons are different from those persons defined as the "administrator"); whether the plan is mentioned in a collective bargaining agreement; copies of the plan or of the bargaining agreement, trust agreement, contract, or other instrument, if any, under which the plan was established and is operated; the source of the financing of the plan and the identity of any organization through which benefits are provided; whether the records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. Amendments to the plan reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 306 of this title, shall be included in the description on and after the effective date of such amendments. Any change in the information required by this subsection shall be reported to the Secretary within sixty days after the change has been effectuated. (Pub. L. 85–836, § 6, Aug. 28, 1958, 72 Stat. 999; Pub. L. 87–420, § 8, Mar. 20, 1962, 76 Stat. 36.)

REFERENCES IN TEXT

"Effective date of this chapter", referred to in the text of subsec. (a) of this section, as Jan 1, 1959, see section 12 of Pub. L. 85–836, set out as a note under section 301 of this title.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–420 required any change in the information to be reported to the Secretary within sixty days after the change has been effectuated.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 18 of Pub. L. 85–836, set out as a note under section 301 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

§ 306. Annual reports.

(a) Time for publication.

The administrator of any employee welfare or pension benefit plan, a description of which is required to be published under section 305 of this title, shall also publish an annual report with respect to such plan if it covers one hundred or more participants. However, the Secretary, after investigation, may require the administrator of any plan otherwise covered by the chapter to publish such report when necessary and appropriate to carry out the purposes of the chapter. Such report shall be published as required under section 307 of this title, within one hundred and fifty days after the end of the calendar year (or, if the records of the plan are kept on a policy or other fiscal year basis, within one hundred and fifty days after the end of such policy or fiscal year).

(b) Contents.

A report under this section shall be signed by the administrator and such report shall include the following:

The amount contributed by each employer; the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number of employees covered; a statement of assets specifying the total amount in each of the following types of assets: cash, Government bonds, non-Government bonds and debentures, common stocks, preferred stocks, common trust funds, real estate loans and mortgages, operated real estate, other real estate, and other assets; a statement of liabilities, receipts, and disbursements of the plan; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in what amount, and for what purposes. The Secretary, when he has determined that an investigation is necessary in accordance with section 308(d) of this title, may require the filing of supporting schedules of assets and liabilities. The information required by this section shall be sworn to by the administrator, or certified to by an independent certified or licensed public accountant, based upon a comprehensive audit conducted in accordance with accepted standards of auditing, but nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing an insurance, investment, or related function for the plan, if such books or records are subject to examination by any agency of the Federal Government or the government of any State. In the case of reports sworn to, but not certified, the Secretary, when he determines that it may be necessary to investigate the plan in accordance with section 308(d) of this title, shall, prior to investigation by the Department of Labor, require certification of the report by an independent certified or licensed public accountant.

(c) Unfunded plans.

If the plan is unfunded the report shall include only the total benefits paid and the average number of employees eligible for participation, during the past five years, broken down by years; and a statement, if applicable, that the only assets from which claims against the plan must be paid are the general assets of the employer.

(d) Additional information required where benefits are provided by insurance carrier or other service or organization.

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

(1) The premium rate or subscription charge and the total premium or subscription charges paid to each such carrier or organization and the approximate number of persons covered by each class of such benefits.

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

(e) Holding or investing of funds.

Details relative to the manner in which any funds held by an employee welfare benefit plan are held or invested shall be reported as provided under paragraphs (B), (C), and (D) of subsection (*f*)(1) of this section.

(f) Plans funded through trust; plans funded through contract with insurance carrier; unfunded plans.

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

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

(A) the type and basis of funding, actuarial assumptions used, the amount of current and past service liabilities, and the number of employees, both retired and non-retired covered by the plan;

(B) a statement showing the assets of the fund as required by section 306(b) of this title. Such assets shall be valued on the basis regularly used in valuing investments held in the fund and reported to the United States Treasury Department, or shall be valued at their aggregate cost or present value, whichever is lower, if such a statement is not so required to be filed with the United States Treasury Department;

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

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

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

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

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

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

(g) Certification of information by insurance carrier or service or other organization.

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

(h) Simplified reports.

The Secretary shall prescribe by general rule simplified reports for plans which he finds that by virtue of their size or otherwise a detailed report would be unduly burdensome, but the Secretary may revoke such provisions for simplified forms for any plan if the purposes of the chapter would be served thereby. (Pub. L. 85–836, § 7, Aug. 28, 1958, 72 Stat. 1000; Pub. L. 87–420, §§ 9–13, Mar. 20, 1962, 76 Stat. 36, 37.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (f)(1)(C) of this section, is classified to sections 80a–1 to 80a–52 of Title 15, Commerce and Trade.

The Public Utility Holding Company Act of 1935, referred to in subsec. (f)(1)(C) of this section, is classified to chapter 2C of Title 15.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–420, § 9(a), limited the requirement of publishing the annual report to those plans which cover one hundred or more participants, empowered the Secretary to require the administrator of any plan to publish such report when necessary and appropriate to carry out the purposes of this chapter, and substituted "one hundred and fifty" for "one hundred and twenty" in two instances.

Subsec. (b). Pub. L. 87–420, § 9(b), (c), required the statement of assets to show the total amount of cash, Government bonds, non-Government bonds and debentures, common stocks, preferred stocks, common

trust funds, real estate loans and mortgages, operated real estate, other real estate, and other assets, authorized the Secretary to require the filing of supporting schedules of assets and liabilities, and empowered the Secretary if he determines that it may be necessary to investigate the plan to require the certification of the report by an independent certified or licensed public accountant.

Subsec. (f)(1)(B). Pub. L. 87–420, § 10, substituted "a statement showing the assets of the fund as required by section 306(b) of this title" for "a summary statement showing the assets of the fund broken down by types, such as cash investments in governmental obligations, investments in nongovernmental bonds, and investments in corporate stocks."

Subsec. (f)(1)(C). Pub. L. 87–420, § 11, substituted "total funds" for "total fund" and "valued as provided in subparagraph (B)" for "listed at their aggregate cost or present value, whichever is lower," and eliminated words "by reason of being an officer, trustee, or employee of such fund" which followed "other party in interest."

Subsec. (f)(1)(D). Pub. L. 87–420, § 12, eliminated words "by reason of being an officer, trustee, or employee of such fund" which followed "other party in interest."

Subsecs. (g), (h). Pub. L. 87–420, § 13, added subsecs. (g) and (h).

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 18 of Pub. L. 85–836, set out as a note under section 301 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

§ 307. Publication of description of plan and annual report.

(a) Availability for examination in office of plan; delivery of copy of description of plan and summary of report.

Publication of the description of the plan and the latest annual report required under this chapter shall be made to the participants and to the beneficiaries covered by the particular plan as follows:

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

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

(b) Filing of copies of plan and report with Secretary; availability for examination in Department of Labor.

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

(c) Preparation and availability of forms for description of plan and annual report.

The Secretary shall prepare forms for the descriptions of plans and the annual reports required by the provisions of this chapter and shall make such forms available to the administrators of such plans on request. (Pub. L. 85–836, § 8, Aug. 28, 1958, 72 Stat. 1002; Pub. L. 87–420, §§ 14, 18, Mar. 20, 1962, 76 Stat. 37, 43.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–420, § 14, substituted "an adequate summary" for "a summary" in par. (2).

Subsecs. (b), (c). Pub. L. 87–420, § 18, substituted "Secretary" for "Secretary of Labor", wherever appearing.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 18 of Pub. L. 85–836, set out as a note under section 301 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

§ 308. Enforcement.

(a) Penalty for violations.

Any person who willfully violates any provision of this chapter shall be fined not more that $1,000, or imprisoned not more than six months, or both.

(b) Liability for failure or refusal to make publication.

Any administrator of a plan who fails or refuses, upon the written request of a participant or beneficiary covered by such plan, to make publication to him within thirty days of such request, in accordance with the provisions of section 307 of this title, of a description of the plan or an annual report containing the information required by sections 305 and 306 of this title, may in the court's discretion become liable to any such participant or beneficiary making such request in the amount of $50 a day from the date of such failure or refusal.

(c) Actions to recover liability; jurisdiction; attorney fees and costs.

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

(d) Investigations to disclose violations.

The Secretary may, after first requiring certification in accordance with section 306 (b) of this title, upon complaint of violation not satisfied by such certification, or on his own motion, when he continues to have reasonable cause to believe investigation may disclose violation of this chapter, make such investigations as he deems necessary, and may require or permit any person to file with him a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated.

(e) Attendance of witnesses and production of books, records, and documents; applicability of other laws.

For the purposes of any investigation provided for in this chapter, the provisions of sections 49 and 50 (relating to the attendance of witnesses and the production of books, records, and documents) of Title 15, are made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

(f) Injunctions.

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

(g) Jurisdiction to restrain violations.

The United States district courts and the United States courts of any place subject to the jurisdiction of the United States shall have jurisdiction, for cause shown, to restrain violations of this chapter.

(h) Regulation or interference in management of plan; restriction on power of Secretary.

Nothing contained in this chapter shall be so construed or applied as to authorize the Secretary to regulate, or interfere in the management of, any employee welfare or pension benefit plan, except that the Secretary may inquire into the existence and amount of investments, actuarial assumptions, or accounting practices only when it has been determined that investigation is required in accordance with section 308(d) of this title.

(i) Information to Attorney General.

The Secretary shall immediately forward to the Attorney General or his representative any information coming to his attention in the course of the administration of this chapter which may warrant consideration for criminal prosecution under the provisions of this chapter or other Federal law. (Pub. L. 85–836, § 9, Aug. 28, 1958, 72 Stat. 1002; Pub. L. 87–402, § 15, Mar. 20, 1962, 76 Stat. 37.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–420, § 15(a), eliminated provisions which limited subsection to violations of section 304 or 307 of this title, and inserted provisions authorizing imposition of both fine and imprisonment.

Subsecs. (d)—(i). Pub. L. 87–420, § 15(b), added subsecs. (d)—(i). Former subsec. (d), which related to jurisdiction to restrain violations, is now covered by subsec. (g) of this section. Former subsec. (e) made section 1001 of Title 18 applicable to any description of a plan or any annual report which is sworn to under this chapter. See section 1027 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 18 of Pub L. 85–836, set out as a note under section 301 of this title.

CROSS REFERENCES

False statsments and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

Offer, acceptance, or solicitation to influence operations of employee benefit plan, see section 1954 of Title 18.

Theft or embezzlement from employee benefit plan, see section 664 of Title 18.

§ 308a. Reports made public information.

The contents of the descriptions and regular annual reports filed with the Secretary pursuant to this chapter shall be public information, and the Secretary, where to do so would protect the interests of participants or beneficiaries of a plan, may publish any such information and data. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate. (Pub. L. 85–836, § 10, as added Pub. L. 87–420, § 16(a), Mar. 20, 1962, 76 Stat. 38.)

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

§ 308b. Retention of records.

Every person required to file any description or report or to certify any information therefor under this chapter shall maintain records on the matters of which disclosure

is required which will provide in sufficient detail the necesear basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain. (Pub. L. 85–836, § 11, as added Pub. L. 87–420, § 16(a), Mar. 20, 1962, 76 Stat 38.)

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

§ 308c. Reliance on administrative interpretations and forms.

In any action or proceeding based on any act or omission in alleged violation of this chapter, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with any provision of this chapter if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Secretary, or (2) publish and file any information required by any provision of this chapter if he pleads and proves that he published and filed such information in good faith, on the description and annual report form prepared by the Secretary and in conformity with the instructions of the Secretary issued under this chapter regarding the filing of such forms. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this chapter. (Pub. L. 85–836, § 12, as added Pub. L. 87–420, § 16 (a), Mar. 20, 1962, 76 Stat. 38.)

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

§ 308d. Bonds.

(a) Requirement; amount; conditions; sureties.

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

(b) Violations.

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

(c) Procurement from surety or other company or through agent or broker in whose business operations such plan or party in interest has significant control or financial interest.

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

(d) Bonding requirements in other provisions of law.

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

(e) Regulations; exemption of plan.

The Secretary shall from time to time issue such regulations as may be necessary to carry out the provisions of this section. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participante, he may exempt such plan from the requirements of this section. (Pub. L. 85–836, § 13 as added Pub. L. 87–420, § 16(a), Mar. 20, 1962, 76 Stat. 39.)

EFFECTIVE DATE

Section effective 180 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 301 of this title.

§ 308e. Advisory Council.

(a) Establishment; appointment of members.

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

(b) Duties; meetings, report to Congress.

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

(c) Executive secretary; secretarial, clerical and other services; statistical data, reports, and other information from governmental agencies.

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

(d) Compensation of members.

Appointed members of the Council shall be paid compensation at the rate of $50 per diem when engaged in the work of the Council, including travel time, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (section 73b–2 of Title 5) for persons in the Government service, employed intermittently and receiving compensation on a per diem, when actually employed, basis.

(e) Exemption of members from provisions of other laws.

(1) Any member of the Council is exempted, with respect to such appointment, from the operation of sections 281, 283, and 1914 of Title 18 and section 99 of Title 5, except as otherwise specified in paragraph (2) of this subsection.

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

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

(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment. (Pub. L. 85–836, § 14, as added Pub. L. 87–420, § 16(a), Mar. 20, 1962, 76 Stat. 40.)

REFERENCES IN TEXT

Sections 281, 283, and 1914 of Title 18 and section 99 of Title 5, referred to in subsec. (e)(1), are repealed. See sections 201 et seq. of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

§ 308f. Administration.

(a) Applicability of Administrative Procedure Act.

The provisions of the Administrative Procedure Act shall be applicable to this chapter.

(b) Prohibition on administration or enforcement by employee with respect to organization in which he has an interest.

No employee of the Department of Labor

shall administer or enforce this chapter with respect to any employee organization of which he is a member or employer organization in which he has an interest.

(c) Limitation on number of employees.

No more than 260 employees shall be employed by the Department of Labor to administer or enforce this chapter for the first two years after March 20, 1962.

(d) Authorization of appropriations.

Not more than two million two hundred thousand dollars per year is authorized to be appropriated for the administration and enforcement of this chapter, for the first two years after March 20, 1962. (Pub. L. 87–836, § 15, as added Pub. L. 87–420, § 16(a). Mar. 20, 1962, 76 Stat. 41.)

REFERENCE IN TEXT

The Administrative Procedure Act, referred to in subsec. (a), is classified to chapter 19 of Title I, Executive Departments and Government Officers and Employees.

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

CROSS REFERENCE

Offer, acceptance, or solicitation to influence operations of employee benefit plan, see section 1954 of Title 18, Crimes and Criminal Procedure.

§ 309. Effect of other laws.

(a) State laws.

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

(b) Present or future Federal or State laws.

The provisions of this chapter, except subsection (a) of this section and section 308d of this title, and any action taken thereunder, shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the United States or of any State affecting the operation or administration of employee welfare or pension benefit plans, or in any manner to authorize the operation or administration of any such plan contrary to any such law. (Pub. L. 85–836, § 16, formerly § 10, Aug. 28, 1958, 72 Stat. 1002, renumbered and amended Pub. L. 87–420, § 16(a), (b), Mar. 20, 1962, 76 Stat. 38, 41.)

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–420, § 16(b), excepted section 308d of this title.

Mr. BAYH. Mr. President, I do not think that Judge Haynsworth did that intentionally. I do not ask my friend from Kansas to share my concern, but I believe—and I hope the Senate will act on this later this year, or next year—that if a man is going to be on that bench for life and make those important determinations, he should absolve himself of all intricate financial relationships such as these. Not to do so gets a judge into this present sticky situation.

Mr. DOLE. Mr. President, the reason this question is raised is that it is one which has been highly publicized all across America, and in my State of Kansas; namely, did Judge Haynsworth commit a crime? It has raised doubts in the minds of many people who were neither for nor against Judge Haynsworth at the time. It is a rather serious situation, but perhaps, since he was only one of three trustees, there was no deliberate effort not to disclose information. In fact, the plan was made available to the employees. He was not the manager. It is unclear whether this law would apply to him, in the first instance, but the charge was made and it was made publicly, and apparently, for some reason. It certainly has not been helpful to Judge Haynsworth, because after the news media publicized it, displayed it, it then appeared in this regular bill of particulars. It was played up all over the country, and it has raised serious doubts in the minds of many people as to Judge Haynsworth's qualifications.

Mr. BAYH. I have not had the good fortune to read the papers of Kansas. I have not read all the newspapers in my State of Indiana, for that matter. I have not seen it in the clippings which have come over my desk. I have not seen this particular issue dwelt on. Certainly, Judge Haynsworth did not intentionally violate the statute.

I do not think this issue has received any attention in the press. At least I have not seen it. I expect the Senator from Kansas has.

Mr. DOLE. The Senator may have been on television at that time. The point is that in the statement issued by the Senator from Nebraska (Mr. HRUSKA) and the Senator from Kentucky (Mr. COOK) on October 15, 1969—let me read it for the RECORD:

PENSION AND PROFIT SHARING PLAN

While serving as a director of Carolina Vend-A-Matic, Judge Haynsworth was appointed in 1961 as a trustee of the company's pension and profit-sharing plan. The benefits of the plan did not accrue to the directors, only to the employees. He was one of three directors. (Hearings Pages 92, 290). His duties as trustee ended in 1964 when the corporation was merged. 29 U.S.C. Sec. 301–308 was passed by Congress in 1962. Its purpose was to require the disclosure and reporting to participants and beneficiaries of the details of pension and profit-sharing plans. Carolina Vend-A-Matic did fully disclose the details of the plan's operations to the participants: a description of the plan was given to the participants at the plan's inception and thereafter the participants received an annual statement of accounts. Records of the Department of Labor do not disclose that a short form description of the plan was filed with the Department. The only penalties included in the Act are for willful violation. Inadvertent failure to comply is not a willful violation. Because the short form filing was part of the daily administration of the plan and normally would be done by clerical staff, Judge Haynsworth was not aware of the inadvertence. (Hearings Page 291). There is no evidence that Judge Haynsworth was in violation of the Act. As a matter of fact, the reported cases have found a violation only if the trustees of a plan refuse to disclose the required information to employees after the information is demanded. Here the opposite is true. The information was made available to the employees willingly.

Mr. BAYH. Does the Senator have evidence that the trust had a clerical staff?

Mr. DOLE. It is my judgment there was.

Mr. BAYH. It is my judgment there was no clerical staff or administrator, but that there were three trustees, one of whom was a judge. I do not think he willfully violated it, but it is an example of a man not removing himself from complicated financial relationships that are likely to raise a question of impropriety.

The Senator from Kansas disagrees with that. It is certainly within his right to disagree.

If I may expand these remarks, I have tried my very best to make my feelings known, although I have not succeeded 100 percent. Remarks were made earlier by the distinguished Senator from Iowa that there have been allegations relative to certain activities of the judge that are not relevant. I have not made them. I do not know of any Senator who has made any that do not have a bearing on the case.

I think, in fact, whether the judge violated the law does not have any bearing, either. It is just that it is a relationship which is subject to question. I would rather that a judge going into that high position on the Court not involve himself in such relationships.

Mr. DOLE. We get back to the question raised earlier. Why is the allegation included in the bill of particulars of the Senator from Indiana if it has no relevance or bearing on the question? The inference is that he committed a crime.

Mr. BAYH. Is it difficult for the Senator to hear what I am saying?

Mr. DOLE. I can also read, and I read the bill of particulars.

Mr. BAYH. I suggest that the Senator read it further. It is my feeling that it is clear. I cannot understand why it is not clear to the Senator.

Mr. DOLE. It is also contained in the bill of particulars in a particular way.

Mr. BAYH. At the time the bill of particulars was submitted, and immediately afterwards I pointed out the same thing orally that I pointed out in the minority views.

Mr. DOLE. But the Senator agrees that his bill of particulars contains a different statement than contained in the report.

Mr. BAYH. In the first part it is almost verbatim, and it is factual.

Mr. DOLE. Charge No. 12 refers to a violation of title 29 of the United States Code, section 301. What other inference could anyone draw who read that charge than that he violated the provisions of that statute?

Mr. BAYH. I do not know how to say it any clearer.

Mr. DOLE. The Senator says it so clearly that perhaps he damaged the judge in doing so. That is why the question should be raised.

Mr. BAYH. If the judge is damaged by the activities he engaged in and the judgments he made, that is his responsibility. I have been as kind and sensitive as I know how, but I am not apologetic

for submitting this and letting everyone make his own determination. Anyone can come to a conclusion as to whether this is the kind of relationship which a judge going on the Supreme Court should have as an everyday kind of activity.

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

Mr. BAYH. I yield.

Mr. HRUSKA. I have this particular paragraph in the bill of particulars before me. I fully agree with the Senator from Indiana that the public and the Senate should know all the facts and the truth about the facts. I would seriously question that the way in which the bill of particulars is fashioned gives us the entire truth. The entire truth would include a statement that there was no willful violation of the statute which is referred to. A willful violation can lead to 6 months' imprisonment or a fine of $1,000, or both.

In the bill of particulars the letter from the U.S. Department of Labor is quoted:

> Our records do not show that any reports have been received under the name of Carolina Vend-A-Matic, Inc. for a profit sharing and retirement plan.

The whole truth would be that this does not constitute a willful violation unless and until under those circumstances the Department of Labor asks for a report, and there is noncompliance with such a request. That is what the whole record shows.

I ask the Senator from Indiana for any commentary on that. The truth is fine, but should not we have the whole truth? I do not apologize for the judge, nor excuse the fact that a report was not filed, but we need all of the facts of the case. There is such a thing as willful violation, to be sure, but it is not to be inferred until such time as a request is made for the report and the request is denied.

Mr. BAYH. Perhaps the Senator would point out where these ameliorating circumstances that go beyond what I put in the RECORD are.

Mr. HRUSKA. I would be glad to read the whole text into the RECORD, so the Senator and I will be talking about the same thing.

Mr. BAYH. I suggested that the whole text go into the RECORD. I think that bill of particulars has been in there. I think it is going to be on the best seller's list, but if the Senator wants to put it in again, that is fine. I put the statute ino the RECORD, so we could see what we are talking about.

Mr. HRUSKA. Is that pension fund a profitmaking proposition?

Mr. BAYH. It is a profitsharing proposition and comes under the provisions of the act.

Mr. HRUSKA. It is not an organization organized for profit. It is a fund gathered together by joint contributions from employers and employees and dispensed according to the rules of the trust.

Mr. BAYH. It is for retirement and profitsharing. The Senator refers to a sentence from the second paragraph of the bill of particulars. Long before we even got into the matter of listing what I feel is an impropriety, I said I issued the bill of particulars with no malice toward Judge Haynsworth, and with considerable regret. The question is not whether Judge Haynsworth is dishonest, but whether he has shown a temperament which qualified him to sit on the highest judicial council. The Senator has heard me say this. He has heard me ask the questions as apologetically as I know how. I do not know what else to say.

Mr. HRUSKA. It is one thing to call attention to something which might give rise to an appearance of evil or to put a man in a position of reproach, but when it is clearly pointed out that there is no evil, that there is no violation of the statute, and there is nothing improper about being involved in transactions with that retirement fund, then it seems to me most Senators who would be reasonable and who would like to put this matter in the proper light and who had a fair intendment for the integrity of a man who has been on the bench 12 years, would say, "All appearance of evil disappears with this explanation." Unfortunately the Senator from Indiana apparently is reluctant to do that.

Mr. BAYH. May I quote from the guiding language of the statute which has already been put into the RECORD:

> The administrator of any plan subject to the provisions of this chapter—

Mr. HRUSKA. What is the Senator reading?

Mr. BAYH. Section 307, title 29—

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

I have said this from the beginning. I will repeat it again. As I recall, when I discussed this matter in the hearings, I suggested that we were dealing with the provision under the canons of ethics that a judge should avoid getting himself involved in litigation. What if the proper precautions had not been taken, and the judge maintained that financial relationship? A complaint could have been made. The reports were not filed.

Mr. DOLE. Mr. President, will the Senator yield at that point?

Mr. BAYH. I yield.

Mr. DOLE. The Senator is saying he probably did not violate the Federal law.

Mr. BAYH. It is my judgment he was not subject to penalty. It was inadvertent. It is the type of relationship from which he should have severed himself before he went on the bench.

Mr. DOLE. I assume the Senator will admit that his individual views on that point were different. On page 26 of the report are shown the differences which come to mind, where he said Judge Haynsworth "violated Federal law in his administration of the Caroinla Vend-A-Matic Co. profit sharing and retirement plan."

If that is not a concise statement that a man had violated Federal law, then I do not understand the English language.

Mr. BAYH. If he violated the letter of the law, he is not subject to penalty unless it is a willful violation. It is that simple.

Mr. HRUSKA. In no event is he subject to penalty unless it is willful. He did not violate any law unless it is a willful violation. When we look for evidence of willfulness, it is not there. There is no showing that it was the duty of the judge, himself, to have filed that statement. There is no showing on that.

Mr. BAYH. The Senator is not at all concerned about this type of relationship, as far as this trust is concerned?

Mr. HRUSKA. No, not when all of the facts are related, because here we have a situation of no willful violation, no showing of the violation of any criminal statute, or the incurring of any sanction. We do have the rules of the Judicial Conference of the United States, which say, do they not, that "no justice or judge shall serve in the capacity of an officer, director, or employee of a corporation organized for profit?"

This corporation is not organized for profit. Judge Haynsworth got no profit out of it. The trust did not get any profit. There is no appearance of evil, nor any circumstances that would amount to a situation that he could be considered in reproach. Yet the Senator insists upon including in his statement inferences of violation of the law, of bad business, and that Judge Haynsworth got himself into a bad situation.

What is the bad situation? We would like to know what the bad situation is.

Mr. BAYH. The bad situation is that he did not adhere to the letter of this law, and it looks bad.

Mr. HRUSKA. Did what?

Mr. BAYH. He did not adhere to the letter of the law. You can violate one section of the law and not be subject to the penalty section; the Senator knows that.

Mr. HRUSKA. He did not violate the law.

Mr. BAYH. The report was not submitted——

Mr. HRUSKA. No; the law is that there shall be a penalty in case of willful violation. There was no willful violation; therefore, he did not violate the law.

Mr. BAYH. The Senator and I, standing here, are willing to concede that there was no willful violation, but we have no proof of it; do we?

Mr. HRUSKA. And since when is it incumbent upon a man to prove he is innocent? The Senator made the statement; it is for him to prove there was a willful violation. I do not think anyone accused of a crime has to prove he is innocent. Not in this country. Not in America.

Mr. BAYH. Whether it was a willful violation or not, I am trying to suggest that it is the relationship, the impropriety of the relationship.

Mr. HRUSKA. What is improper about it? No rule against it. No law against it. It is perfectly honorable: an effort to try to help the employees of the organization. No motive of profit; no corruption; what is improper about it?

Mr. BAYH. The very fact that the judge was a trustee of this profitsharing

and retirement fund, and no report was filed could be interpreted by one of the employees as a willful refusal to file.

Mr. HRUSKA. Oh, it could be, indeed.

Mr. BAYH. And that employee could bring a suit, which could ultimately come before the judge in his own court.

Mr. HRUSKA. Oh, that argument has no application at all.

Mr. BAYH. It is the very fact——

Mr. HRUSKA. None at all. With that standard, the judge would have to resign from the human race, because one member of the human race, somewhere along the line, might come before the court with litigation against the judge. How can a judge resign from the human race? That has no applicability.

Mr. BAYH. Therein the Senator from Nebraska is stretching the point just a bit.

Mr. HRUSKA. No more than the Senator from Indiana.

Mr. BAYH. To suggest that it is impossible for a man to sit on the bench, when he has a pretty good salary, lifetime tenure, and does not have to run for reelection the way the Senator and I do, without resigning from the human race is preposterous. A man has to resign from the human race, does he, to deny himself the opportunity to serve as a member of a board of trustees, or as an officer or vice president of a corporation such as the Carolina Vend-A-Matic Co.? Does that say you are going to have to resign from the human race?

Mr. HRUSKA. No, but the Senator is a good debater, and so he shifts from the question of a permanent trustee to that of a vice president. But his argument will not hold water. There is nothing from which an inference of impropriety could be drawn. He was a trustee, and of course he could be held to answer for a violation, if he willfully did it. He could have been guilty of defalcation or embezzlement. It is not proved, but he could be. Does that mean there is an appearance of evil? That would not follow. And I still say there is nothing upon which to charge that anything is improper, or that there is anything that would put the judge in a position of reproach, notwithstanding the recital here in the individual views and in the Senator's bill of particulars.

Mr. BAYH. May I make a suggestion?

Mr. HRUSKA. Surely.

Mr. BAYH. The Senator from Nebraska has had considerably more experience in the law than has the Senator from Indiana, and I say that with a slight touch of envy in my voice.

Perhaps we should let it rest at this: It is the contention of the Senator from Indiana, much junior as he is to his friend from Nebraska, that it is possible to violate provisions of a statute and not violate the criminal section. That is what we are talking about.

Now, if the Senator from Nebraksa says that is not possible, let us let the RECORD stand where it is and let the lawyers of this country decide whether it is right or wrong.

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

Mr. BAYH. I am glad to yield.

Mr. DOLE. The reason for raising the point in the first instance in that the Senator lists five reasons why the judge's appointment should not be confirmed. The one just read to the Senator, on page 26, No. 4, states very clearly—in his words, not mine—that "Judge Haynsworth violated Federal law in his administration of the Carolina Vend-A-Matic Co. profit sharing and retirement plan."

The Senator concludes, after listing these five reasons why he should not be confirmed, by saying:

> Some of these failings would be relatively minor if each stood alone. But they do not stand alone. Together they produce a profile of a judge who consistently failed to give ethical questions the weighty consideration they deserved.

The point in raising the issue is this: First of all, as the Senator from South Carolina asked, "Do we have a criminal on trial, or are we trying to confirm or not confirm a judge?"

And second, if item No. 4 drops out of the Senator's bill of particulars——

Mr. BAYH. Does the Senator say I am calling Judge Haynsworth a criminal?

Mr. DOLE. I am quoting what the Senator from South Carolina said. He is talking about——

Mr. BAYH. Mr. President, is the Senator from Kansas saying I have called Judge Haynsworth a criminal?

Mr. DOLE. No, I am simply saying what the Senator from South Carolina said.

Mr. BAYH. I thought the Senator said that is what the Senator from South Carolina quoted me as saying.

Mr. DOLE. No; but I want to raise a question.

Mr. BAYH. The Senator knows there are civil and criminal statutes, does he not? He is a very learned member of the bar.

Mr. DOLE. I am a member of the bar. I am not very learned.

Mr. BAYH. That makes two of us.

Mr. DOLE. But the Senator said that for five reasons, the nomination should not be confirmed. The question is raised only in an attempt to sway the Senator over to our side, because if this point disappears, he has only four left, and if another of them disappears, perhaps there would not be sufficient reason to oppose the confirmation.

The Senator has said many times, and I agree, that Judge Haynsworth is a man of honesty and integrity; is that not correct?

Mr. BAYH. That is correct, basic honesty and basic integrity. And very successful financially.

Mr. DOLE. The only point he raises is that Judge Haynsworth is insensitive?

Mr. BAYH. That is correct.

Mr. DOLE. Is that word used anywhere in the canons of ethics?

Mr. BAYH. The Senator does not want me to get out the canons of ethics and start reading about the appearance of impropriety, does he?

Mr. DOLE. I could not find the word "insensitive" anywhere in the canons.

Mr. BAYH. The Senator is making a rather unique distinction, but certainly that is within his right.

Mr. DOLE. The point is this: We are all concerned. As the Senator has said many times, we may reach different conclusions; but if we are to have any meaningful debate on the floor of the Senate with reference to Judge Haynsworth, we should be perfectly candid with one another. There have been some spectacular charges made. Some may be correct, some not correct. But if we agree that perhaps the charge that he may have violated 29 United States Code is not correct, and the Senator now says that it probably was not correct in the bill of particulars, we ought to set the record straight, so that the weight may be lifted from the shoulders of Judge Haynsworth and the Senators who have to make a decision on Friday of this week.

Mr. BAYH. Nice try. But I repeat to my friend from Kansas: Let us read the whole paragraph there on page 26, because I think the preceding sentence, before the five points that the Senator listed, might put those five points in a little different perspective:

> Unfortunately, Judge Haynsworth has not taken these necessary precautions and, as a result, his record has been blemished by a pattern of insenstivity to the appearance of impropriety.

The Senator may not like the word "insensitivity," but I think he knows what it means. This is the whole frame of reference in which the following five points are listed.

Then, of course, if we are going to look at the whole picture, I think it is only fair to suggest that we look at what I said when dealing with that one point specifically, when I suggested that the failure to file was probably inadvertent.

Mr. DOLE. The Senator is saying there are some very minor points in the total reason for his opposing the judge?

Mr. BAYH. Shall I read again what I said?

Mr. DOLE. No, but if the Senator wants to amend that, when he says he violated the law——

Mr. BAYH. He did violate the civil statute.

Mr. HRUSKA. Where is the violation?

Mr. BAYH. The violation is that he did not file, where the statute said he should, as was pointed out a while ago.

Mr. HRUSKA. Mr. President, there is no showing in that kind of a simple statement that it is a willful violation. And the statute has to do with a willful violation.

Mr. BAYH. Mr. President, there we get into the criminal penalty involved. And the Senator and I disagree on that point. There is no use of thrashing that matter out.

Mr. HRUSKA. There is no violation unless it is willful. If the Senator wants to prove that it was willful, he has a job.

Mr. BAYH. I never had any intention of proving it was willful. I said it was possible to have the violation of a civil provision of a statute and not of a criminal provision. And that is exactly what happened.

Mr. HRUSKA. Mr. President, we have here a situation where an allegation is made with reference to the nominee. The burden is not on the nominee to disprove that he has done something and that it was bad. The burden is on the people who say he is a bad man or an insensitive man to prove affirmatively that he did something. That has not been done.

Mr. BAYH. Mr. President, I appreciate

the Senator's bringing up these points. A couple of matters have been mentioned that I wish had not been mentioned. They were mentioned inadvertently. As I say, I disclosed those as quickly as I could.

Both sides have been fraught with frustration from time to time because of the inaccessibility of the records. Our distinguished friend, the junior Senator from Kentucky (Mr. COOK), made reference to this the other day when he was rather critical of the Justice Department for the way they handled this matter. His counter bill of particulars stated that there was no Furman trust. We have the copy of the trust instrument with Judge Haynsworth's signature on it. So I do not believe that any of us have intentionally misrepresented the facts. I know that the other side has not, and I trust that they will give me credit for the same intentions.

Mr. DOLE. Mr. President, this is in some respects a difficult decision because of the questions which were raised. And I do not doubt the propriety of raising some of the questions. However, I think in fairness to the judge, we should explain the matter. I have pointed out that a couple of times I had read the canons on prior occasions, but not as thoroughly as I have recently.

Canon 1 is directed to lawyers.

Mr. BAYH. The Senator is correct.

Mr. DOLE. Mr. President, we have some responsibility to Senators and to the members of the bar. And the members of the bar are in a rather peculiar circumstance. The court is not in a position to defend itself.

We have an obligation as members of the bar—and I assume it continues into our service in the Senate—when we think some of the charges are erroneous to discuss the matter and try to resolve it, if we can do so in all propriety, in favor of the court.

That is one of the reasons I have raised the issue. I think there will be a very close vote on the Senate floor on Friday.

Perhaps some Senators are sincerely in doubt. It seems to me that if we are now in agreement that there was no violation of the law, it might make a difference to two or three Senators.

I hope the Senator from Indiana will find it in his heart, if he agrees that there was no violation, to agree that we can say so on the RECORD and let the other Senators know that there was no violation and that the statements in the bill of particulars, while they were inaccurate, were inadvertently made, and there was not any violation of a law. And perhaps the charge might be withdrawn.

Mr. BAYH. Mr. President, why do we not let our colleagues read the RECORD, including the statute, the bill of particulars, and our colloquy, and then let them determine the matter in their own judgment?

I think the Senator knows what I will respond, and I know what he is trying to get to. I think we both realize we have reached an impasse.

As forthrightly as I can, I suggest that I do not see point 4 as a worldbeater insofar as being a significant conflict of interest. I do not think that it is. It is one of the unfortunate situations that the judge let himself get involved in.

Mr. DOLE. Mr. President, I think that is all we have here, one nuance piled on top of another.

Mr. BAYH. Mr. President, I respectfully take issue with that description.

Mr. DOLE. We will take them one at a time.

Mr. BAYH. Mr. President, if the Senator will rest easier tonight by reading that interpretation into my statement, I will let him do so. However, I do not interpret it in that way. Perhaps we have set the record straight on the matter.

Mr. DOLE. Mr. President, the Senator is saying that if there was any violation, it was of the civil part and not of the criminal part.

Mr. BAYH. The Senator is correct. And further—perhaps I should not open the matter any further—it was probably inadvertent, but it just goes to prove that judicial responsibility mixed with complicated financial relationships can result in a rather sticky business.

I have not tried to allege that this is a great cause celebre as far as the judge is concerned. I think that it is another little incident that helps to fill in the whole picture. That is what concerns me.

I respect the Senator's judgment.

Mr. DOLE. The Senator is saying that it probably is not very serious, but that it is evidence of an appearance of impropriety.

Mr. BAYH. I think that is correct.

Mr. DOLE. And the Senator has referred to several of these appearances of impropriety and they add up in his mind to a reason for not voting for confirmation.

Mr. BAYH. I think that is a fair statement. That is exactly the way I feel, as I read earlier:

> Some of these failings would be relatively minor if they stood alone. But they do not stand alone. Together they produce a profile of a judge who consistently failed to give ethical questions the weighty consideration they deserved.

I think that expresses my feelings as accurately as I am able to express them.

Mr. DOLE. Mr. President, the Senator said many times in the hearings that he does not question the judge's honesty or integrity and does not question the right of the President to appoint him for any philosophical reason.

The basis of the Senator's opposition boils down to the so-called insensitivity of the nominee which is based on the appearance of impropriety.

Mr. BAYH. If the Senator strikes the "so-called," I agree.

Mr. DOLE. The Senator can strike whatever he wants to, but I think that is the issue.

Mr. BAYH. I think the Senator is accurate.

Mr. President, over the last few weeks I have received many petitions and resolutions from various groups concerning the nomination of Judge Haynsworth to the Supreme Court. They include resolutions of church groups, political organizations, and the Student Bar Association of the University of Southern California. I invite the attention of the Senate to petitions circulated to several of the country's law schools by a group of law students at the University of Virginia. In a short time, they received an amazing response.

I ask unanimous consent that some of the resolutions and petitions and some of the correspondence which accompanied them be printed in the RECORD.

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

THE NOMINATION OF JUDGE CLEMENT F. HAYNSWORTH

(Approved by the Board of Christian Social Concerns, of The United Methodist Church, October 7, 1969, Lake Junaluska, North Carolina, Annual Meeting. Vote: *41* for *11* against, *0* abstaining.)

The Board of Christian Social Concerns reaffirms its respect for and faith in the United States Supreme Court as the highest judicial body in our nation. We believe the Court should continue to reflect, with fine-tuned sensitivity, the ethical values which Americans historically have embraced. Recognizing this, we express deep concern over the possible appointment of Judge Clement F. Haynsworth as Justice of the high Court for the following reasons:

We believe that a judge should refrain from making a judicial decision in any case in which he has or contemplates a personal investment interest and that he should refrain from all relations which would arouse suspicion of prejudice or bias of judgment.

In view of this, we are gravely concerned over the question of conflict of interest, whether apparent or real, in the *Darlington* and *Brunswick* cases considered before Judge Haynsworth's court.

Further, we recognize that in major civil rights cases, Judge Haynsworth has taken a position opposing school desegregation, favoring "freedom of choice" plans, and denying rights to Negro hospital employees and patients.

We are also aware that in the seven labor cases on which Judge Haynsworth sat and which were reviewed by the Supreme Court, all seven were reversed by the Supreme Court.

The history of the United Methodist Church, and its predecessors, has been clear with respect to proclaiming strong and unequivocal statements on behalf of civil rights and the rights of labor.

Therefore, in considering the aforementioned, we oppose the nomination of Judge Clement F. Haynsworth to the United States Supreme Court and urge Senators not to support confirmation. We are not questioning Judge Haynsworth's personal integrity, but rather his ethical sensitivity at the points of conflict of interest and human rights. Prospective nominees to the Supreme Court should not give even the appearance of impropriety nor should they be involved in such relations which arouse suspicion regarding their objectivity, past or future, on the bench.

We encourage the President to appoint to the highest court of the land a distinguished appointee who has earned the right to the full respect of the American people by reflecting a sensitivity to ethical values and a responsiveness to this century's movement toward equal justice under the law for all.

STATEMENT OF TILFORD E. DUDLEY FOR THE COUNCIL FOR CHRISTIAN SOCIAL ACTION, UNITED CHURCH OF CHRIST, BEFORE THE SENATE COMMITTEE ON THE JUDICIARY, RE: CONFIRMATION OF JUDGE CLEMENT F. HAYNSWORTH

I am Tilford E. Dudley, Director of the Washington Office for the Council for Christian Social Action of the United Church of Christ. Our office is at 110 Maryland Ave. N.E., Washington, D.C. 20002.

The United Church of Christ is a relatively new denomination formed several years ago by the merger of the Congregational Christian Churches and the Evangelical and Reformed Church. It has about 7,000 local churches with slightly over 2 million members. The Council for Christian Social Ac-

tion is an official agency within that church with the responsibility of working to make the implications of the Gospel effective in society. Its 27 members are appointed by the Church instrumentalities.

At its meeting on September 20, 1969, the Council discussed the President's nomination of Judge Clement F. Haynsworth, Jr. to membership on the U.S. Supreme Court. The Council members were concerned over Judge Haynsworth's insensitivity over conflicts and the appearance of conflicts between his personal finances and cases that come before him and also over his philosophical inability to understand and meet the current challenges of society. The discussion culminated in the unanimous adoption of a formal statement which is set forth below.

I should point out that the Council's deliberations were before the revelation—or at least without any knowledge—of Judge Haynsworth's purchase of $16,000 worth of stock in the Brunswick Corp. while that company was involved in litigation before him and his Court. The Council also did not know that the Judge's wife still owns 10 shares of stock in the Chesapeake & Ohio Railroad and that the Judge has sat in several cases involving the C & O. These additional instances of improper, or at least questionable, conduct would have sharpened the Council's conviction that confirmation of the appointment should be denied. The nominee does not have the qualifications needed for the nation's top judicial authority.

A STATEMENT ADOPTED SEPTEMBER 20, 1969, BY THE COUNCIL FOR CHRISTIAN SOCIAL ACTION CONCERNING THE APPOINTMENT OF JUDGE HAYNSWORTH

The Council for Christian Social Action of the United Church of Christ opposes the confirmation of Judge Clement F. Haynsworth, Jr. as Associate Justice of the United States Supreme Court both because of his demonstrated indifference to conflicts of interest and because of the philosophy revealed by his decisions.

CONFLICTS OF INTEREST

Federal judges are appointed for life and the Constitution further provides that their salaries cannot be reduced during their tenure. Canon 26 of the Code of Judicial Ethics promulgated by the American Bar Association provides: "A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court, and after his accession to the bench, he should not retain such investments previously made longer than a period sufficient to enable him to dispose of them without serious loss."

In 1950, when he was a practicing attorney, Mr. Haynsworth and his partners formed an automatic vending machine company. He became a stockholder, director, and vice president and his wife became the Secretary. In 1957 he was appointed to the U.S. Court of Appeals. He retained his holdings but now says he orally resigned as vice president, although the corporation records continued to list him as such for at least five years. His company did a substantial business with the Deering Milliken Company. Early in 1963 his court began hearing an important case involving that company and in November he cast the deciding vote and wrote the opinion favoring the company. The following spring he sold his stock at a profit of $434,710. Later in 1964, the U.S. Supreme Court reversed his decision by a vote of 7 to 0.

Testimony at the current Hearings of the Senate Judiciary Committee shows that Judge Haynsworth now holds more than $24,000 worth of stock in the J. P. Stevens textile firm. He stated at the hearing that he saw nothing wrong in retaining this investment. The Stevens company's labor relations problems, among the most turbulent in the South, have been in and out of the Fourth Circuit Court for many years.

PHILOSOPHY

We believe that the nation is entitled to a Supreme Court familiar wth current trends and able to interpret the Constitution so as to meet the new challenges that confront us each day. Judge Haynsworth's record discloses no such ability.

In the long, bitter fight for desegregated schooling in Prince Edward County, Virginia, Judge Haynsworth played an important role. In 1959, he wrote a 2 to 1 decision reversing a Federal Court order against school officials, holding that it was proper to await action by state courts of Virginia.

In 1963, he could find no way for Federal Courts to cope with the county's strategy of closing down public schools and helping private ones operate with tax credits for parents. He wrote:

"When there is a total cessation of the operation of an independent public school system, there is no denial of equal protection of the laws, though the resort of the poor man to an adequate substitute may be more difficult and though the result may be the absence of integrated classrooms in a locality."

The Supreme Court disagreed in 1964, holding that even if Virginia had no duty to operate public schools, it must operate them in Prince Edward if it operated them elsewhere.

We find a similar insensitivity in the area of civil liberties. For example, Judge Haynsworth upheld the conviction of an illiterate Negro, Elmer Davis of Charlotte, North Carolina, when Davis sought habeas corpus relief from a death sentence. He had confessed to a rape-murder after two weeks in police custody. The U.S. Supreme Court reversed the Haynsworth decision by a 7 to 2 majority.

RESOLUTION ON THE CONFIRMATION OF CLEMENT F. HAYNSWORTH FROM THE POLK COUNTY DEMOCRATIC CONFERENCE, DES MOINES, IOWA

Whereas, the Judiciary Committee of the United States Senate is presently considering the confirmation of the nomination of Clement F. Haynsworth to the position of Associate Justice of the Supreme Court of the United States of America, and,

Whereas Judge Clement F. Haynsworth appears to have substantial investment holdings in a broad spectrum of corporations whose activities are woven throughout the fabric of our nation's economy, and,

Whereas, litigation involving such corporations having a substantial effect upon the value of such holdings has in the past and will inevitably in the future come before Judge Haynsworth in his official capacity, and,

Whereas, Judge Haynsworth has admittedly exercised poor judgment with respect to the conflict of interest presented by such cases and the requirements of Canons 26 and 29 of the Canons of Judicial Ethics, and,

Whereas, Judge Haynsworth has admittedly been "forgetful" with respect to the cases pending before him and the investments that he contsmporaneously makes, and,

Whereas, Judge Haynsworth, contrary to Canon 26, has admittedly engaged in speculative investments which turned an investment of several hundred dollars into an investment of a few hundred thousand dollars at a time when such corporation had substantial dealings with another corporation with litigation pending before him, and,

Whereas, contrary to Canon 26, Judge Haynsworth has not only held such investments longer than a reasonable time after his appointment, but has continued throughout his tenure to make such investments, and,

Whereas, such conduct has and will detract from the public confidence in the integrity of the legal system, arouse suspicion as to the soundness and impartiality of his decisions, and impair the integrity and effectiveness of the Supreme Court of the United States of America, and,

Whereas, sound judgment would require Judge Haynsworth to disqualify himself from sitting on cases involving his own extensive personal holdings, thereby depriving the Court and the public of one of nine justices, and,

Whereas, Judge Haynsworth has throughout his judicial tenure sought to frustrate the implementation of civil rights decisions of the Supreme Court of the United States of America; sought to limit the application of desegregation decisions to slow down integration; and continued to hang onto segregationist ways thereby feeding the fires of racial injustice and hatred, all under the guise of a strict constructionist, with nebulous distinctions and reasoning of gossamer strength, and,

Whereas, the elevation of such a person to the highest court of our land can only lead to a further deterioration of race relations, impairment of public confidence in the honesty and integrity of our courts, and further erosion of the confidence of minority groups in the ability of our courts and legal system to protect minority rights and to meet the social problems of our day,

Now, therefore, be it resolved by the Polk County Democratic Conference at a regular meeting of its members this 29th day of September, in the year of Our Lord One Thousand Nine Hundred and Sixty Ninth, and of the Independence of the United States of America the One Hundred and Ninety Fourth, that the United States should refuse to confirm the nomination of Clement F. Haynsworth to the position of Associate Justice of the Supreme Court of the United States of America, and,

Be it further resolved that the President of the United States request the resignation of Clement F. Haynsworth as a United States Court of Appeals Judge for the Fourth Circuit, or that the House of Representatives of the United States of America commence a Petition of Impeachment, and,

Be it further resolved that a copy of this resolution be sent to Richard M. Nixon, President of the United States of America, United States Senators Harold E. Hughes, Jack R. Miller, Birch Bayh, and James O. Eastland, and United States Congressmen Neal Smith, John C. Culver, Fred Schwengel, John H. Kyle, Wiley Mayne, William J. Scherle, and H. R. Gross.

Done this first day of October, 1969.

GLENN E. BUHR,
Chairman.

UNIVERSITY OF SOUTHERN CALIFORNIA LAW CENTER,
Los Angeles, Calif., October 27, 1969.

Senator BIRCH BAYH,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR BAYH: On Monday, October 13, 1969, the Board of Governors of the Student Bar Association of the University of Southern California Law School considered the appointment of Judge Clement F. Haynsworth, Jr., to the Supreme Court of the United States. Enclosed is a copy of the resolution expressing the Board's opinion as to this appointment. The Board has sent copies of the resolution to the Senators from California and wishes to express our appreciation for your efforts in rejecting this nomines. Your fight will prove of benefit to the United States judicial system and the American people.

Sincerely yours,

BOARD OF GOVERNORS,
STUDENT BAR ASSOCIATION.

[From the University of Southern California Law Center, Los Angeles, Calif.]

RESOLUTION

Whereas the Student Bar Association Board of Governors is greatly concerned about the leadership and influence of this nation's judicial system, and,

Whereas the stature of the United States Supreme Court has been diminished by recent events, and,

Whereas the pending appointment of Judge Clement F. Haynsworth, Jr., to the United States Supreme Court has raised the spectre of criticism and mistrust of the nation's highest judicial body, and,

Whereas Judge Haynsworth's insensitivity to judicial ethics has cast grave doubt on the propriety of appointing him to the Court whose support must ultimately rest in the respect accorded to it by the people,

Therefore, be it resolved that the Student Bar Association Board of Governors does strongly urge that the nomination of Judge Clement F. Haynsworth be rejected by the Senate of the United States.

A letter expressing opposition to the Haynsworth nomination has been circulating through all of the nation's law schools for the past week. We have already received the signatures of over one thousand students from sixteen law schools in fifteen states on copies of this statement. In some of these schools, this represents but one day's solicitation and in many others the petition is still in the process of circulation. This expression of sentiment by the young people who will constitute America's legal profession of tomorrow is in itself a serious indictment of any man who aspires to a position of leadership in the judicial system.

The signers clearly recognize the importance of the Supreme Court to the law, the government and to our society and rightly demand that a member of it be of unquestioned integrity. Clearly, they realize that Clement Haynsworth is not acceptable by that test, and the maintenance of confidence in the integrity of the court demands that a better qualified candidate be found.

The signers also have expressed their dismay over Mr. Haynsworth's disconsonance with the ideals and principles of equal justice in civil rights and in the rights of labor, which are so important to their generation.

The depth of their feeling and the extent of unanimity is definitely shown by a letter from the Cornell Law School where in one day, one-fourth of the student body signed the petition and the Student Law Association president estimates three-fourths of the student body will ultimately be signing.

A profession must look to its youth for the future and if the United States Congress looks to the future of the law, its youth has significantly indicated opposition to the Haynsworth nomination.

(Petition distributed by United Students for Society's Rights: Gregory Murphy, Bernie Carl, Linda Fairstein, James Ghee, c/o University of Virginia Law School.)

A PETITION FROM THE UNIVERSITY OF VIRGINIA, UNITED STUDENTS FOR SOCIETY'S RIGHTS

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynesworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Barhara A. Bailey, Gregg Murphy, Paul P. Taddem, Ralph W. Setner, Lucien Wulsin, Russel H. Lubbin, Philip S. Davi, Mark W. Brandt, Robert P. Hodores, Michall A. Solodor, Edward H. Bains, Jr., D. Sophodes Dodakis.

Dominick J. Thomas, Jr., Ronald R. Toral, Gary D. Twafel, Tim Spoman, Harvey A. Goldman, W. D. Tucker, Geoffrey P. Hull, Ron Steven, Stan Tharp, John P. Paone, David Bolzern, James J. Tanous.

Thomas J. Tgar, Jr., Carl W. Tobias, William S. Horn, Thomas A. Sandoboni, Robert W. Benjamin, R. Belk, Jeffrey H. Krasnon, Christopher J. Murphy, Dozie P. Wadilis, R. T. Mundy, Liz Medagtia, Lawrence D. Rech.

Thomas E. Bundy, Dean L. Hassman, Stephen Milletto, Paul Vincent, John J. Millihler, Arden B. Schell, Charles Redick, William A. Parks Jr., John M. Oleyer, Paul W. Zeller, Gerald W. Walhney, Stephen T. Yandle.

Michael R. Brown, Callis T. Johnson Jr., Don Carroll Jr., King O. Golden Jr., Stephen Pevar, Jeffrey M. Proper, Mike Matyomas, Kenneth M. Murchison, Robert C. Miller, Bob G. Hexson, James G. Winstead, Robert A. Sugarman.

David R. Johnson, Michael F. Blair, Joseph A. Derrin Jr., Ken Royn, Gregory L. Juland, A. R. Snyder, Morris Rosenberg, Sandra J. Adkins, Arthur Strickland, R. A. Mbl, C. D. Cowley, Elaine R. Jones.

Dave Long, John F. Kuither, Stephen T. Nyking, Laird T. Riedel, Eugene Shapiro, James Bryan, J. L. Malone III, John Cassady, J. Rush Barnes, Michael A. Cohen, Neil S. McBride, Henry Hurton.

James P. Meyer, Bernard T. Carl, Linda Fairstein, Robert H. Tony (S.C.), Raymond G. Osberg, Jr., Robert C. Gary, Edward H. Stover, John T. Brodevile, Jr., James Ghee, Lee Caplin, William H. Wilson, Jr., Lindsay B. Donier, Jr.

John W. Brinkenloff, Peter H. Leroy, A. L. Williams, Jr., Prof. R. B. Lillust, Robert C. Smith, Charles A. Bentley Jr., Patrick M. Stanton, George W. House, Clifford F. Haygood, Steven R. Belaso, Jean Roane, Brad Foster.

Hans J. Warden, J. Richard Rossie, Barry A. Bryer, John J. Michal, Geoffery H. Keppel, Emmett R. Costrich, Brad Bryant, John T. Schell III, Lawrence D. Gaylan, Charles A. Shanon, Peter T. O'Keeffe, Michael D. Wright.

Philip T. Lacy, W Toderourl, Cecil Otwe, Rick Kaplan, David Kirbein, John X. Denney, Jr., Thomas A. Morris, Sr., Vincent V. Shenlay Jr., Barry J. Levin, W. C. Ford, Charles L. Jaffee, Burton Greenspon.

John Ons, Andrew H. Goodman, Herb Hyl, W. U. Deane, B. L. Weston, W. Wm. J. Thorgood, Dan Sullivan, Daniel B. Mahony, B. Vicki Senski, J. W. Grawely, William O. Shapiro, Alfred T. Bolton.

Carol J. Duane, Jennifer Vantoyl, Frederick F. Staut, Jr., Rich Seein, R. A. Skeels, R. G. Andcery, Howard Myers III, David H. Nelson, Michael Friedley, Sue Ann Slackin, Kent Christison, W. Roger Adams.

Joseph C. Kenfott, Kurt Kaufmann, Anita Baly, William Grant, H. Gregory Skidmore, Thomas B. Spaulding, Gordon J. Brandt, Jr., John V. Buffington, Charles M. Oberlym, Elizabeth C. Thacker, Richard L. Clark, Terence M. Donnelly.

Richard H. Goodson, Daniel P. Parfett, Tom Johnston, K. Stewart Evans, Jr., Peter F. Edelman, Lorelei Haig, Donald B. Dilliport, Craig M. Bradley, Samuel M. Bradley, Long Smith, A. J. Laubham, Steve Edwards.

Ron Tarrant, Tom Renehan, Fred D. Smith, Jr., Elaine R. Jones, Jerry R. Carter, William S. Bowe, Ed Haddock, Jr., Morris Rosenberg, Lois E. Anderson, Jeanne Erhardt, Robert E. Beach, Jr., Donald Oorenberg, Richard B. Mathews.

DEAR UNITED STUDENTS: The names on the petition represent about ¼ of the Cornell legal community. I received it Wednesday and it was posted but one day. I am returning it now on the theory that it's better to have less than the maximum number of potential signatures than to submit a full list too late for effective use. I would surmise that, given sufficient time, upwards of ¾'s of our students would have signed.

I wish you success on what is a most commendable effort.

CARL T. HAYDEN,
President, Cornell Law Student Association.

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

O. J. Cleveland, Andy Hewit, Bradley Bank, Charles Paddy, Gynn J. Ink, Gordon L. Rashner, David C. Minc, Robert Hill, John Gallagher, Carl S. Taylor, Ellen S. George, Warren E. George.

Jay W. Waks, Booth Kelly, Ira Shepard, Robert D. Gaudet, William Beyer, Peter M. Smith, John H. Gros, Jon Brod, Carl Braunset, Lawrence S. Lese, Warren D. Brocy, Tony Smith, Bruce Allen, Daniel Sleasman.

Marc Silberman, Anthony J. Siurlino, Sheldon S. Cohn, Robert J. Leerw, Patrick R. Oster, Lun Anelin, Robert Fish, Stat A. Michlin, Robert Jethrers, A. J. Zarjuff, Norm Geer, D. C. Wilson.

Clifford Wiedberg, Frank L. Murray, Al Meyerhoff, James S. Strauss, Karl J. Eeze, Jeffrey Bivins, Doris Provine, Alex Gaynes, L. Pollan, Larry Berent, Stephen Hegles, Stanley Kantor.

Dan Sheehan, Bruce Roswick, Peter I. Wolff, David E. Burford, Nick Schiula, S. W. Dunto, Steve Brown, David F. Craver, William Fahey, Jan Bellsey, Bruce Gorman.

Leslie A. Reovern, Peter Bienstock, Jon Landau, Robert Magielnicki John J. Strothers, R. V. Kenon, Joseph M. Sharnoff, Harold G. Cohen, Kurt R. Kupohy, Jeffrey Mistike, Julie Hilliss.

A PETITION FROM THE SOUTHERN UNIVERSITY LAW SCHOOL, BATON ROUGE, LA.

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image

of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

RODNEY M. WILLIAMS,
Student Bar Association President.

Jim Carnes, Rodney M. Williams, Fred L. Tinsley, Jr., Robert D. Richardson, Tom E. Roberson, Harold W. Isadore, Miss Regina McClay, Russell Castille, Charles Jones, Jr., Charles Yancy, Donald Robinson, Edward Rubin.

Mack McCaney, Charles Z. Hanel, Jesse Pebo, James A. Waye, Larry E. Roberts, Vincent Wilkins, Jr., Clod F. Richard, Allen Sims, Houston J. Patton, Douglas P. Wilson, Samuel Morgan, W. H. Samuel.

Otha C. Nelson, Steven Young, Earl D. Thomas, Robert L. Conneuf, Gail Sandle, Sid Cox, Rochard Snudy, Warren Phillips, Aaron Harris, Louis Drew, John Pohl, Mrs. P. Spencer Torry, Robert Torry.

A PETITION FROM SYRACUSE UNIVERSITY

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of changes in our times, especially in the areas of labor and civil rights.

David D. Kerman, Laurence Uhlick, Richard B. Boddie, Edward M. Onlinofsba, M. D. Lenith, George Fiesinger, Joe Nathanson, Rick Tremaine, James A. Rosel, Robert Baumann, Edward Fingerman, John A Yaskow.

Richard Q. Catanise, Steve Mullens, Tony Adany, James J. Hook, Mike DiPrima, William J. Welles, Dan Shaugnessy, Jr., Michael Coopiever, Lawrence Keller, Harry Newman, Richard Kirk, James P. Donald.

Harvey Spring, Joe DiPalma, Tom Haburn, Pete Panels, Jeffrey Weitzman, Marc S. Seigle, James A. Cuparts, Jeffrey L. Hill, Robert Rubine, Karen Debrow, Frederick G. Tobin, Kim Gorman.

Arthur A. Petoona, Kenneth W. Tucker, Neil H. Deutsch, Paul K. Mulligan, Richard B. MacFarland, Stephen D. Fryk, Joseph R. Catanise, Rubin England, Gerald Mingobelle, Jr., Harvey Scot Mandelcom, Jerry Dorfman, Robert P. Rothman.

NOVEMBER 6, 1969.

GREGG MURPHY,
United Students for Society's Rights,
University of Virginia Law School,
Charlottesville, Va.

DEAR SIRS: Enclosed is a copy of a petition that was circulated at the University of Colorado law school before we received yours. Hopefully this one will be satisfactory, although it was addressed to Senators Allott and Dominick. The petition was posted for a period of about five hours, during which time it was signed by fourteen members of the faculty and about 143 students. This figure represents almost half of the student body at this law school. Undoubtedly more would have signed had we left the petition up longer.

Hopefully this petition will produce the desired results.

Sincerely.

WALTER J. HOPP.

OCTOBER 20, 1969.

Hon. GORDON ALLOTT,
Hon. PETER DOMINICK,
U.S. Senate,
Washington, D.C.

GENTLEMEN: As members and future members of the legal profession, we urge you to oppose the confirmation of Judge Clement Haynsworth as an Associate Justice of the United States Supreme Court.

Because of the vital role the Supreme Court plays in our government and society, it is imperative that its members be unbiased in cases confronting them and of unquestioned integrity in their professional conduct. In a time of unprecedented social change and conflict, confidence in the integrity of the Court is especially necessary. The appointment of an individual whose integrity and impartiality are open to serious question would undermine this confidence and do a disservice to the judicial system.

Serious questions have been raised regarding Judge Haynsworth's personal interest in cases before him. In addition, we feel that his opinions are not consonant with the principles of equal social justice in the area of civil rights. For these reasons a better qualified candidate for the Supreme Court should be found.

Walter J. Hopp, J. W. Raisch, J. W. Earley, Walter Slatkins, Charles S. Sisk, Andrew Vargas, Bruce Nelson, Dan Hale, Nicholas J. Bourg, Robert F. Hill, James A. Collins, Peter A. Goldstein, Evelyn Roberts, L. J. Tobe.

Gus Pluor, E. H. Hoffey, H. W. Cavallera, F. J. Baxter, James S. Swift, John ——, Austy Grant, W. J. Klakey, Gail F. Linn, Jon C. Hilges, Woody Norman, Tnomas Fhorsheim, Marc Collins.

Charles Hutchens, J. Michael Harry, Chester C. Edward, Luize Q. Adler, Jill Ragsdale, Annette Pierce, Ann Trumble, Jim Windhos, Jane Tueance, Catayton Adams, Alfred Tate, Don B. Miller.

Bruce G. Smith, Mark Levy, Stan Stark, Gary Stumf, U. W. High, Don Humphrey, Thomas E. Meacham, David T. Fisher, Richard Valdy, Bette Halorian, Marion B. Farris, James A. Lowe.

Phil Cochran, Rick Pike, Jim Moranek, Diane Horn, Paul Pinson, Fred Charleston, J. J. Bland, C. W. Maes, Paul Salem, Thomas A. Trainer, Burch Billard.

Tyler Mekpeace, Linder Grueskin, Charles Bolen, L. N. Wood, Jr., Beth Peck, Jack Truburable, John Walker, Dennis M. Ginnis, Mary A. Allen, Philip E. Colmer, Rober H. Lichty, Archer B. Howse, Kyth P. Pecant, Russel P. Rowe, R. H. C. Lehr.

John T. Bruce, N. H. Barnes, Seymour Jensen, Erwin Pidican, Jane L. Cauges, Alan Brothers, Robert Felton, George Keldonlaw, Tr Ax Fulton, Jeffrey A. Bullen, Barry M. Johnson, Edward Stevenson, Kent McDonald, Mrs. Natalie S. Ellwood, Charles David Miller, Piper Murray, Rina Jankelli, Prof. R. Marony, Carolyn S. Mckinnon, David Snyder, M. W. Hertzog, Edwardo Voitzman, Felix Licini, Tim Rivera, Carmen Krakling,

Adam MacLaughlin, Peter E. Rivera, Walter V. Lawrence, Stanley J. Mayhew, Albert C. Proctor, Diane Delany, Robert E. Ray, Dan M. Haskell, Gus Sandstrom, Jr., Raymond P. Reyes, J. K. Miller, Gary M. Jackson, Silvaro Aeldicel.

George Clough, W. Sherman Weidner, Patrick Moynihan, Daniel Brantley, J. Downing, Michael Ehrlich, Jonathan B. Chase, J. D. Hynes, Frank Dubb Eskey, William L. Ripley, Donald M. Hoerl, Morton L. Stanton.

Douglas W. Parker, Clifford J. Calhoun, Oscar J. Miller, Russell Olin, James W. Burroughs, Gay P. Sandblon, Doug Brown, H. V. Ellwood, Stephan Oder, Walter Parish, William Brown, Timothy Murphy.

Michael L. Calvin, John C. Flanders, H. G. McCleary, Gilbert N. Whitener, David D. Belian, Anthony Frank Renzo, Francis M. Goldsberry II, Robert J. Adler, Charles D. Tribtz, C. F. Hurd, John C. Richardson, Harold S. Beudent, Homer H. Clark Jr., Howard Plummer, Terrence A. Fribee.

STUDENT BAR ASSOCIATION, WEST VIRGINIA UNIVERSTIY COLLEGE OF LAW,
Morgantown, W. Va., November 10, 1969.

Mr. GREGG MURPHY, et al.
United Students for Societys' Rights, University of Virginia School of Law, Charlottesville, Va.

GENTLEMEN: This is the best we could do on such short notice. Maybe it will help a little.

Sincerely,

E. F. THAXTON,
President.

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Lewis G. Brewer, Betty L. Caplan, R. W. Bltytap, Diana Everett, J. Davitt McAtun, Alan B. Mollohan, Fred Ioder, Dennis L. Schrader, E. L. Hoffman III, Robert Joseph Simol.

Robert L. White, J. F. Boomer, James S. Arnold, Larry Alan Stark, F. L. Satter, David J. Millston, Charles H. Damron, Daniel F. Hedges, John Krisa, J. David Cecil, R. S. Cavallars, William Robert Wooton, William S. Cummings, E. F. Thornton.

JUNIOR BAR ASSOCIATION, NORTHWESTERN UNIVERSITY SCHOOL OF LAW,
Chicago, Ill., November 10, 1969.

UNITED STUDENTS FOR SOCIETY'S RIGHTS,
University of Virginia Law School,
Charlottesville, Va.

Gentlemen: Enclosed please find petitions concerning the Haynsworth appointment. These petitions have been signed primarily by students of Northwestern Law School. The student body at the Law School numbers approximately 500.

Sincerely,

DAVID M. MITCHELL,
Secretary.

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Douglas G. Brown, Senior; Jeffrey M. Thiner, Senior; Elizabeth Mulford; David A. Rood; Ben E. Cohen; Hndreu M. Stroginy; John F. Rodhska; Stephen F. Stoht; Michael Mushlin; Seva Dubuac; Richard Q. Fox; Carter W. Emerson.

David Rudstein, Judge T. Ellis, Norman Muiddo, Douglas M. Brannont, Donie Bwoley, Charles E. Levin, Kathy Miller Hahn, Arnold Harrison, James G. McConnell, A. C. Cunningham.

Joan Humphrey, Walter W. Nielsen, Michael G. Binton, Zoela Goldstein, Robert S. Bayer, Stewart Gerhitt, Robert A. Steinberg, Wm. D. McIntyre, David Coeler, Jack Fong, Thomas Wm. Branehi, Thomas R. Pendin.

Larry Zanger. Nicholas Bulle, Richard Booth, Bradford J. Race, Frederick S. Burstein, Barbara Caulfield, Robert W. Queeney, Eugene Runster, Myron D. Novik, Michael H. Holland, Alee D. Berry, David O. Kallick.

John L. J. Tronaiczyk, Paul E. Slater, John A. Relias, Henry A. Abey, Gary Martin, Dennis P. McPencon, Victor M. McAron, John J. Blake, Jack Wesokay, S. J. Commody, Ron Zernlicker, Enis Shiller.

Catherine Ryan, James J. Aufini, Jack H. Welch, Clark Mitchell Rose, Henry Vess, Alan Norogrud, Diane Crawford, Robert Garfolich, Jeffery L. Gibbs, Dennis Fields, John K. Weir, Stephen M. Miller.

Kevin E. Gallagher, Richard Chanzet, Harry Seigle, Richard Kling, Martin Denis, Laurence K. Hellman, Thomas F. George, Stephen Horbut, Laurence H. Levine, Starn Samuels.

Charles Uchland, V. Shaw, John M. Smyth, Jr., R. C. Freeso, Donald S. Cohen, Jonathan Solomon, Jeff Johnson.

UNIVERSITY OF PITTSBURGH

We the undersign law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Peter D. Jacobson, Ralph S. Pinkus, Robert L. Flint, Peter R. Penney, A. E. Deelanch, J. T. Gillenbal, Trevor Edwards, Howard L. Rubenfield, Pete Cherellia, Ted Miller, Samuel Acey, Martin H. Ausenberg.

Joe M. Lewis, Burt F. Swope, Ronald M. Chesin, D. M. Smith, Nathania. Williams, Homer J. Harris, Albert Jay Mendelson, James H. Logan, Ken Bake, Stuart M. Blane, Mark Kaiserman, Daniel S. Kaploth.

Mari D. Ants, Larry T. May, John G. Stracner, Gary Wilson, John J. Keller, Stanford B. Dunn, Charles C. Tyson, Dennis Shitobac, Michael A. Nemec, Thomas C. Jameson, Paulet Pittman, Michael Handler.

Eler Josephson, Michael Brenaham, Thomas M. Burly, Sam Victors, Elissa Parker, George Teaffer, Kim Patrono, Ken Lewis, Jess Warett, R. Lee McLadden, Ted Goldburg, James V. Self.

Ames Cole, James V. English, Paul Boas, Marc Kranson, Gordon Banks, Edward D. delCanto, Denis DiLoretto, Janet Horner, John Knight, Edward Masar, Stanley Lederman, William Kinner, Dwight L. Kairber, George B. Jones, Jan T. Mahachlin, Clyde Miller.

HASTINGS COLLEGE OF LAW

We the undersigned law faculty and students of Hastings College of the Law strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the direction of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Stephen Bomes, Jorgen Nielsen, A. H. Rose, Lother Eiserloh, Steven N. Belaces, Howard Watkins, Ed Forstenger, John O'Connor, Mary T. Grove, Don Priego, Martin A. Kresse, Richard Stampor, Andrew C. Sigal.

J. W. Whitener, James D. Grandjeau, Paul Shingle, William S. Ogle, Thomas Dohyns, Mark Ross, Mike Miller, Jeffrey Surche, Richard Oliver, Dion Dury, Anne Chiverydagt, Karl Chandler.

Dale F. Smith, T. D. Woo, Ken Cochrane, S. J. Phonefan, Steven Obermay, Raymond A. Alyn, Jr., Paul Clark, Bob Tuts, David I. Stanton.

Joel Pressman, John S. Morfirms, Jim Fryman, Frank A. Konecz, Byron M. Rabin, William Runyarn, Jeff Forster, Margot Champagne, Michele Schwartz, Neal Snyder, Andrew I. Pott, Joseph N. Ighunder.

Dannis T. Gary, Joel Marsh. John Kubs, John D. Rortud, George Wright Twek, Mike Crady, John Rogers Jay, B. Pagi, Leo M. Pruett, I. Dewey Watson, Ralph Winter, R. Z. Pruit.

J. Kendrickresse, Dennis Wayne Krarke, Gregory C. Parashon, Philip E. Dullion, Ed Schulman, Sandrae Musser, Dan Lavery, Ben Taylor, Roger W. Pottor, Lawrence Rosenberg, Gary Couter, Daniel K. Whiteham, Gerard F. Roney.

UNIVERSITY OF MONTANA

We the undersigned law faculty and students strongly *oppose* the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Ron A. Belder, Michael S. McKeon, Jim Driscoll, Sharon L. Bretz, Paul B. Smith, Alexander Blewett III, Michael S. Murphy, Roger A. Barber, Daniel McCarthy, Ronald J. Glorvan, Harold W. Daze.

Terry Casgrove, Greg Skakles, Willard L. Poyer, Terry A. Wallace, Richard Volikaty, Jim Whalen, Max Haishman, Edward J. Brooke, Ted J. Poney, Richard T. McCann, Frank Kampfe, Keith Haker.

Pat Sherlock, Gary Wilson, Matthew W. Shaw, Bill Leaphart, Jim Sudler, Nat E. Ugrim, Nick A. Roteing, Chuck Evans.

UNIVERSITY OF NORTH DAKOTA

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Mark Thomason, Sal Lorello, Marcia O'Kelly, Keith Rodli, Henry F. Rompage, Judi McDonald, Tony Holter, Thomas H. Edstrom, James R. Flett, George V. Goodwin, R. E. Gross.

Dwight F. Kalash, William Muldoon, R. Paumephail, Barry T. Olsen, K. U. Reinck, Stanley M. Axeirod, Gary Schnech, Mario Gonzalez, Todd J. O'Malley, John Ohon.

TEXAS SOUTHERN UNIVERSITY

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Robert Anderson, Bibiam Rosa, Osborn L. Caldwell, Daniel E. Mueso, Jethro Currie, Earl L. Bush, Kenneth M. Hoyt, Amelia Hunter, Norma M. Watson, John F. Hofly, Patricia A. Catchinqse, Willow P. Connor, Jr.

Bruce Johnson, James Buttock, Thornben Cohincin, Bernard L. Middleton, Sam Jackson, Virgin J. Rhodes, Jr., Craig A. Washington, J. B. Keys, Thomas J. Jackson, V. E. Morgan.

Dan W. Hern, Jr., James R. Pierce, Bill Monkres, Clarie Sluderint, J. H. Jurim, Richard Wallearrs.

UNIVERSITY OF TOLEDO LAW SCHOOL

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Joseph J. Farna, Raymond R. Porte, Philip J. Berg, Peter W. Rimy, Jason Halp, Arthur Ecegcuw, B. W. Gallagher, Louis J. Petruzzo, Lawrence P. Brodie, John Korn, Peter J. Wayne, Douglas Alyard, Gary M. Victor.

Harris N. Walters, Rick Stearns, G. T. Merritt, William C. Buigle, Michael G. Breslin, Carolyn Wheat, John R. Warrick, Philip S. Fortune, Howard E. Engle, Jr., James I. Muhlatt, Sim Herb, Thomas V. Spinks, Russell A. Kelm, Samuel Lionel Rosenberg.

Alan M. Freedman, James D. Cohen, R. Cox, Nick Geven, Jr., Phillip M. Leshe, P. Gel, Neil D. Breslin, Anthony P. Capozzi, John L. Jacobson, Bernard Stern, Michael J. Vernacer, Alan L. Lapp.

Robert T. Maison, Barry Denkensohn, Thomas R. Cassant, Don Holmes, Stanley M. Brower, Vincent M. Nathan, Kenneth C. Shotland, Joel Rossen, Murray L. Ross, Kenneth A. Rohrs, Horace Rice, Kenneth C. Stein.

Bob Lindeman, Bob Sihien, Frank A. Stupah, Jr., Judy Jackson, Brian Sin, Robert J. Potter, Steven C. Rene, John Pjarnechi.

VALPARAISO UNIVERSITY

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Robert Swanson, Stephen C. Raithe, A. R. Soderman, Larry Albrecht, Robert Veyter, Thomas Dent Cuelzar, William J. Brendemuhl, Jr., Thomas P. Young, Thomas J. Ruthkosh, Michael E. Hughes, Kenneth R. Tuel.

Michael S. Suggert, James L. Wieser, J. Peter Ault, W. Walter, Mrs. Carol Caldwell, Philip Sehaeter, John Halkonz, Alfred W. Myer, Burton D. Wichster, Henry C. Hagen, Stephen N. Brenman, David Horn.

DEAR VALPARAISO SCHOOL OF LAW: Enclosed is a copy of a petition being sent to as many law schools as we can contact. Please place this petition in an appropriate place in your law school and gather as many signatures as possible in any way you are able. Time is short.

When you have finished with this petition, please mail it to us by November 10 so that we can present them all to Senator Birch Bayh, who is leading the fight against the Haynsworth nomination.

The media has said that one more serious embarrassment to Haynsworth could result in the failure of confirmation, and we hope that a massive expression of opposition to Mr. Haynsworth by law students and young lawyers could provide the needed embarrassment.

Thanks for your help.

UNITED STUDENTS FOR SOCIETYS' RIGHTS.
THE UNIVERSITY OF VIRGINIA LAW SCHOOL.

WASHINGTON UNIVERSITY

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Mike King, Joseph S. Sanchez, Wendy N. Schiller, Bob Ford, Al Rosen, Don B. Palmer, Richard Bertram Teitelman, David H. Collins, John Biroth, Amos Ripesto, Barry Barr, Richard A. Knutson, Joe Ellis, Norman Wirey, Jr., Brenda Vander Host, Janice Carr, William T. Gagen, B. Platz, Chris Andreoff, Lowel Irving, Ed Page, Jim Cook, Wayne C. Harvey, Jerome Bulansky, Stanley E. Nolan, Thomas P. Watson, Ilene Spevack, Susan Glaseberg, Glenn Altman, Geoffrey Z. Tucker, E. Stripes, Ruth Fehr, Clyde Ferris, Jr., Tom Haugelin, Thomas R. Trager, Ward Brue, Richard Kandeman, Barry S. Schermer, Andrew M. Brown, Steven B. Fishman, Robert A. Taylor, O. H. Douglass, Nancy Edelman, Jan Marble, Mark Painter, Alphonse Gibson, Phillip Morris, Gary D. Bullock, Derek I. Meier.

S. 3150—INTRODUCTION OF A BILL RELATING TO EMERGENCY ASSISTANCE TO THE NATION'S MEDICAL AND DENTAL SCHOOLS

Mr. JAVITS. Mr. President, as in legislative session, and out of order, I introduce for myself and 25 other Senators a bill that would authorize an additional $100 million in grants as a form of emergency relief to our Nation's medical and dental schools, many of which are in great financial distress and in danger of being forced to curtail teaching and research programs or to close down altogether. This is a crisis with the gravest humanitarian implications, and my bill is designed to enable these schools to continue programs and services that are in the national interest.

Joining as cosponsors in the introduction of the bill are Senators BAYH, BROOKE, CANNON, CASE, EAGLETON, GOODELL, HARRIS, HARTKE, INOUYE, JACKSON, MCCARTHY, MCGOVERN, MATHIAS, MONDALE, MONTOYA, MOSS, NELSON, PACKWOOD, PELL, PROUTY, RANDOLPH, SAXBE, SCHWEIKER, SCOTT, and WILLIAMS of New Jersey.

I introduce the bill as a partial response to a health-care crisis at the threshold of which America stands today. This crisis is evidenced by skyrocketing health costs and is exacerbated by marked shortages of doctors, dentists, and other health personnel—as well as seriously inadequate, obsolete, and outmoded health facilities. And yet, in the face of this crisis, there is the imminent danger of the closing of medical and dental schools or at least the cutback of several of their programs. The critical shortage of physicians and dentists is estimated at 52,000 and 9,000 respectively for 1969. If we are to meet this shortage, we must allocate sufficient resources to establish a Federal commitment for assisting schools of medicine and dentistry to increase their output of graduates. We must rescue those schools that face a clear and present danger to their survival.

The sources of the best, the newest, and the safest in health care and treatment are the medical and dental schools and their teaching hospitals. These institutions are traditionally committed to standards of excellence in the care of the sick, in the training of new physicians, dentists and other health professionals, and in the expansion of medical knowledge. Therefore, at the very time that their survival and their continued growth are so essential to keeping up with the exploding health needs of the Nation, it just does not make sense to have these schools on the brink of financial disaster.

A month ago I met with the deans of all the medical schools in New York State to discuss the financial problems of their institutions that have resulted from cutbacks in Federal programs—cutbacks that I will discuss in a few moments. I was told that three distinguished medical institutions from my State—the New York Medical College, the New York University School of Medicine, and the Albert Einstein College of Medicine of Yeshiva University—are in such acute financial straits that their very survival is threatened. So, the State of New York is in danger of losing three of its 10 medical schools.

Since that meeting, I have been informed by the Association of American Medical Colleges that this critical situation is common across the country. Two universities—St. Louis University and Loyola University in New Orleans—recently discontinued their dental schools because they were unable to continue to meet the financial commitment required for maintaining high professional standards. Although many medical and dental schools throughout the country face similar problems, some are reluctant to admit publicly their severe financial plight because of the repercussions these disclosures might have on the relations of these schools with the academic community.

I have communicated my concern over the growing financial problems of our Nation's medical and dental schools to Secretary Finch, who fully shares my concern. He responded in a letter to me:

At this time of growing need, we can ill afford the loss of a single resource for training medical manpower . . . we will work with you in any way we can.

The bill I introduce today is designed to be a first step—not a final solution—to this problem. It is a stopgap, emergency measure that seeks to save our medical and dental schools from disaster while we begin to correct the basic problems through other means. In fact, the $100,000 in additional funding provided under this bill would be not altogether dissimilar to disaster relief programs that have been enacted to meet the ravages of flood and hurricane—only this time it is our entire Nation that faces disaster if our medical and dental schools cannot meet their current financial crisis.

I am proud to announce that the bill has the active support of the Associa-

[1] Amounts have not been reduced to reflect reserves established pursuant to Public Law 90-218. Includes 2d supplemental but interaccount transfers are excluded.
[2] Includes $175,000,000 advance funding for fiscal year 1971.
[3] Includes $25,000,000 in H. Doc. 91-113 and $125,000,000 in S. Doc. 91-36.
[4] Reflects reduction of $210,000 in H. Doc. 91-100 and addition of $160,000 in S. Doc. 91-34.
[5] Reflects reduction of $80,000 in H. Doc. 91-100.
[6] Reflects reduction of $2,052,000 in H. Doc. 91-100.
[7] Reflects reduction of $19,672,000 in H. Doc. 91-100.
[8] Reflects reduction of $7,477,400 in H. Doc. 91-100 and addition of $7,396,000 in S. Doc. 91-29.
[9] Reflects reduction of $80,000 in H. Doc. 91-100.
[10] Reflects reduction of $45,000,000 in H. Doc. 91-100.
[11] Includes $300,000 in H. Doc. 91 113.
[12] Reflects reduction of $405,000 in H. Doc. 91-100.
[13] Reflects reduction of $17,600,000 in H. Doc. 91-100.
[14] Reflects reduction of $5,000,000 in H. Doc. 91 100.
[15] Reflects reduction of $333,000 in H. Doc. 91-100.
[16] Reflects reduction of $2,200,000 in H. Doc. 91 100.
[17] Reflects reduction of $41,151,000 in H. Doc. 91-100.
[18] Reflects reduction of $4,000,000 in H. Doc. 91-100.
[19] Reflects reduction of $3,728,000 in H. Doc. 91 113.
[20] Reflects reduction of $7,500,000 in H. Doc. 91-100.
[21] Advance funding for fiscal year 1970.
[22] For fiscal year 1970. Original budget estimate of $1,250,000,000 advance funding for fiscal year 1971 deleted in revised estimate in H. Doc. 91-100.
[23] Reflects reduction of $28,000,000 in H. Doc. 91 100.
[24] Reflects reduction of $1,250,000 in H. Doc. 91 100.
[25] Reflects reduction of $5,000,000 in H. Doc. 91-100.
[26] Reflects reduction of $500,000 in H. Doc. 91-100.
[27] Reflects reduction of $10,000,000 in H. Doc. 91-100.
[28] Reflects reduction of $150,000 in H. Doc. 91 100.
[29] Reflects reduction of $75,000,000. Original budget estimate of $1,250,000,000 advance funding for fiscal year 1971 deleted in revised estimate in H. Doc. 91-100.
[30] Reflects reduction of $100,000 in H. Doc. 91 100.
[31] Includes $5,000,000 in revised estimate in H. Doc. 91-100.
[32] By transfer from previous items.
[33] Reflects reduction of $22,500,000 in H. Doc. 91 100.
[34] Reflects reduction of $7,000,000 in H. Doc. 91-100.
[35] Reflects reduction of $2,000,000 in H. Doc. 91-100.
[36] Reflects reduction of $4,900,000 in H. Doc. 91-100.
[37] Reflects reduction of $70,000 in H. Doc. 91-100.
[38] Reflects reduction of $4,000,000 in H. Doc. 91-100.
[39] Reflects reduction of $1,100,000 in H. Doc. 91-100.
[40] Reflects reduction of $400,000 in H. Doc. 91-100.
[41] Contained in H. Doc. 91 100.
[42] Reflects reductions of $15,000,000 for "Grants for tenant services"; $5,000,000 for "Urban information and technical assistance"; $10,000,000 for "Planned areawide development"; and $7,750,000 for "Urban transportation".
[43] Contained in H. Doc. 91-117.
[44] Included in Urban Research and Technology.

SUPREME COURT OF THE UNITED STATES

The Senate, in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. DOMINICK. Mr. President, the Senate is to advise and consent to the nomination of Clement F. Haynsworth, Jr., to be an Associate Justice of the Supreme Court. Many view this nomination as unique in our history. There have been reports and polls from groups and individuals of all varieties, but they cannot and will not make this decision. The responsibility is solely that of the United States Senate.

Few nominations to the Supreme Court have raised so much controversy in this century since Louis D. Brandeis and John J. Parker. The debates on Charles Evans Hughes and Harlan Fiske Stone also bear some relevance on this nomination. Of these nominations only Judge Parker was rejected and most, including labor interests, concede that that rejection was unjustified. Judge Parker and Judge Haynsworth share the dubious distinction of being the only Supreme Court nominees opposed by organized labor, so the union representatives have testified. For those who did not hear or have not read Senator Cook's excellent review of these hearings in his floor speech on November 14, 1969, they should certainly do so.

Judge Haynsworth is opposed also by certain civil rights organizations.

I, as one Senator, refuse to consider polls or political pressure from special interest groups as bearing on my decision. Special interest groups should not have the final say here, even if one happens to agree with the general objectives and purposes of such groups.

The sharp focus on this nomination has come about primarily because of the growing controversy surrounding the Supreme Court. We have all had something to say about the Warren court, judicial ethics and confidence in the Court at one time or another over the past few years. And because of this discussion many are apparently determined to see that there is no change in the membership of the Court which might change the philosophy which they conceive as been expressed. That does not, however, alter our responsibility under the Constitution to determine whether this man who has served 12 years in judicial office has the temperament, ability, integrity, and ethics to be a Justice of the Supreme Court.

Many charges and allegations have been made concerning Judge Haynsworth's ethical judgments and social, legal, and constitutional philosophies. All have been investigated and thoroughly reviewed. The record has been made over 8 days of testimony covering some 700 pages with intensive investigation of every conceivable point.

Out of all this, two factors have been publicized which, in my opinion, have no place in this debate. "Doubt" and "appearance" are those factors or watchwords governing the judgment of some of my colleagues. The record clearly shows criticisms to be founded on overgeneralization; unfounded and occasionally outright false facts; or ethical standards apparently espoused for this nomination alone and which are not supported by law, practice or judicial requirement. In addition, these opponents of the nomination wish to make these novel ethical standards retroactive for 6 or even the full 12 years he has been on the Federal bench.

But the power of "advise and consent" is an affirmative duty. We have the factual record and we must decide upon that record. We must vote "yea" or "nay." We cannot say, "I do not know."

Every accusation, every question, every "doubt" was investigated and explored. Nothing was glossed over. Every "appearance" was put under a microscope. The Judiciary Committee made a record that contains answers, not doubts—reality, not appearances. Let everyone in this country know that a man can come before this body for confirmation and have that decision made on evidence and facts.

False accusations and political smokescreens against this nominee should weigh almost as heavily on the reputation of the Senate as they do on the reputation of the man charged. The two highest requirements for a judge are fairness and unbiased judgment. The Senate has placed no less an obligation on itself while acting in a quasi-judicial capacity. Each of us must be equal to that burden.

The facts and the record show that we have before us a man of high reputation, eminently qualified by every judicial requirement to sit on the Supreme Court of the United States.

The American Bar Association through its chairman of the Committee on the Federal Judiciary, Judge Lawrence E. Walsh, gave its full approval of Judge Haynsworth. A man's reputation is a good indication of his integrity. We are fortunate to have before us a man who sat on the Federal Court of Appeals for the Fourth Circuit for 12 years. This court is only one step below the Supreme Court. His long tenure gave ample opportunity to interview judges and lawyers associated with him. Judge Walsh testified before the Senate Judiciary Committee on September 18 and I would like to quote part of his testimony which appears in the record on page 138:

> At the request of Chairman Eastland, we have examined into the professional qualifications of Chief Judge Clement F. Haynsworth. Our investigation has consisted of interviews with his judicial colleagues, interviews with a cross-section of district judges and lawyers practicing in the Fourth Circuit and an interview with Judge Haynsworth himself.
>
> These interviews were conducted by Norman P. Ramsey of Baltimore, the Committee member of the Fourth Circuit and his partner, David R. Owen. I also made certain inquiries of my own. The members of the bar from whom comments were received included lawyers from each State in the Circuit and lawyers having different specialities. For example, some customarily represented plaintiffs in personal injury cases. Others represent defendants. Two were deans of law schools. Two represent labor unions. One specializes in admiralty work for shipowners, another represents seamen and longshoremen. Two are outstanding Negro lawyers. Others include a past president of the American Bar Association and three members of the Council of the American Law Institute. A sincere effort was made to get candid reports from a representative sample of the bar.
>
> All of the persons interviewed—

And I emphasize the words here—

> All of the persons interviewed regarding Judge Haynsworth expressed confidence in his integrity, his intellectual honesty, his judicial temperament and his professional ability. A few regretted the appointment because of differences with Judge Haynsworth's ideological point of view, preferring someone less conservative. None of these gentlemen, however, expressed any doubts as to Judge Haynsworth's intellectual integrity or his capability as a jurist.

A survey of Judge Haynsworth's opinions confirmed the views expressed by those interviewed as to the professional quality of his work. As is its practice, the Committee does not express either agreement or disagreement as to the various points of view contained in Judge Haynsworth's opinions.

The conclusion was that "Judge Haynsworth was highly acceptable from the viewpoint of professional qualifications."

The six other judges who sit with Judge Haynsworth have expressed their "complete and unshaken confidence in his integrity and ability."

Judge Harrison L. Winter, one of these judges, personally testified:

But to begin, I would like to say that I have known Judge Haynsworth since he was appointed to the U.C. Court of Appeals, and I have had a very close association with him since I was appointed a district judge in 1961, and even closer association since I was appointed to the court of appeals in 1966.

I think that I have had ample opportunity to observe the manner in which he conducts himself, the manner in which he has led his court, and the quality and content of his written opinions.

To summarize my views, I would say that I know of no fairer judge, no more gracious, considerate or understanding leader, and no judicial officer more possessed of judicial temperament.

Keep in mind that what we are dealing with is ability, temperament, and judgment. These are the opinions of his fellow judges and the American Bar Association.

I continue to quote from Judge Winter:

Judge Haynsworth and I have differed on the decision of cases. At times I have sought to give decisions of the Supreme Court wider scope and wider application than he has. At times the converse has been true. And at times he and I have found ourselves in disagreement with our brethren on the Court, so that we were in a dissenting position. But I must say, sir and gentlemen, that when he and I have disagreed between ourselves, I have never felt or thought that this position on a particular matter has exceeded the area of legitimate and informed debate.

From my association with him, I have a profound respect for his capabilities as a legal scholar and as an intelligent, capable, and informed judge. (Senate Report 91–12, pp. 3–4.)

Judge Walsh reviewed the American Bar Association committee's study of Judge Haynsworth's opinions:

As far as Judge Haynsworth's opinions are concerned, he has written more than 300. Probably 90 percent of them are not controversial in any way. He has participated in many, many more, probably well over 1,000, but looking to the 10 percent of his opinions which were in the areas which inevitably would invite controversy, we can see that in those areas where the Supreme Court is perhaps moving the most rapidly in breaking new ground he has tended to favor allowing time to pass in following up or in any way expanding these new precedents.

The areas in which you might notice this would be in the areas of civil rights but also in the areas perhaps of labor law and in the areas of the rights of, for example, seamen and longshoremen. The Supreme Court has greatly expanded the old definitions of seaworthiness and things like that. In all of these areas, whether they are politically sensitive or not, you see the same intellectual approach.

It was our conclusion, after looking through these cases, that this was in no way a reflection of bias. This was a reflection of a man who has a concept of deliberateness in the judicial process and that his opinions were scholarly, well written, and that he was, therefore, professionally qualified for this post for which he is being considered.

Incidentally, in reporting to this committee for the lower courts, we usually express our qualifications without limitation. When we report on a person under consideration for the Supreme Court, we realize that professional qualification is only one of many factors that has to be considered in this case. The Supreme Court has such broad responsibilities that there are many things that must go into selection besides professional qualification. It is only for that reason that we limit our endorsement to professional qualification. We feel that it is beyond the scope of our committee to go into these other factors, so we do not express any view as to the points of view expressed by Judge Haynsworth for example. All we say is that they are within the limits of good professional thinking. (Hearing Record, pp. 138–140)

Judge Walsh went on:

I think it was Senator Tydings who posed the three questions which must be considered at this time: first, integrity, second, judicial temperament, and third, professional ability. As far as integrity is concerned it is the unvarying, unequivocal and emphatic view of each judge and lawyer interviewed that Judge Haynsworth is, beyond any reservation, a man of impeccable integrity. His word is good. (Hearing Record, page 140)

There is also no question concerning his judicial temperament, and the quotations concerning his able professional ability have already been given.

The Senator from Maryland asked the following of Mr. Ramsey, one of the interviewers:

Senator TYDINGS. Would it be a fair statement to say that not just the great weight but the overwhelming opinion of the lawyers of Maryland who have had any contact, direct or indirect, with Judge Haynsworth would be that he, regardless of his political philosophy or political allegiance or political registration, is competent and qualified to be a Justice of the Supreme Court?

Mr. RAMSEY. I believe that is correct, sir, and I think our State bar association has advised the chairman of the Committee that in the opinion of the board of governors of our association, he is eminently well qualified to be a member of the Supreme Court and in addition, I would concur that I think that it is unvaryingly the opinion of our board. (Hearing Record, page 142)

Mr. President, there is nowhere in the record a challenge to Judge Haynsworth's professional ability, judicial temperament, or integrity as a judge or a man.

Opposition to Judge Haynsworth, then, lies not in his judicial qualifications—his ability to decide cases fairly in an unbiased manner. He has been attacked partly on manufactured flimsy ethics charges and largely on unfounded assumptions as to his legal, social and judicial philosophy. Specifically he is charged with being a "strict constructionist," anti-civil rights and antilabor. All of these challenges are unfounded.

Judge Haynsworth decided thousands of cases in 12 years. He was charged by one opponent of sitting in cases in which he owned stock in one of the litigants. He was so charged in Kent Manufacturing Corp. against Commissioner of Internal Revenue. It turned out to be a different Kent Manufacturing. He was so charged in Merck against Olin Matheson Chemical Corp. This case received wide publicity. He never owned stock in either. He was so charged in Darter against Greenville Community Hotel Corp. Judge Haynsworth owned one share for 1 year but had disposed of it 5 years earlier before the case ever came before the court. Another mistake. This matter has been detailed by the Senator from South Carolina (Mr. HOLLINGS).

There were other mistakes and the opponents so conceded but the damage was done. The report clearly states that out of the thousands of cases in which Judge Haynsworth participated a question is raised in only five cases. It is charged Judge Haynsworth should have disqualified himself even though the Federal law 28 U.S.C. 455 required that he sit and decide those cases. 28 U.S.C. 455 provides:

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein. (Senate Report 91–12, p. 5)

The key words are "substantial interests."

Canon 29 of the code of ethics provides in part:

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. (Senate Report 91–22, p. 5)

The key words are "personal interest."

The five cases present three separate circumstances. The first is the question of an interest in a third party not a litigant in the case. This is Darlington Manufacturing Co. against NLRB, argued June 13, 1963, and decided November 15, 1963. Judge Haynsworth owned stock and was an officer and director in Carolina Vend-A-Matic, not a party to the suit. This company had vending machines in three textile plants. Deering-Milliken, Inc., owned controlling interests in 27 textile plants including these three. Darlington Manufacturing was one of these plants controlled by Deering-Milliken but not one in which Carolina Vend-A-Matic had vending machines. So here we have a situation where he is accused of conflict of interest, where he owned no stock in either litigant, and where the customer of one company did not have any interest in the plant involved in the suit.

Judge Haynsworth took no active part in the management of Carolina Vend-A-Matic and the litigation in no way affected Carolina Vend-A-Matic. There is certainly no substantial or personal interest in the litigation.

John P. Frank, a lawyer and expert on judicial disqualification, appeared before the committee and testified on September 17, 1969. I would like to quote part of his testimony.

Now, the precise question in disqualification terms which is presented is what is to be done in the so-called third party situation—that is to say where a judge is connected with a third party who, in turn, has a busi-

ness connection of some sort with a party to a lawsuit, and that reduced to its legal substance, is the problem which is here.

In this connection then we have the precise question, should Judge Haynsworth have disqualified himself in this case because he was connected with a third party, which, in turn, had such a business relation? (Hearing Record, p. 111)

Mr. Frank went on to state that the cases under the Federal law not only require disqualification if there is substantial interest in the litigation, it also requires the judge to sit where that requirement is not met. There is no third possibility. Judge Haynsworth was not disqualified and therefore he had to sit. There was no conflict of interest in appearance or reality from a factual or legal viewpoint.

Interpolating again, it would be as though we were saying there is a conflict of interest if one owned stock in any company doing any business with any company having a suit. Under those conditions, could any judge sit in any case where he owned any stock in any corporation? If so, we should make a law to that effect, if that is the way the Senate wants to work. But that was not the law when this happened, and it is not the law now. In my opinion, it is simply creating another red herring to so interpret it at this time.

A second line of three cases which Judge Haynsworth decided involved ownership of stock in a parent corporation when a subsidiary was before his court. Again the law requires the judge to sit where there is no substantial or personal interest in the litigation. Disqualification is clearly not automatic because of mere stock ownership in a subsidiary. If we want it so we must change the law.

This leaves the Brunswick case. The third situation is ownership of stock in one of the litigants. *Brunswick Corp.* v. *Long*, 393 Fed. 337 involving competing claims for repossession of bowling alley equipment. The case was argued on November 10, 1967. The judges met immediately afterward and unanimously affirmed the judgment of the lower court. The case was assigned to Judge Winter, not Judge Haynsworth, for preparation of the opinion.

On December 20, 1967, a stockbroker placed an order for Judge Haynsworth for 1,000 shares of Brunswick. The broker recommended the purchase and Judge Haynsworth testified he had no recollection at the time that the Brunswick case had not been finally disposed of. The purchase was made on December 26, 1967. The draft opinion was circulated on December 27, 1967, and signed by Judge Haynsworth on January 3, 1968. The opinion was released on February 2, 1968, and petitions for rehearing and certiorari to the Supreme Court were subsequently denied.

Had Brunswick been allowed the full claim of $90,000, which it was alleging and this amount distributed to each shareholder, Judge Haynsworth's personal interest would have been less than $5.

This could be a technical error in judgment but it is not a substantial "interest" as set forth specifically in the law of disqualification.

The committee report states:

It scarcely needs to be added that to regard an inadvertent error such as the purchase of the stock as a basis for refusing to confirm Judge Haynsworth would be to demand a degree of perfection seldom, if ever, achieved by those in either public or private life. This committee requires a nominee to be honest, honorable, and sensitive to ethical considerations. It does not require him to be infallible. (Senate Report 91–12, p. 12)

I fully agree with that conclusion.

There is no cumulative effect on small errors here as charged by some opponents. There was one inadvertent error of a highly technical nature in 12 years and thousands of cases.

Charges of "ethical insensitivity" are not valid. Opponents have tried to create a completely new standard of ethical practice, contrary to Federal law, and make it retroactive. They charge that if it was not wrong, it could have the "appearance" of wrongdoing. Again, that is contrary to Federal law and the overwhelming opinion of cases decided. There is no doubt. The record is clear. If we do not like these standards it is up to us to change them, but we have not changed them yet.

Judge Haynsworth has violated no existing standard of ethical conduct except the one that is being emphasized over and again, especially created to deny his confirmation. He was, in fact, scrupulous in his ethical conduct in the thousands of cases that came before him.

Mr. President, one of the major objections of Judge Haynsworth is that he is supposedly a "strict constructionist" of of the Constitution—a conservative. The history of the men who have sat on the Court should be fair warning to all of us that we cannot "pigeonhole" men's political philosophies. It is unique that this objection seems to be a central concern of many who stated that such considerations were not relevant when more "liberal" men were being considered for this position.

I would quote one excerpt from the record appearing on pages 75 and 76. The Senator from Michigan (Mr. HART) was questioning Judge Haynsworth.

We have been hearing for months, years, that what we need on the Supreme Court is a strict constructionist. Now, what is that? I take it you are one.

Judge HAYNSWORTH. Senator, I have been said to be one. I don't know—I don't know what it is and I certainly do not know that I am one. Again, one can read what I have written as judge and draw conclusions from it. But I have not labeled myself a strict constructionist. And I think if you read some opinions I have written, you would not think I was.

Senator HART. I am trying to find out what it is that I should establish as the standard against which to make that judgment. And apparently this definition was not discussed with you by the President who nominated you.

Judge HAYNSWORTH. The term has not been defined to me by anyone, sir.

Senator HART. I think it is politically a popular phrase, but we would all be the better off if it was more clearly defined.

Now, certainly in the mind of the man who nominated you, Earl Warren is not a strict constructionist.

That opinion is shared by many. I think he was an outstanding, magnificent Chief Justice.

Judge HAYNSWORTH. He is a very close friend of mine.

Senator HART. I am speaking now of what he did in terms of leading that Court in the direction that history will reflect was very timely, in the best long term interests of this country. He got into trouble because he said, among other things, that "separate but equal" wasn't equal and wasn't constitutional.

Do you agree with him?

Judge HAYNSWORTH. I certainly do.

Senator HART. He said that the right to counsel of a man under a criminal charge was a right that was available to rich and poor alike; if you couldn't afford it, you didn't lose it. We would provide counsel for you.

Now, do you think that is good?

Judge HAYNSWORTH. Senator, we have upheld that right again and again in my court.

Senator ERVIN. If the Senator will pardon me for committing an unpardonable sin, I am glad at long last the Senator from Michigan agrees with me that a Senator has a right to ascertain the view of a nominee for the Supreme Court.

Senator HART. I am ascertaining whether he agrees with Earl Warren.

Senator ERVIN. And I would like to say that I am glad to have a convert to my philosophy. However, I never did get one of the previous nominees to ever reveal any of his political or constitutional philosophy. And I was told at the time that it was highly improper for me to seek to ascertain it.

Excuse me, I won't interrupt you any more.

Senator HART. I was trying to figure out a device that would enable me not to backtrack on the position I have taken earlier, and nonetheless——

Judge HAYNSWORTH. It is very hard to do.

Senator HART (continuing). And nonetheless find out if we were asked to consent to the nomination of a man who thought that the direction of the Supreme Court under Earl Warren should be reversed or modified.

Now, I think that is a fair question because on its answer hinges, I suspect, my vote.

In other words, not a question of judicial temperament, not a question of ability, not a question of integrity but on the question solely, insofar as the Senator from Michigan is concerned, as to whether the movement of the Court as it was under Chief Justice Warren would be continued. If it is not, then he will vote against Judge Haynsworth. It says so right here. Read the record.

Mr. President, I submit that that is hardly a fair way to approach the question of whether this man who has been nominated has the judicial temperament, the ability, and the integrity to serve as a Justice of the Supreme Court.

A close examination of the cases and opinions by Judge Haynsworth show first of all a scholarly balanced approach to the law. Prof. G. W. Foster, Jr., submitted a statement particularly with regard to Judge Haynsworth's Civil Rights opinions as follows:

I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent and openminded man with a practical knack for seeking workable answers to hard questions * * *.

Judge Haynsworth is an intelligent, sensitive, reasoning man. His record as a judge shows him to be a man capable of continuing growth and responsive to the needs for change where needs are persuasively shown to exist.

Mr. ALLOTT. Will my colleague yield to me?

Mr. DOMINICK. I am glad to yield.

Mr. ALLOTT. I concur completely with the arguments made by my distinguished

colleague, who is a distinguished lawyer in his own right. Before he gets further into his discussion on this matter, I should like to ask him, knowing that he has studied the record, does he find any impugnment of the personal integrity of Judge Haynsworth anywhere in the record?

Mr. DOMINICK. I have not found it anywhere, but surely it is interesting that the Senator from Maryland (Mr. TYDINGS), who opposes Judge Haynsworth for reasons known only to himself, has clearly brought out the fact that Judge Haynsworth has unquestioned integrity and unquestioned ability.

Mr. ALLOTT. Yes, it is difficult for me to reconcile how a man could praise a judge in such a lavish way and then make a determination that he was going to vote against him.

Mr. DOMINICK. I wholeheartedly agree with my distinguished colleague.

Mr. ALLOTT. The Senator from Maryland is either 100-percent wrong now or, when he was speaking from his heart and mind, he was 100-percent wrong. Thus, he is wrong on one of the other occasions, too.

Mr. DOMINICK. I might say, on the first occasion, however, when he was praising Judge Haynsworth, that what he said about him was backed up by all the other witnesses.

Mr. ALLOTT. That is true. It was, entirely. To pursue the same line of questioning, all of the testimony of those qualified to judge Judge Haynsworth's legal abilities, as I read the record, indicated 100 percent that he has very high legal ability.

Mr. DOMINICK. Without any question. Some of the people did not agree with some of his philosophy, but they did say that they were able, well-reasoned and intelligent decisions.

Mr. ALLOTT. That is correct. Some of them did not quite agree with his philosophy, especially as to implementing or moving into an innovative field as might be interpreted by a future Supreme Court decision; but if we take the fact that no one has ever accused him of profiting from a decision in any respect, and if we take the Brunswick case, for example, that was decided within 10 minutes or so after the hearing had concluded and the only thing that remained was for Judge Winter—not Judge Haynsworth—to write the opinion and for them to affix their signatures.

When one considers all these factors, how can a reasonable and sane man question the ability of this man to sit on the Supreme Court?

I simply cannot fathom the reasoning of those persons.

Mr. DOMINICK. I concur. I think the major problem was that the attack got started before his qualifications were distributed nationwide. As brought out by the Senator from South Carolina (Mr. HOLLINGS), the attack was delivered by labor unions and others.

I was quite intrigued with the speech of the Senator from Kentucky (Mr. COOK), in which he went into what happened to Judge Parker when he was nominated. After reviewing the history of the career of the judge, his former opponents confessed they had been wrong. Yet, just on the basis of philosophy, they were able to carry enough weight to defeat his nomination.

For example, in the bill of particulars of the distinguished Senator from Indiana (Mr. BAYH), he cites cases of conflict of interest on the ground that the judge had stock in litigant companies; and in at least three out of four he did not have stock.

Mr. ALLOTT. It was spread around the country. The impression people got of the Haynsworth matter was that he was deciding cases in which he had a pecuniary interest, when he was not.

Mr. DOMINICK. That is correct.

Mr. ALLOTT. Let me carry this one step further. It has already been pointed out that in the Darlington case, Carolina Vend-A-Matic had machines in a particular building which was controlled by the Deering-Milliken Corp. Would that mean that if a man owned stock in Ford Motor Co., he could not sit on a Hertz Co. case? I am not sure that Hertz does business with Ford, or whether it is Avis, No. 2——

Mr. DOMINICK. The Senator is right, Hertz does do business with Ford.

Mr. ALLOTT. Does that mean that if one owned 100 shares of Hertz stock or 100 shares of Ford stock, he would be precluded from sitting on a case involving the other company, simply because it did business with that company?

Mr. DOMINICK. That is what the opponents are trying to say, although it is not a rule or canon.

Mr. ALLOTT. For example, it is a well known fact that the large motor companies do business with literally hundreds of companies. That is also true in the airplane business. I know my colleague well knows that, because he knows that field so well. If a company did business with hundreds of companies, and if a judge owned stock in a company which did part of its business with the litigant, it is then said he then would be precluded from sitting on that case. Where do we stop in this particular reasoning?

Mr. DOMINICK. I do not know. On that reasoning, if a judge owned a cow, he could not sit in a case involving a butter or cream company, because the milk from the cow had gone into that butter or cream. We would make a parade of horrors out of it. I hope we do not have that as a serious charge against the nominee, because it is ridiculous.

Mr. ALLOTT. In fact, I do not think there is a serious charge of any nature against Judge Haynsworth which has been proven.

I would like to ask the Senator one other question. I do not want to delay the completion of the Senator's stimulating discussion of this matter.

My colleague from Colorado has practiced law for quite a few years, as I have. I do not think any legitimate lawyer—thank God most of them are—has asked anything of a judge other than that he be honest and that he be intelligent. I would like to call my colleague's attention to the last paragraph of a letter written to me by a Democratic Congressman from South Carolina, in which, after mentioning his Democratic affiliation, he stated as follows, which I think is very persuasive:

> Of course, the decision is not to be mine. If it were, I would find it easy. I would rather have the honesty, objectivity, and judgment of Clement Haynsworth apply to my rights of life, liberty, and property than that of any judge who graces the bench of this great Nation.

Here is a man who has known him, who has lived in the same State with him. I cannot think of any greater tribute than that.

I am sure my colleague will join me when I say that if we were to pick a judge, we would ask for no greater tribute to a judge than that which was given by that Member of Congress, who lives in the same State as the judge.

Mr. DOMINICK. I certainly agree with my distinguished colleague. I am grateful to him for having highlighted many of the points I am trying to make.

I really have deep concern over the charges that have been made. It is interesting that the ethical charges have been knocked down by editorials in the Washington Post and many of the major newspapers throughout the country. Those charges have just been eliminated. They recognized there was nothing to them at all.

Yet, somehow or other, after saying that, some of the editorials have come to the conclusion that, nevertheless, the man should not have his nomination confirmed. One cannot really put his finger on why his nomination should not be confirmed from their reasoning except on the basis of some manufactured doubt or that they are concerned, as the Senator from Michigan (Mr. HART) said, as appears in the hearing record, that perhaps he would not move as rapidly as Earl Warren moved.

That should not be the focal point of our consideration. The President has nominated a person of great integrity, great ability, complete honesty, and objectivity. We may consider it, but we in the Senate cannot control what his philosophy will be when he gets on the Court.

Mr. ALLOTT. That is correct. I think of Justice Brandeis and what was said of him before he went on the Court. That matter has been discussed on the floor. It is recognized that he became a great Justice.

With respect to some of the charges made, and which were not proved, as was shown in the hearings, perhaps certain Senators cannot support the nomination of Judge Haynsworth simply because they were blocked out in the first instance, and would find it very embarrassing to change their positions, even though all logic and reason dictate that they should.

Mr. DOMINICK. I think the Senator has made a good point; but I would hope that we recognize that this body has some judicial authority when it comes to the nomination of members to the Court. We ought to look at those nominations objectively, as we would want the nominee to look objectively at cases he had before him as a judge. Yet we are not doing that here.

Mr. ALLOTT. The nominee is entitled to the same objectivity and fairness that

a Senator would ask of him were he to be so unfortunate as to be in any court of law. I say "unfortunate," because it is not fortunate when anyone has to go to a court of law, particularly if a person is to be before that judge on a criminal appeal.

I think one thing people do not recognize generally is that there is a great difference—and this is probably due to lack of knowledge on the part of a great many people—between the practice of law in a trial court and a proceeding before an appellate court. Most people think of a court hearing, for example, the Brunswick case, as a hearing in which witnesses are paraded in before the court, in which there is an evaluating of the testimony of the witnesses, and the jury is instructed. They do not realize that the hearing before the appellate court on that particular day was only one of three.

The only thing that occurred was that the briefs and the appellate papers were before the judges; they heard the argument of the lawyers in the case, and that was all that occurred. To them it was a fairly routine matter.

It is also noteworthy, I think, that at no time was the original finding of the judges disturbed or modified in that case.

Mr. DOMINICK. That is exactly correct. Another interesting thing, too, in connection with the so-called Darlington case, is that there were actually three cases. I do not think the unions opposing him actually bothered to look this thing up. The first time the matter came before the court, he voted for the union. Then it was sent back and came up on a side or procedural issue, and he voted for the company that time. Then it went to the Supreme Court, and was reversed in the Supreme Court and sent back. The NLRB put in an order and it was appealed, and he affirmed again.

So in two cases out of the three, in the Darlington Mills case, he actually was on the labor side, which seems difficult to put together with a so-called antilabor bias that we have heard alleged all around us.

Mr. ALLOTT. Mr. President, I thank the Senator for permitting me to intervene, and I shall be very interested in the subject matter which he had just started on when he permitted me to intervene.

Mr. DOMINICK. I thank my colleague. I think we have highlighted some of the points which are of such deep concern, I know, to the Senator as well as to all of us, and I know what a fine speech he made the other day pointing out some of these sensitive areas, and in fact rapping some people rather sharply on the knuckles in the process of doing it—something which I think needed to be done.

Mr. President, Judge Haynsworth's opinions show a deep respect for the law and he has consistently followed Supreme Court decisions or those of other circuits when the Supreme Court had not decided a point. He has in fact broken new ground in some criminal, civil rights and labor cases.

I have previously stated the conclusions of the ABA through Mr. Walsh after study of Judge Haynsworth's opinions. Labor witnesses freely admitted that their objection was based on a few cases decided generally against the organized labor viewpoint in those selected cases. They completely ignored any analysis of his opinions in favor of the organized labor viewpoint in other cases. The same criticism can generally be made of those who say he is anticivil rights. North Carolina Teachers Association against Asheboro City Board of Education is particularly relevant because the court split four ways in four separate opinions, Judge Haynsworth holding with the majority. Seven judges heard the case en banc. Several Negro teachers had been displaced as a result of desegregation, and had claimed the board's failure to reemploy them was racially motivated. The district court denied relief.

The majority opinion by Judges Winter, Butzner, and Haynsworth awarded injunctive relief to the Negro plaintiffs as a class and money damages to three plaintiffs, declared two were entitled to preferential hiring, and denied relief to four others. Judge Sobeloff thought more relief should have been granted to individual teachers. Judges Bryan and Boreman contended the district court should be upheld—it having denied relief—and Judge Craven concurred but thought preferential hiring rights should not be granted the two plaintiffs.

In order of "sympathies," then—speaking in terms of civil rights—Judge Sobeloff would be "most sympathetic." Judge Winter, Butzner, and Haynsworth second most sympathetic. Judge Craven would be third most sympathetic and Judge Bryan and Boreman least sympathetic.

I, for one, as a strong supporter of the civil rights movement—which I have been ever since I have held public office—have no doubts about Judge Haynsworth in the area of civil rights.

For those who still express doubts about Judge Haynsworth's philosophies I recommend a review of the testimony of Mr. John Bolt Culbertson appearing at pages 211 through 230 of the hearing record. Mr. Culbertson is a practicing lawyer in South Carolina. He is a member of ADA, supports the NAACP, has represented the AFL–CIO, in particular the textile workers and the criminally indigent. He has written no books or articles. He is truly a practicing lawyer. He calls himself an activist, not a theorist. His testimony bears that out. He does not agree wholeheartedly with Judge Haynsworth's philosophies, but he supported him as a judge, a lawyer, and a man.

At page 215, Mr. Culbertson stated:

Judge Haynsworth, in my opinion, has one of the best legal minds, the most incisive mind that I have run into.

At page 216, Mr. Culbertson continued:

Clement Haynsworth's mind, legal mind, is really sharp and he is a competent man. Now, don't misunderstand me, he has decided a lot of cases. I take a lot of cases on social security for disability before that court and I haven't had much success up there, and I have got some of those, one of those cases on the way now, on the pauper's oath, to the U.S. Supreme Court, but what I am saying in response to Senator Eastland's question is that he has as good a legal mind as there is in the United States, in my opinion. Now, I don't know whether that answers that or not.

The CHAIRMAN. And he has made a fair judge?

Mr. CULBERTSON. What is that, sir?

The CHAIRMAN. He made a fair judge?

Mr. CULBERTSON. If I didn't believe he was fair and honest, Senator, a thousand mules couldn't pull me from South Carolina up here.

Nobody is paying me for this. I am hoping before I go back that I am going over here to the Teamsters place and pick me up a check for $2,500 that they owe me.

[Laughter.]

For defending them.

At pages 221 and 222 of the hearing record, the following colloquy occurred between Senator ERVIN and Mr. Culbertson:

Senator ERVIN. I want to ask you if you agree with me that no single American and no group of Americans have a right to demand that no one will be appointed to the Supreme Court except those who will do their bidding or will share their views. Isn't the only thing we can ask is that appointees to the Supreme Court will be men who accept the Constitution as their guide and who do the best they can with all the fallibility of human beings to inform themselves about the merits of the case and then reach conclusion with respect to which they believe to be an honest conclusion?

Mr. CULBERTSON. Yes, sir.

Your honor, may I say this: When the American Bar Association called me, they didn't know I was president of the bar, they didn't call me for that reason, they called me because they thought again, my name had been given to them by someone and I told them substantially what I am saying here, and I said, *How can you pick a judge that has not lived, I said, you can't raise them in a vacuum. You can't come to the bench sterile. He has got to have some exposure, and the real criterion and test is the honesty and integrity of the individual.* They make a lot about textiles. It is true we have textiles in Greenville, and nobody can be involved in making a living or in politics or anything else that is not touched by the textile trade, but just to say that he is "Mr. Textile" or something, you have got to go to the character and the nature of a man.

Now, if he was a one-sided individual, if I thought he was vindictive or dishonest, I would be the first man to get on the stand in South Carolina and I would tell it all. I don't never hold anything back. And let me say this, your honor, if I may, some people asked me today, the News and Courier reporter, a black man here, Mr. Price, I think is his name, he said they want to know back in South Carolina what John Bolt Culbertson is doing up here. Let me read to you, just a second, "Certificate of Merit awarded to John Bolt Culbertson in recognition of praiseworthy service in the area of political action in efforts to secure equality of opportunity in behalf of the underprivileged by the South Carolina Conference of Branches, National Association for the Advancement of Colored People." Signed J. Hubert Nelson, president, D. C. Francis, secretary, J. D. Quincy Newman, field secretary. At the 24th annual State convention, November 11–14, 1965, at Sumter, S.C.

Do you think that I would prostitute myself and give up all that I have ever lived for and fought for to come up here and express a dishonest opinion? If I have to be condemned and criticized by my longtime friends and associates for honestly stating my convictions then what is America for? (Emphasis added.) (Senate Hearings, pp. 221, 222.)

Mr. Culbertson further stated:

I predict that Judge Haynsworth will prove to be one of the greatest Justices of the Supreme Court that ever has been on this Court. If I were a member of the U.S. Senate, I would vote for the confirmation of his appointment. (Senate Hearings, p. 222.)

Mr. President, Shakespeare wrote in "Timon of Athens": "Every man has his fault, and honesty is his." The bard could well have been speaking of Clement Haynsworth. He has been called a lawyer's lawyer, a judge's judge. Judge Haynsworth has been frank and honest with the committee. He has been subjected to one of the most detailed personal inquiries conducted by this committee for a nominee for the Supreme Court. He has furnished item after item on his personal finances. His decisions have been examined, dissected, and analyzed by friend and foe alike. Through it all he has remained cooperative and candid.

The reputation of this man as a judge shines clearly through the record. The esteem in which he is held, even by those who might disagree with him philosophically, is uniformly high. His professional credentials have withstood the determined attack against his confirmation. The record is clear. This man is exceptionally qualified to serve on the Supreme Court.

I wish to reiterate a word of caution which I pointed out in my opening remarks. Certain labor leaders have made much of the fact that this is only the second nomination they have opposed. The first, Judge Parker, was the only nominee rejected by the Senate as a body in the last 60 years. He was alleged to be antilabor, unsympathetic to Negroes, and supposedly politics dictated his selection. How familiar that sounds. He likewise was from the fourth circuit. The special interest groups finally conceded they had defeated a nominee who was essentially liberal. We should all be warned not to label people by their supposed political philosophies. History has proven this wrong time and time again.

Likewise we should not allow political pressure from special interest groups to dictate our individual decision as Senators. At best this is secondhand politics in a debate that should be without political motivations.

I shall vote to confirm Judge Clement F. Haynsworth, Jr., to be an Associate Justice of the Supreme Court. On the record I can do nothing less. I do so without reservation or doubt.

Mr. DOMINICK. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SPARKMAN. Mr. President, I am supporting President Nixon's nomination of the Honorable Clement F. Haynsworth, Jr., to be an Associate Justice of the U.S. Supreme Court. I believe he is well qualified, that he is a man of integrity, and that he will make an excellent Associate Justice.

I have followed the testimony as it has been given in the hearings on his nomination. I have read many, many articles in the papers and magazines of this country. I have heard his appointment discussed both favorably and unfavorably. I have tried to do my best in separating the chaff from the grain and I have come to the conclusion that on the record I should vote to confirm.

The framers of our Constitution gave to the Senate the sole power of confirmation. However, it gave only the power to confirm or refuse to confirm. It did not give to the Senate the power to nominate. That power vests in the President of the United States and in him alone. Ordinarily, I believe that doubts that are not sufficient to vote against confirmation, even though they exist, should be resolved in favor of the President's nominee, particularly since we are not empowered to select someone to his place.

Some very able arguments have been presented on the Senate floor. I have been particularly impressed with the elaborate and careful analysis given by the junior Senator from Kentucky (Mr. COOK) and by the senior Senator from Nebraska (Mr. HRUSKA). There have been other very fine, forceful, and able presentations in behalf of Judge Haynsworth.

The opposition to Judge Haynsworth has been of a twofold nature. In the first place, it is claimed by some that he has not rendered decisions as a Federal judge in the way they believe they should have been rendered. Yet, experienced lawyers in the American Bar Association have examined cases in which Judge Haynsworth has participated and have come up with a recommendation for his promotion to the Supreme Court.

I have not heard anyone say that Judge Haynsworth is not qualified for the Supreme Court. I believe even those who oppose his appointment say that he is a man of honor and integrity. What more can we require of a man's promotion to this high position than those very qualifications—that is, that he is an able lawyer and jurist and that he is a man of honor and of integrity?

The other point that has been made against him relates to his investments. Again, I believe there is nothing in his record that shows any dishonest or reprehensible conduct on his part in connection with his investments.

Mr. President, I have often wondered how a man who has accumulated wealth can invest that wealth in a way that secures him completely against ever running into any conflict of interest in any way whatsoever. As a matter of fact, if conflict of interest were strictly enforced, many times Members of Congress would have to abstain from voting on everyday issues, for we do have an interest in many things about which we must legislate. As it happens, such interest ordinarily is not of the degree that could be presumed to affect the vote of a Member of Congress. I have examined as best I can the securities listed as being owned by Judge Haynsworth, and I have heard the arguments presented by those who have spoken in his behalf that his interest was so small that it could not be expected to affect his decisions in any way.

As I have said, I have often wondered how a man in public office, such as Judge Haynsworth, possessing wealth, can safely invest. I know little about the field of investment from personal experience, but I do know that a person generally relies on a broker or a brokerage firm to look after his investment interests; and I am of the opinion that the average person, whoever he may be, simply does what his broker recommends. I believe that also true in the case of Judge Haynsworth and that he should not be denied the high office offered him on such evidence as has been presented against him. Accordingly, I shall vote for his confirmation.

Mr. MOSS. Mr. President, it was my hope that this debate on the nomination of Clement Haynsworth would never have had to take place. I had hoped that when the President of the United States realized that this nomination was not satisfactory to the Senate he would withdraw it. There are, after all, many other conservative lawyers who are eminently qualified and who would be confirmed readily.

But, the President has chosen to force this issue to a showdown and has once again brought bitter divisiveness to this floor. I, therefore, must tell the Senate that I will vote against the confirmation of Judge Haynsworth.

I will take no pleasure in this vote. This confirmation battle, whatever the outcome, only adds more hurt to an already injured man and only does more damage to an already weakened Supreme Court.

Nor is there any gain for the liberal cause if this nomination should be defeated. President Nixon can simply propose another nominee whose ideology is just as conservative as is Judge Haynsworth's. The liberal Senators know this and so does the President.

In casting my vote, therefore, I seek not to preserve the so-called liberal block on the Court—that could not be accomplished by this vote in any event. I seek to preserve the integrity of the Supreme Court.

In the eyes of many American citizens, the integrity of the Supreme Court would be damaged by the confirmation of Clement Haynsworth. At a time when respect for law is so vital to domestic order, respect for the courts and their judges becomes even more crucial.

To command this respect judges who are appointed for life must conform to the Canons of Judicial Ethics. Unfortunately, Clement Haynsworth does not meet these high standards.

Judge Haynsworth sat on cases involving litigants in which he had a financial interest; he purchased stock in corporations likely to appear before his court; and he sat on cases involving customers of a corporation in which he was a major stockholder and for which he served as a director and vice president.

These activities were clearly contrary to the guidelines set down by the Canons of Judicial Ethics.

Canon 26 provides:

A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation.

Judge Haynsworth purchased stock in corporations which later had litigation before his court.

It is not a defense to this breach of judicial ethics to claim that the judge's potential monetary gain was minimal. Litigants are entitled to expect that the judge will have no financial interest whatsoever in either party.

A Federal statute provides:

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest.

Judge Haynsworth purchased 1,000 shares of Brunswick Corp. stock while a case involving that corporation was pending before his court. Later he participated in the denial of two post-verdict motions in that same case.

Canon 4 provides:

A judge's official conduct should be free from impropriety and the appearance of impropriety.

If it is not clear from the many incidents revealed concerning Judge Haynsworth's business activities while on the bench that he is guilty of improper conduct, it is at least clear that he has created the appearance of impropriety.

President Nixon disputes this standard saying that the appearance of impropriety can be created by any charge against a sitting judge. But it takes more than a few random charges to create the appearance of impropriety. In Judge Haynsworth's case there is, at least, reasonable doubt as to his conformity to judicial ethics.

Finally there is the grave matter of Judge Haynsworth's lack of candor. Judge Haynsworth testified that when he went on the bench he resigned from "all directorships and things of that sort." Yet until sometime in 1963 Clement Haynsworth was a director and vice president of Vend-A-Matic. This was not a casual relationship. Judge Haynsworth attended directors meetings, received a director's fee, and pledged his personal credit to enable the company to borrow substantial sums. Clement Haynsworth was not telling the truth to a committee of the Senate and I find it difficult to believe that he did not realize it.

In the final analysis Judge Haynsworth himself summarized the reasons why his nomination should be defeated:

While I am concerned about myself and my reputation, I am much more concerned about my country and the Supreme Court as an institution, and if there is substantial doubt about the propriety of what I did and my fitness to sit on the Supreme Court, then I hope the Senate will resolve the doubt against me.

Unfortunately, there is in my mind a substantial doubt and I must, therefore, resolve it against the nomination of Judge Clement Haynsworth to become a Justice of the Supreme Court of the United States.

Mr. DOLE. Mr. President, in these closing hours of debate on the confirmation of Judge Clement Haynsworth, it is important to remember that, throughout the Nation, people in general are convinced of Judge Haynsworth's integrity, honesty, and qualifications for a seat on the Supreme Court.

As evidence, I submit editorials from newspapers ranging from Seattle to Orlando, and commend them to the attention of my colleagues.

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

[From the Seattle Post-Intelligencer, Sept. 30, 1969]

COURT VACANCY

A P–I View: Senate confirmation of Judge Haynsworth to the vacant seat on the U.S. Supreme Court should be accomplished without further delay so he may be present when the Court begins its Fall Term Oct. 6.

We wonder how many men of 56 years, which is the age of Judge Clement F. Haynsworth, could have survived so well the hostile and exhaustive probe to which he was subjected for eight days by the Senate Judiciary Committee. In the end, the inquisitors were able to produce nothing to shake President Nixon's confidence—or ours—in the "qualifications and integrity" of the man he nominated to fill the Supreme Court seat vacated by the resignation of Abe Fortas.

All kinds of slurs and innuendoes were cast at Judge Haynsworth by his critics. It was alleged he ignored the "appearance" of judicial purity in failing to disqualify himself from two cases in which he had a remote personal interest. It was alleged he showed apparent favoritism in cases involving former law clients. Liberal senators joined civil rights and labor leaders in contending his rulings proved him biased against their causes. It was hinted that his Supreme Court nomination was a post-election payoff to Sen. Strom Thurmond (R–S.C.).

None of the politically-motivated aspersions jelled into anything solid. We concede that Judge Haynsworth may have been less than discreet in the two cases mentioned, but not even his strongest critics charged that he did or could have profited personally from his decisions in them. And so far as the rest of his many decisions during 12 distinguished years on the Fourth U.S. Circuit Court of Appeals are concerned, nothing was proven at all except that he is a legal conservative who goes strictly by the book.

This is precisely the kind of judicial philosophy President Nixon was after in making his nominaton. Judge Haynsworth has made a full, frank and convincing response to those who did their best to discredit him. He should be confirmed with no further delay so that he may take his seat as the ninth member of the Supreme Court when it begins its fall term Oct. 6, as the President hopes and expects him to do.

[From the Washington Star, October 22, 1969]

NIXON'S DEFENSE OF HAYNSWORTH

If ever there was a case of "character assassination"—as the term was used during Senate committee investigations in the 1950's—it is the attack which has been made on Judge Clement F. Haynsworth, who has been nominated by President Nixon to be an associate justice of the Supreme Court.

President Nixon is plainly displeased with accusation that have been leveled against a man who he considers innocent of any wrongdoing. Were the President's comments—a most significant presentation made at a news conference here on Monday—widely distributed throughout the country? Nixon says that, having evaluated all of the allegations, he reaffirms "with even greater conviction" the support he has given Judge Haynsworth, and makes a pointed plea for fairness as follows:

"When a man has been through the fire, when he has had his entire life and its entire record exposed to the glare of investigation—which, of course, any man who is submitted for confirmation to the Senate should expect to have—and in addition to that, when he has had to go through what I believe to be a vicious character assassination, if after all that he stands up and comes through as a man of integrity, a man of honesty, and a man of qualifications, then that even more indicated that he deserves the support of the President of the United States who nominated him in the first place, and also the votes of the senators who will be voting on his nomination."

Nixon now has personally examined all the charges mentioned by opposing senators. The President is particularly critical of those who say Judge Haynsworth's nomination should be withdrawn just because "a doubt has been raised." Nixon continues:

"The appearance of impropriety, some say, is enough to disqualify a man who served as judge or in some other capacity. That would mean that anybody who wants to make a charge can thereby create the appearance of impropriety, raise a doubt, and that then his name should be withdrawn. That isn't our system. Under our system, a man is innocent until he is proven guilty."

The President declares that it is not proper to turn down a man just because he is a Southerner or a Jew or a Negro or "because of his philosophy," and that the real question relates to what kind of lawyer he is and what his attitude is toward the Constitution. Nixon contends that it is the duty of the senators to take into consideration the following:

"Is he a man of integrity? Is he a man that will call the great cases that come before him as he sees them, and in this case will provide the balance that this great court needs? I think Judge Haynsworth does that."

Nixon reveals that some of his friends came to him a few weeks ago suggesting that he withdraw Judge Haynsworth's nomination because a doubt had been raised which would be politically difficult to handle. But the President made this observation:

"I had to consider then whether because charges had been made without proof, and whether there was a doubt, whether I would then take upon my hands the destruction of a man's whole life, to destroy his reputation, to drive him from the bench and public service. I did not do so."

The President notes that if Judge Haynsworth's philosophy leans to the conservative side, this is in his favor, because the Supreme Court "needs balance." Nixon explains it this way:

"I think that the court needs a man who is conservative—and I use the term not in terms of economics, but conservative, as I said of Judge Burger, conservative in respect of his attitude towards the Constitution.

"It is the judge's responsibility, and the Supreme Court's responsibility, to interpret the Constitution and interpret the law, and not to go beyond that in putting his own socio-economic philosophy into decisions in a way that goes beyond the law, beyond the Constitution."

The President is right when he says that no man who has already served many years on a federal court bench should have to go through such an ordeal. The truth is the critics oppose Judge Haynsworth because of his views. They have raised the issue of honesty as a smokescreen in order to defeat the nomination as demanded by civil-rights leaders and labor unions who don't like some of Judge Haynsworth's rulings.

[From the Dallas (Tex.) News, October 14, 1969]

CUT OUT THAT JAZZ

The nomination of Judge Clement Haynsworth to the Supreme Court has again been

reviewed by the American Bar Association's committee on the federal judiciary. After the second review, again the ABA has given the nominee its endorsement—but the endorsement is unlikely to calm in any degree the storm directed at Haynsworth.

That's because the attacks on Haynsworth have nothing to do with his qualifications as a jurist, acknowledged to be outstanding, or the charges of conflict of interest, which have been demonstrably groundless.

The liberals leading the attack on Haynsworth object to him because they do not own him. Newsweek magazine quoted couple of critics who made it clear that the judge's nomination is being fought on this basis, despite the smoke screen of false charges and unfounded innuendo.

One senator declared, "Conflict of interest is so much jazz. We are against him for what he believes. He thinks like a medieval prince."

A civil rights leader narrowed down the focus, saying that Haynsworth's "much heralded 'strict constructionist' approach is not new to the Negroes. (It) means granting their constitutional rights with an eyedropper when they should be flowing like a river . . ."

Since, by the critics' own admission the other charges are "so much jazz," why don't they stop confusing the issues and debate the main issue here, which is the philosophy of strict construction?

Strict construction implies no doctrinaire way of looking at racial questions or labor disputes or any other public issues. Strict construction refers to the way in which an individual regards the law.

The strict constructionist believes that the law pretty well means what it says, as written. The loose constructionist prefers to interpret the law not on the basis of what it says, but on what it would have said had the lawmakers had the benefit of his wisdom and experience.

In recent years, the Warren court has placed a construction on the law that is not so much loose as psychedelic. In effect, the high court has not been interpreting law, it has been making policy, disregarding the Congress and the voters in the process.

Under our system, the voters' ability to influence the court has always been tenuous and indirect at best, but they do rate a say. The chief method by which the public can give its opinion of the court's opinions is in its votes for the presidency, the office that nominates the members. The public did so in 1968, making it clear that it felt the court has gone too far in rolling its own law.

What the loose constructionists seek, on the other hand, is to pass on to the court even greater opportunities to take over the task of lawmaking, the task that is Congress' reason for being. If the liberal senators really want to pass on their legislative duties to the court for good, as they seem to do, why don't they just say so and cut out all that other jazz?

[From The Birmingham News, Oct. 20, 1969]

HAYNSWORTH'S RECORD

Opponents of the nomination of Judge Clement Haynsworth to the U.S. Supreme Court have zeroed in publicly on some business dealings. But the hard-core center of opposition to the South Carolinian is a belief that he would bring a more conservative, strict-constructionist approach to the court.

In that belief they are right; or at least we certainly hope and expect so. But even in this respect some of the judge's foes have misrepresented his record on the U.S. Fourth Circuit Court of Appeals to make him appear a segregationist and an enemy of civil rights.

An interesting column to this point appeared last week in *The Washington Post*, hardly a champion of segregation or anti-civil rights sentiment. Written by a *Post* editorial page staff member, James E. Clayton, the article concluded that Judge Haynsworth's record on civil rights in 12 years on the appeals court puts him "somewhere in between."

Clayton wrote:

"Unlike some other federal judges in the South (the heroes of the civil rights movement), he was not willing to go beyond what the Supreme Court or Congress specifically ordered. Also unlike some other federal judges in the South (the heroes of the segregationists), he was not willing to oppose what the Supreme Court, or a majority of his own court, had already done. He preferred to read Supreme Court opinions literally and to interpret them narrowly, doing precisely what that court said had to be done but rarely, if ever, going beyond that narrow interpretation.

"The result was that Judge Haynsworth voted with the most pro-civil rights judge in his circuit, Simon Sobeloff, far more than he voted against him; most of his civil rights cases were easy. But they parted company most of the time when Sobeloff wanted to break new ground in the civil rights struggle or to put a broad interpretation on Supreme Court opinions . . .

"Thus, you can tote up the score in several ways. If the standard of judgment to avoid being called a segregationist is that a judge must almost always support expansions of desegregation and avoid options that discoursge it, Haynsworth comes out a segregationist. If the standard is that a judge is a friend of civil rights unless he takes every opportunity to denounce integration and never votes to encourage it, Haynsworth is a friend of civil rights. If the standard is somewhere in between, Haynsworth is somewhere in between. He rarely did anything more than that required of him by the Supreme Court, he rarely did anything less, and when he had options open to him he turned aside from being bold."

That may not be the portrait of the kind of judicial activist Judge Haynsworth's opponents would like to see appointed to the U.S. Supreme Court. But it describes precisely the kind of man most Americans—who, whether anyone likes to admit it or not, have grown increasingly disturbed at the Supreme Court's leanings in recent years—wanted President Nixon to name.

President Nixon is standing by his nomination. The Senate has heard more than enough pertinent testimony—and Judge Haynsworth has been subjected to more than enough attack by innuendo—to make a decision. Every effort should be made to bring this nomination to a vote. We are convinced that a majority of senators after fair-minded consideration will vote for confirmation.

[From the Manchester Union Leader, Nov. 3, 1969]

IN SUPPORT OF JUDGE HAYNSWORTH

The Judge Haynsworth appointment is quite in line with President Nixon's campaign pledge that there would be no more political cronies put on the U.S. Supreme Court but that, wherever possible, promotions would be made from the federal judiciary to the Supreme Court.

This, of course, is the way to produce an experienced and able Supreme Court. It is a marked improvement from the previous practice of picking politicians and cronies that unfortunately, was engaged in too often in the last eight years or so.

The attacks on Judge Haynsworth, of course, border on gutter tactics and are a sad commentary on the political leaders and others who have made them. The attacks are nothing but a complete smokescreen and an attempt to prevent the Haynsworth appointment by hurling so many false charges at the Nixon appointee that he will either withdraw or ask the President to withdraw his nomination.

President Nixon quite properly says he has no intention of withdrawing the nomination and Judge Haynsworth, who does not seem to be afraid of the cross-fire, has announced that he has no intention of asking the President to withdraw his name.

This is as it should be.

If appointees to the Supreme Court are to be scared off by verbal garbage thrown at them from individuals with special interests and very personal axes to grind, then we would indeed end up with a very sorry Supreme Court.

Senator Cotton has announced that he will support the Haynsworth appointment. It certainly would be a happy event if Senator McIntyre were to do the same.

The Haynsworth appointment really should not be a question of partisan politics. It should be a question of putting a man who has proved his capabilities as a judge on the Supreme Court by way of promotion from the Court of Appeals on which he has been sitting.

President Nixon elevated Chief Justice Burger from the Appeals Court of another district and if he continues to make appointments to the Supreme Court from such experienced jurists, then a much higher quality of decisions should be forthcoming from the highest court in the land.

[From the Orlando (Fla.) Sentinel, Nov. 2, 1969]

THE CHARACTER ASSASSINATION OF JUDGE CLEMENT HAYNSWORTH

There has been controversy over the nomination of several great Supreme Court justices, including Hughes, Brandeis, Black and Warren.

So controversy is not new to the court and perhaps it is a good thing. In a democracy all should be free to voice their opinions whether agreeable or not.

If anything distinguishes the Judge Clement F. Haynsworth case it is the depth to which his detractors have gone to try to destroy his character.

The judge has been accused of many things by many irresponsible people. He has answered all of the accusations satisfactorily. He has willingly cooperated in baring his life and his record to the glare of investigation.

He emerges, in our opinion, as a man of integrity, a man of honesty and a man of qualifications, who deserves, as Richard Nixon said, "the support of the President and also the votes of the senators who will be voting on his nomination."

The American Bar Association, the same group which found that Justice Abe Fortas acted "clearly contrary" to the canons of judicial ethics in his dealings with financier Louis E. Wolfson, was quick to support the Haynsworth nomination and has defended Haynsworth's handling of cases in which some senators have charged there was an interest conflict. Obviously there was none or the ABA would have withheld its support.

Many senators who have said they intend to vote against confirmation of Judge Haynsworth state they have found nothing dishonest or unethical in his record, but feel compelled to oppose him only "because there is considerable public doubt about him."

That is asinine logic. The public doubt has been created to a large extent by the continued circulation of false and misleading statements and irresponsible accusations.

President Nixon, who has been pressured to withdraw his nomination because "a doubt had been raised" about Haynsworth, categorically refused with this explanation:

"The appearance of impropriety, some say, is enough to disqualify a man who served as judge or in some other capacity. That would mean that anybody who wants to make a charge can thereby create the appearance of impropriety, raise a doubt, and that then his name should be withdrawn.

"That isn't our system. Under our system, a man is innocent until he is proven guilty.

Judge Haynsworth, when the charges were made—instead of withdrawing his name, as he could—openly came before the committee, answered all the questions and submitted his case to the committee and now to the full Senate.

"I have examined the charges. I find that Judge Haynsworth is an honest man."

As the Judge Haynsworth case drags on it is clearer than ever that those opposing him can find nothing on which to base their allegations of "impropriety." So they have resorted to wild character assassination.

Part of this is inspired by the fact they want to embarrass President Nixon, but mors by the fact that in truth Haynsworth may be too honest for them. A Southern conservative, he has a middle of the road record on major issues. Most of us, including Richard Nixon, feel Haynsworth is a man who would simply intepret the Constitution and the law, not put his own socio-economic philosophy into decisions in a way which goes beyond the Constitution.

In short, the Supreme Court needs Clement F. Haynsworth.

Mr. FANNIN. Mr. President, long years ago, Mathew Henry gave us that now famous quotation, "None so blind as those that will not see."

I am afraid that is the sad situation with regard to the debate which presently surrounds the President's nomination of Clement F. Haynsworth, Jr., to be an Associate Justice of the Supreme Court of the United States.

It is not my purpose to scold or deride or to scoff at those with whom I am in disagreement over this nomination. Nothing is to be gained in that direction. Besides, such a function, if it is to be performed with some force, is best left to those to whom we, as elected representatives of our several States, are responsible.

The purpose I have in mind today is to bring what I believe to be the real issue into sharper focus so that the Nation may better see the point on which this issue turns, and the basis upon which the votes are cast.

On the day of the White House announcement of the nomination of Judge Haynsworth, I stated:

The President has nominated a man of proven ability and qualifications to sit on the bench of the highest tribunal. Judge Haynsworth's record as an attorney and a jurist fulfill the President's stated desire to see men serve on the Court who are concerned with interpreting rather than making law. In nominating Judge Haynsworth, I feel the President has selected a man of character and integrity, and I feel sure the Senate will agree.

On September 4, 1969, here in this Chamber, I reaffirmed that conviction. As yet I have found nothing in the record that changes my mind. The judge has been subjected to an examination—much of it by his own request and using information which he, himself, has supplied.

Never, in comparatively recent history, has a Presidential nominee to the highest Court been subjected to the attacks, innuendoes, and judgments of motive which have been leveled at Judge Haynsworth.

I only hope that those who have been so "nitpicking" in regard to the record of this outstanding man will be able to find a candidate in some future nomination who can meet their standards.

The question which should be examined today, Mr. President, is the consistency of those who have opposed the nomination of Judge Haynsworth and in so doing have denied the very principles upon which they, such a short time ago, were castigating their colleagues.

Let us review a little history, Mr. President.

Last year we had before the Senate the nomination of Mr. Justice Abe Fortas to be Chief Justice of the United States, and Judge Homer Thornberry to be an Associate Justice. Since that nomination was before the Senate, several important events have taken place. A sequence of events transpired, sparked by a magazine article appearing in Life magazine, which resulted ultimately in Mr. Justice Fortas resigning from the Court.

Mr. President, I am not one to take advantage of another man's misfortune, mistake, or indiscretion.

There are men sitting upon the highest bench today about whom there is, even now, some question as to complete candor, uprightness, perhaps even a cloud as to former clientele. The question is, Can these Justices be completely unbiased when certain persons or causes come before them?

The Court deserves the best men who can be found to serve. I think that Judge Haynsworth is such a man. But those of us who were so sorely used when the Fortas affair was before the Senate, found our reservations and opposition fully justified.

Mr. President, in going back through the record of late in the summer of 1968, and early fall, one can find quotations that are most embarrassing in light of subsequent events. I know that we cannot always be sure of the actions of those we must trust. And I am sure that those who were most vocal in their support of the former Associate Justice were just as chagrined as I to learn of his seeming indiscretions.

I shall not trot out those quotations. I feel it is neither fair nor proper to do so. I will say they exist; and to those who are so glib and easy with their condemnations and pronouncements today, I say look at the record and see how very wrong some have been.

If I may cite the record in my own behalf, Mr. President, one of the major labor organizations in the United States, the AFL–CIO, has made my quotations of the Fortas case one of their frequent headlines. I suppose I should be flattered that they endow me with such power and influence that I have never noticed to exist.

They have gone back to the Fortas case and cited my opposition and quoted my words that "A judge should not only avoid impropriety, he should avoid the appearance of impropriety."

Well, that is what I said, Mr. President, when I quoted the Canons of Judicial Ethics and that is what I believe. That is what I believe is the case in the present circumstances before us.

There have been many comparisons made between the Fortas case and the Haynsworth case. They are unworthy. There is no comparison possible.

If there are those who seriously wish to compare the two, let us just look together at a few facts.

Former Justice Fortas received a substantial payment from the Wolfson Family Foundation in pursuit of a contract which called for payments to him and his wife after his death of $20,000 a year for assistance to the foundation and its charitable activities during the Court's summer recess. He said he returned the payment a year later when he found he would be unable to serve as contracted. There is a real question as to the size of the fee in consideration or the amount of the foundation sums to be administered. The statements made by Mr. Fortas when confronted with these facts were contradictory. He was faced with the need of giving further explanations or to resign. Mr. President, he chose to resign. This does not compare with Judge Haynsworth's actions.

There are several other major contrasts, Mr. President, but perhaps this is the most striking.

Judge Haynsworth has made a thorough disclosure of the facts and the records involving his judicial activities. He has provided the Judiciary Committee with information pertaining to the most minute and miniscule of his transactions—even to a 15-cent dividend.

In fact, Mr. President, the only case in which there even is the semblance of a serious question is the so-called Brunswick case—which I shall deal with later—and even Judge Haynsworth's most severe critics, including the Senator from Indiana, have not charged the judge with bad motive, or with attempting to make a financial gain, or with any other impropriety in this connection.

There is nothing in Judge Haynsworth's record that suggests impropriety, Mr. President. In fact, all the evidence points the other way. Most of the judge's detractors, when pinned down, admit that the Brunswick case might never have been "discovered" at all, were it not for the judge's complete and meticulous disclosure of his total investment activity. Is that the act of a devious man, Mr. President? It does not compare with Mr. Fortas.

Under these circumstances, Mr. President, and many more which can be cited, it is a gross distortion to suggest that there is even an appearance of impropriety in the case of Judge Haynsworth.

There are many other comparisons and contrasts which could be drawn, but I fear that following down that trail does not lead out at the right place, for there are none so blind.

Today, Mr. President, I would like to raise a question of honesty—intellectual honesty.

I have dealt with my own record in these matters. So far as I can determine I am applying the same standards to Judge Haynsworth that I have applied to the previous appointees. In my view there is no such nice distinction to be made between a nominee's ability and his philosophy. I am aware, Mr. President, that on the matter of Judge Haynsworth some of my colleagues, who back the President on this issue, notably the Senator from Kentucky (Mr. Cook), do make such a distinction.

Certainly, my colleague from Kentucky is a distinguished lawyer, a former judge, and far more learned in the matters of law than I shall ever hope to be. But as I read the Constitution and the duty of the Senate to advise and counsel the President on these appointments, I can find no distinction. I respect the Senator's view however, and I suggest that he is completely honest and consistent in applying it. If I interpret what the Senator has said on this subject correctly, I understand that if he considered it proper to take a judge's philosophy into account he might have some reason to disagree with the President's choice, particularly since he views Judge Haynsworth's record of decisions in civil rights as somewhat in disagreement with his views.

I respect the Senator's position, even though I do not agree with his reasoning on this particular point. I would like to point out that he is being consistent with the principle which he espouses and has not shifted his ground to suit the expediency of the moment.

It is unfortunate, I feel, that this consistency cannot be discerned in all those who have taken this line in opposition to Judge Haynsworth.

If I may paraphrase the language of my friend from Michigan (Mr. HART), in in the record which appears on page 27 of the judiciary hearings, in regard to Mr. Fortas, he said that while it may be interesting which side of the tracks a fellow comes from, or if he, as in the case of Justice Frankfurter, has had a great deal of correspondence with the President, and all other bits and pieces of extraneous information, while these are interesting, the Senator says, they are not the questions to be asked. He says we must only ask, "Is the man a distinguished lawyer, able to preside over the court? And is he intellectually fitted for the work?" Those, if I am to believe the Senator from Michigan, are the only two tests that he would apply, at least in the case of Mr. Fortas.

Now I submit, Mr. President, that Judge Haynsworth meets those qualifications and meets them without question.

In all the testimony developed in the committee, from friend and foe alike, there is no suggestion that Judge Haynsworth is anything less than a distinguished and dedicated jurist.

Attorneys whose practice is almost entirely made up of labor or civil rights groups, who have appeared before Judge Haynsworth multitudes of times, all testify to his capability, and to his fairness.

I was most impressed with the testimony, Mr. President, of one John Bolt Culbertson. Mr. Culbertson, who is an attorney in Judge Haynsworth's hometown of Greenville, S.C., has represented almost every unpopular cause in that area for years and years.

He was a liberal before it became fashionable to be one. He has stood with the NAACP in their legal battles when it was almost impossible to find someone to help them. He testified on the day he appeared before the committee that he planned to go by the Washington headquarters of the Teamster's Union to pick up a check which was due him for some work he had recently done for them.

Here was a labor attorney, Mr. President. Here was a lawyer whose life, practically, has been spent in arguing civil rights and labor cases before the courts—and specifically before Judge Haynsworth.

If anyone has a question as to the testimony of John Bolt Culbertson, I suggest he go and look at the record. The hearing record is full of praise for the judge's fairness and complete competence in matters relating to these cases. To those of my colleagues who have so glibly charged the nominee with bias in these areas of labor and civil rights, I again ask them to read and reread that section of the hearing record. Here is an attorney in a position to know, an adversary position, if you will, for his duty is to represent those very causes and cases in which the judge has been accused of bias.

Here is a quotation, Mr. President, taken from the CONGRESSIONAL RECORD of September 13, 1968. I will not identify the speaker, needless to say, he is opposed to Judge Haynsworth. However, at this point in the record he was advocating the confirmation of the nomination of Justice Fortas to the post of Chief Justice. He is saying that we must not look at decisions of the court when we make our judgments:

> With regard to decisions of the Supreme Court, each of us as lawyers and individuals, can disagree with their reasonings or results, but we must not consciously distort them and impute motives to the justice which simply do not exist.

Now I am of the opinion, Mr. President, that we must examine the judicial philosophy of the nominee. I thought that when Mr. Justice Fortas was nominated. I think it now that Judge Haynsworth is the nominee. I examined Mr. Justice Fortas' judicial philosophy. I did not like what I found; I opposed him. I examined Judge Haynsworth's judicial philosophy, I like what I find, I support him.

If one makes the argument, however, that judiical philosophy does not pertain in the case of Mr. Fortas—then to be intellectually honest—one must make the same argument in the case of Judge Haynsworth.

Here is another quotation from a Haynsworth opponent, a New England senator, who supported Justice Fortas. He said on September 12, 1968:

> There is a serious question whether any judge in our system should be accountable to an elected legislative body for his decision in a specific case. There is a great danger in basing decisions on their popular appear to a majority of senators rather than on less emotional considerations of constitutional law.

This same colleague who, a year ago, could not countenance the application of a test of judicial decisions to a nominee he supported, is today opposing the President's nominee for the very reasons he denounced.

There are many other instances, Mr. President. The record is full for all who care to browse. I would just like to conclude this section of my argument by citing a recent statement of former Supreme Court Justice Charles E. Whittaker. Mr. Justice Whittaker served on the highest tribunal from 1957–1962. He has publicly stated that he is convinced that opposition to Judge Haynsworth is spurred by his philosophy not by ethics nor his character.

The Supreme Court Justice, now retired, said his study of the records of hearings before the Judiciary Committee, in the light of criticism of Haynsworth's appointment, compelled him to speak out on the matter. He said that a thorough review of the hearings had convinced him that Haynsworth is guilty of no improper or unethical conduct.

To quote the Justice exactly:

> I say simply that it seems to me to be a shame that his opponents are willing to falsely assault his character in order to obtain his defeat because they want a more "liberal" justice appointed to the Supreme Court. It seems evident to me, that any proper sense of moral decency requires those who oppose Judge Haynsworth's confirmation to state their real reasons for opposing him rather than to resort to false charges of unethical conduct.

The Justice went on to say that he is convinced that Haynsworth is guilty of no misconduct in the two cases brought up in the hearings. Regarding the Brunswick case, which I have already mentioned, Mr. Justice Whittaker said:

> The record shows that quite aside from this being a piddling suit on a promissory note to foreclose a chattel mortgage that resulted in a judgement of $1,425 Judge Haynsworth owned no stock in the Brunswick company at the time the case was heard and decided. The record shows that after the case was heard and decided and another judge had been assigned to write the opinion, Judge Haynsworth on the recommendation of his broker, purchased some shares in the publicly-held Brunswick company.

If this eminent jurist comes to such a conclusion, based on his experience with evidence, giving it credence, and so forth, I think he must be quite close to the truth.

The point is, Mr. President, there are those who are opposing the nomination of Judge Haynsworth on grounds that are not only specious, but contradictory to positions which they espoused just a few short months ago.

J. P. STEVENS SECTION

Critical allusion has been made in this Chamber, Mr. President, to the fact that Judge Haynsworth, after coming on the bench, continued to hold shares in a major textile firm operating in his region of the country and nationally. The criticism is directed at the fact that this concern, J. P. Stevens & Co., Inc., has on a number of occasions been ruled in violation of the National Labor Relations Act, by various Federal courts, including the fourth circuit of which Judge Haynsworth is the chief judge. Such ownership, his critics suggest in a not too veiled manner, implies approval of wrongdoing. This is not so.

Those who have adopted this stand missed the entire point of Judge Haynsworth's position in the matter, possibly because they have not mastered the facts as they actually stand.

The judge himself has pointed out that this textile company was a client of his law firm before he ascended to the bench, and he has added that he held the relationship to be one that clearly would forever disqualify him from sitting on

a case concerning it. This disqualification, he held, was so basic that disposal of shares in the company could not in any way modify it. And why was that?

Well, questioning of almost anyone in the judge's home city of Greenville, S.C., would disclose that many more years ago than living man can remember with certainty, the Haynsworth family firm was representing a number of cotton mills in this city and surrounding areas. The Stevens firm, which has its roots in New England, during the War of 1812, was selling agent for several of these mills. The relationship of the law firm began in the time of the judge's grandfather.

Nearly a quarter century ago these several companies were acquired by Stevens, thus making possible their expansion, modernization, and adaption to new products and new markets. From the Greenville standpoint the firm is an economic benefactor of no mean proportions. It has been and is responsible for growth of employment, payrolls, and business throughout the Piedmont area, largely because it had the capacity to move forward with the times while many other concerns found it difficult to meet the competition and keep up with new technology. This ability was publicly given later as the reason why the company was singled out as a union target. One may well imagine that the firm of Haynsworth, Perry, Bryant, Marian & Johnston was very pleased to be asked to continue handling the local legal affairs of the national company which took charge of these mills, and the interest expressed itself in modest investment in Stevens shares upon this new relationship being established.

A three-generation connection of that sort is as definite a link as a blood relationship, and Judge Haynsworth with proper appreciation of the fact knew, when he was appointed to the bench in 1957, he would not sit on any case concerning Stevens. Secure in the fact in succeeding years he increased his investment in an expanding and profitable venture that continued to benefit his whole community.

If, on ascending to the bench, he should have to dispose of shares in the company, whose acts he could not pass upon legally, what could he invest in?

There never has been the slightest suggestion on Judge Haynsworth's part that the investment was not a substantial one. It was and is, if $25,000 is substantial, and so what? It seems inevitable that any man raised to the bench through corporate practice would have a number of disqualifications applying to former client companies and their successes. To draw a line against investment in such firms would be tantamount to requiring any occupant of the bench to hold no investment in shares or bonds that could in any way be affected by any court rule. This would debar even investing in U.S. funds.

One would expect instead that a judge might feel freer to invest where he could and would not sit in judgment than in the situation of a company which might at any time come before him with no one else knowing, unless he or someone disclosed the fact, that he might be an interested party through financial holdings. Other judges have been less prompt to disqualify themselves.

But the issue as presented by the critics of the nominee does not turn on any such question. The objection is based on the demands by his critics that to suit them he should throw out investment in a company toward which they bear extreme prejudice.

The prejudice is based on the fact that when in 1963 this company was selected from the entire textile industry as the target of a widely heralded massive multimillion-dollar organization drive of the Textile Workers Union of America, the union was totally unsuccessful and turned to the Labor Board which ruled against Stevens, not once but repeatedly, and had been supported in those cases the company appealed and had heard by the courts. The company still is not unionized.

The last recorded acquisition of Stevens' shares by Judge Haynsworth occurred in 1964. The first ruling of an NLRB examiner against the company was not announced until July 26, 1965, and the Board itself did not rule until March 1966. Disposal of appeal and conclusion of this first case took place in December of 1967 and by the end of the following November the company had gone through the stages of compliance required by the Board order. The fact that other cases involving small numbers of employes in various plants of the company were arising and that a civil contempt action was launched this year concerning a small number of supervisor actions toward a few employees, is sharply magnified by those who feel thwarted by the failure to unionize this company, but Judge Haynsworth was not going to be passing on any affairs of the concern under any circumstances. In this situation he has refrained from action.

Where should he have shifted his investment to satisfy these critics?

There are very few corporations outstanding in this country that have not lost some cases involving the Labor Board, probably quite a number have lost far more such than Stevens, but the unions have organized them whereas the workers at Stevens for whatever cause have turned down election drives by wide margins registered in secret ballots.

It is probably also that, by decisions of the Board, or of umpires, many large companies have had to reinstate far more employees discharged for infraction of rules and other types of disapproved conduct than Stevens has been required to reinstate.

This is not the occasion to discuss the controverted conduct of the National Labor Relations Board nor the constantly heard questioning of the wide disparity between the language of the law Congress enacted and the interpretation at this time.

Suffice is to say that the union here in question has fared no better with competitors than Stevens nor with many of the industries in the Southeast. I would like to meet the public man who makes unionization a controlling criterion in selecting his investments.

Judge Haynsworth's relations with Stevens did not affect the judgment of his own circuit which was one of the courts that upheld Labor Board rulings on Stevens. This should be favorable rather than unfavorable evidence concerning his conduct.

But the fact is that what the critics of Judge Haynsworth demand in the present instance is that he exercise active interventionary prejudice. They demand that despite his disqualification from sitting on matters affecting his old client, he register his disapproval of its policies and of the action of its employees. They demand that he conduct his investments in such a way as to indicate he believes Stevens must not only obey Government orders, which it contends it has done, but must bow its neck to a TWUA which employees have not chosen. He must, in other words, intervene morally in a case from which he is disqualified legally.

Mr. President, without elaborating further let me say that the whole case amassed against Judge Haynsworth is shot through with this same quality, this sharp disappointment and failure to find the judge acting on the prejudice of his critics. The actions they demand are not made necessary by any standard of ethics, morals, prudence, or sense of propriety and fitness.

For the reasons I have stated and because of his record that has been placed before the Senate, I support and shall vote for the confirmation of Judge Haynsworth.

Mr. MILLER. Mr. President, one of the things that has made it so difficult for me to oppose the nomination of Judge Haynsworth has been the proclivity for some of the opponents, aided and abetted by a few columnists and reporters, to raise false issues and innuendos against the nominee. These have no place on the Senate floor and they are unbecoming the Senate.

An example of what I am referring to is the story about Judge Haynsworth's gift of his home to Furman University which, understandably, resulted in a charitable contribution deduction for him on his income tax return. It has been insinuated that there was some violation of the income tax laws connected with this gift. However, from all of the facts I have been able to ascertain about the matter, there was nothing but careful compliance with the income tax laws and the serving of a very worthy purpose for which charitable contribution deductions were designed by Congress.

HAYNSWORTH HOME GIFT

In 1958, Senator and Mrs. Charles Daniel started construction of a large new home in Greenville, S.C. At that time Mrs. Daniel, who held title to the home in which they were living, gave a one-half interest in that home to Furman University. In 1959, Mrs. Daniel gave Furman University the remaining one-half interest in the old Daniel home.

The deductions for these gifts were taken on the Daniel tax returns in 1958 and 1959, but the deed was not recorded until May 1960. The delay in recording the deed was at the request of Mrs. Daniel, who did not want publicity in

connection with the gift of the home to Furman University.

In May 1960, Judge Clement F. Haynsworth, Jr., purchased the Daniel home for the appraised value of $115,000. Furman University had no need for this type of home, but did need the money and accepted Judge Haynsworth's offer. In purchasing the home, Judge Haynsworth gave the university $65,000 in cash along with his former home, which had an appraised value at that time of $50,000. The former Haynsworth home was actually sold by the university for $50,000, so this was not an imaginary figure.

There was no arrangement or even discussion between Senator Daniel and Mrs. Daniel and the Haynsworths in connection with the gift of the house to Furman and the subsequent purchase by Judge Haynsworth. The Daniels, looking forward to moving into a new and much more elaborate home, permitted the old home to fall into disrepair in the last 2 years they were living in it, while paying rent to the university.

Upon moving into the old Daniels' home in June of 1960, Judge and Mrs. Haynsworth improved it with remodeling, air conditioning, and landscaping. The total cash outlay in connection with these improvements was in excess of $10,000.

In 1963, the Haynsworths concluded that the children were not coming home to Greenville to live, and they then decided to give the home to Furman University and retained a life estate. Under this arrangement, Judge Haynsworth and Mrs. Haynsworth retained the right to live in the house during his life and her life; during that time they were liable to pay real estate taxes, other taxes, insurance, and maintenance on the property.

In 1963, Judge and Mrs. Haynsworth held clear title to the home for which they had paid $115,000, and upon which they had expended more than $10,000 for improvements. The appraised value at that time was $153,000, and the replacement value was $184,000.

Judge and Mrs. Haynsworth could have retained the home for their estate. They could have sold it for something in the neighborhood of $153,000. They could have made a gift of the home to any university, including Furman University, and claimed something between $125,000—which includes the more than $10,000 cash outlay—and the $153,000—appraised market value—as a tax base for deductions on Federal tax returns. Judge Haynsworth chose to give the home to Furman University, the school from which he was graduated and which was named after one of his ancestors. His close relationship with the university, and his membership at that time on the university advisory council, was no barrier to him making a gift of the family home to the university while retaining a life estate for himself and his wife.

Judge Haynsworth passed up the legal right to claim the "market value" of $153,000 on the home as the base for his tax deduction. Instead, he took the $115,000 figure, which represented the sum he paid for the home in 1960. He arranged to take the deduction over a 5-year period as provided in the Internal Revenue Service laws and regulations.

Pursuant to a table prepared by the IRS, Judge Haynsworth took the following deductions:

1963	$9,844.46
1964	10,125.98
1965	10,414.00
1966	10,996.00
1968	11,294.00
Total	52,673.44

The variations follow the IRS tax table where a life estate is retained by persons of the ages of Judge and Mrs. Haynsworth.

Instead of being an illegal or questionable act, this was a commendable act. Judge Haynsworth had no conversations or arrangements with Senator Daniel in connection with his purchase of this house, and all of the evidence indicates that these were two separate and unrelated gifts of the same home to Furman University.

Judge Haynsworth is not now and has never been a trustee of Furman University.

Since early 1961, he has been a member of a Furman University advisory council. This council was established by the university in October 1960, 5 months after Judge Haynsworth had purchased the old Daniel home. Judge Haynsworth was appointed to this council in early 1961 and has served on that council since that time.

This advisory council is a "visiting board" with no authority in the operations and administration of the university. It has only the authority to advise and recommend.

At the time he purchased the Daniel home in May 1960, Judge Haynsworth had no official connection with Furman University other than that of a loyal alumnus and as a public-spirited citizen of Greenville who consistently contributed money to support this local educational institution.

Because of my own background as a tax lawyer, it seemed little enough for me to bring this matter to the attention of my colleagues. When the vote is taken on this nomination next Friday, let it not be said that any Senator cast his vote on a basis of a specious issue such a this.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I am about to propound a unanimous-consent request, which may or may not be accepted by this body.

It had been my position that we could have voted on the pending nomination today, or Wednesday or Thursday next. It was otherwise indicated that, because there were so many speakers, it could go into next week. On the basis of the give-and-take of the discussion concerning a vote on the nomination, it was finally suggested that the vote occur at 1 o'clock on Friday next.

Unfortunately, there are Members on both sides of this question who have longstanding engagements outside the city. The same reasoning would apply to any other day we could mention, because I have indications that that would be the case on Wednesday and Thursday, and on Monday and Tuesday of next week as well.

Thus, no matter which way the leadership goes, it is caught between the anvil and the hammer. The only way to face up to the situation is to make a unanimous-consent request and see if the Senate will bear with the suggestion of the joint leadership and grant that request.

Mr. President, I ask unanimous consent that the vote on the pending nomination occur at 1 o'clock p.m. on Friday next.

Mr. BAYH. Mr. President, if the Senator from Montana will yield, and, reserving the right to object, would the distinguished Senator consider the possibility of amending that unanimous consent to make it either Wednesday or Thursday, instead of Friday?

Personally, I am prepared to vote right now. I would prefer to have the vote now rather than on Friday.

Mr. MANSFIELD. Mr. President, it would make no difference to me. All I want to do is get the business along and the issue decided. I seem unable to get a mutually satisfactory agreement for either of those days.

Mr. HRUSKA. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. HRUSKA. It should be suggested that there are at least 12 requests on this side of the aisle by Senators who have not yet spoken and who would like to speak tomorrow or the next day. That, it seems to me, would be ample reason for saying that we must rule out of consideration the matter of trying to vote either tomorrow or Thursday. It seems to me the choice should be either Friday or Monday next.

This Senator proposed Monday as the time, because it is one thing to have Senators with commitments on Thursday or Friday having to modify them on such short notice, and it is another thing, with 6 days' notice, to have the opportunity to adjust commitments that would have to be changed for next Monday.

In common and widespread discussion of this thing informally, I receded from the Monday position to Friday at 1 o'clock. Whichever way the pie is cut, it will not be a happy decision for some one or the other.

Therefore, we might as well—I say in answer to what the Senator from Indiana has suggested—get out of our minds either Wednesday or Thursday because there will not be enough time to take care of all those who wish to speak on the subject.

Mr. BAYH. I am joining in the effort to find a common ground. Would it be conceivable, instead of 1 o'clock on Friday, to have the vote at 6 o'clock on Thursday? This gives us practically 2 whole days of speeches. Certainly, no Senator is going to keep any other Senator from being heard.

Mr. HRUSKA. If the Senator undertakes to make a unanimous-consent request on that basis, let him try it. I know he will meet with failure, because there

are some speeches to be made, but principally because someone's ox is going to be gored.

Mr. MANSFIELD. Some Members of the Senate will be absent on Thursday, or on Friday, or on Monday, or whatever day is proposed. I do not know. All one can do is try.

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

Mr. MANSFIELD. I yield.

Mr. AIKEN. I would suggest that a time which would be satisfactory to everyone would be 1 a.m. on Friday.

Mr. MANSFIELD. 1 a.m.?

Mr. AIKEN. Yes.

Mr. MANSFIELD. No; I know one Member of the Senate who would be very much put out.

Mr. AIKEN. Make it 6 a.m. on Friday.

The PRESIDING OFFICER. Is there objection to the request?

Mr. MANSFIELD. Mr. President, I withdraw my request for the time being. I understand the distinguished Senator from Indiana has a request to make.

Mr. BAYH. Mr. President, so that we may "sense" the sense of the Senate and move forward on this matter, with 2 further days of debate, with what is remaining of today as well—and I would think we could go on as long this evening and tomorrow as the leader and both sides thought necessary to accommodate those of our colleagues who have not been heard—let me propose a unanimous-consent request that we consider voting at the end of the day on Thursday, 6 p.m.

The PRESIDING OFFICER. Is there objection to the request that a vote be had on Thursday next at 6 p.m.?

Mr. HRUSKA. Mr. President, I would be constrained to enter an objection, not on my own behalf, but on behalf of Senators who want to speak, together with other Senators, at least one of whom comes from the other side of the aisle. As far as I know, he is not going to favor the position very meritoriously favored by the Senator from Nebraska, but before he departed the Nation's Capital he said that if he were present, he would object to voting at any time on Thursday.

So I do hope the Senator from Indiana will withdraw his suggestion so I will not be put to the duty of entering an objection; and I do not think the Senator from Indiana wants me to do that.

Mr. BAYH. Mr. President, it is difficult for me to imagine my friend from Nebraska being objectionable in any way. I am glad to withdraw the request, faced with the cold facts as they are.

Mr. MANSFIELD. Mr. President, I renew my request.

Mr. HRUSKA. Mr. President, what is the request? May we have it repeated?

The PRESIDING OFFICER. Is there objection to the request that the vote on the nomination be set for Friday at 1 p.m.? Without objection, it is so ordered.

The agreement reduced to writing is as follows:

Ordered, That at 1 p.m. on Friday, November 21, 1969, the Senate proceed to vote on the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

[The following proceedings were conducted as in legislative session.]

LEGISLATIVE PROGRAM—ANNOUNCEMENT ON A POSSIBLE ADJOURNMENT SINE DIE

Mr. MANSFIELD. Mr. President, if I may have the attention of the Senate, this may be as good a time as any for me to make this announcement with respect to the rest of the year.

During a recent discussion with the distinguished minority leader, an understanding was reached that adjournment sine die would occur between December 15 and 23, probably closer to the 23d, 1969. Further, the second session of the 91st Congress will not convene before January 12, and possibly a few days thereafter.

Legislation to be considered prior to adjournment includes the following: Six appropriation bills; a tax reform and tax relief measure; draft reform; a drug bill; a crime bill, a pornography bill; a gun bill—the Lesnick bill; and, if possible, elementary and secondary education.

It is our intention to call the Senate into session early and stay late during the weeks ahead in order to finish this schedule. All Senators are advised that Saturday sessions will be scheduled during the deliberation of the tax bill.

This information is provided in order that Senators may plan their schedules between now and the beginning of the second session of this Congress.

And on that merry note, I will conclude.

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

Mr. MANSFIELD. I yield.

Mr. McCLELLAN. Will our leader advise us about next week? As I understood earlier, there had been an announcement that there would be some kind of recess over Thanksgiving.

Mr. MANSFIELD. Yes.

May I say it is the hope of the joint leadership, in addition to disposing of the Haynsworth nomination this week, to take up the draft reform proposal, which should not take too long; the Lesnick gun bill, which was reported unanimously——

Mr. McCLELLAN. Mr. President, if the Senator will yield—which bill?

Mr. MANSFIELD. The Lesnick gun bill, to provide that if one carries a gun in the perpetration of a crime, the carrying of the gun itself is a crime.

Mr. McCLELLAN. That bill was reported today.

Mr. MANSFIELD. Unanimously.

Sentences would be mandatory, to a degree, and a sentence imposed in such a case would be in addition to the sentence imposed for the crime itself.

Then it is my understanding that the Finance Committee may well place the tax reform-tax relief bill on the calendar Friday. It is the hope of the joint leadership to make that the pending business and to get started on the tax reform-tax relief bill on Monday, hopefully to finish it within two weeks or so.

Mr. McCLELLAN. Mr. President, do I understand there will be a session this Saturday?

Mr. MANSFIELD. Not this Saturday. At the conclusion of business on Wednesday next, the Senate will have Thanksgiving Day off and Friday as well.

Mr. McCLELLAN. And Saturday and Sunday?

Mr. MANSFIELD. Yes.

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

Mr. MANSFIELD. I yield.

Mr. DODD. I did not hear all the Senator said about the gun amendment. We did not report the amendment until this afternoon.

Mr. MANSFIELD. Yes, and I appreciate the efforts of the Senator and the other members of the committee.

Mr. DODD. I wanted to make that clear.

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

Mr. MANSFIELD. I yield.

Mr. HART. I hope to make it clearer that the majority leader is not quite accurate when he says the gun bill was reported out of the committee unanimously. I rise only to correct the RECORD.

Mr. MANSFIELD. When we get within one of unanimity, I think that is pretty fair shooting.

Mr. HART. The Senator did not come that close, but he came one step shorter.

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

Mr. MANSFIELD. I yield.

Mr. BROOKE. Mr. President, would the Senator consider bringing up the draft bill and disposing of it prior to the end of business on Friday?

Mr. MANSFIELD. Hopefully, if conditions permit. I would like to see it disposed of this week. I would hope, when we take it up, that Senators would not spend too much time expounding their views, but would allow the matter to come to a vote as soon as possible, so that the matter could be sent to the President as expeditiously as possible.

Mr. BROOKE. If the debate on the Haynsworth nomination were concluded by Thursday, at the end of the day, would it be possible that the draft bill would be taken up on Friday and laid before the Senate?

Mr. MANSFIELD. Yes, or possibly before, if conditions permit.

Mr. HRUSKA. Or after the vote.

Mr. BROOKE. Or after the vote; either.

Mr. MANSFIELD. Yes.

HELSINKI: A HOPEFUL BEGINNING

Mr. BROOKE. Mr. President, the most momentous arms control discussions in history have opened. The United States and the Soviet Union have come together in Helsinki, Finland, to consider how best to promote their mutual security and the peace of the world through agreed limitations on strategic arms.

Yesterday's opening statements by Finnish Foreign Minister Karjalainen, Soviet Deputy Foreign Minister Semyenov, and U.S. Ambassador Smith offer clear testimony to the sober determina-

dicate that in the last decade Summersville and its surrounding area has increased from 45 to 75 businesses.

The population has grown almost 1,000 in 10 years and the mayor predicts it will exceed 5,000 before 1980. "That increase, incidentally, will be one of well trained people," says Mayor Bryant.

Bill Bright, one of the successful Bright brothers, says his firm is forced to tie up housing ahead of time so that enough is available for his people. Not only that, but he is counting on the town's mobile home manufacturer to produce enough units to assist in the housing shortage there. Since 1955, more than 300 new homes have been built in and around Summersville.

Of course, there is popular Summersville Dam nearby. It opened in 1966 and already is a tourist attraction for West Virginians. Still, Mayor Bryant says it hasn't even started to be the recreation mecca it will be for the eastern United States when the Appalachian Highway System passes it.

Summersville has its problems. The roads are not up to snuff and Nicholas County still has an unemployment rate higher than the national average. But it's a far cry better than it was 15 years ago and prospects of additional improvement are great. And, there are hot politics in the city, some jealousy and probably some hate.

"You have to expect that," says the mayor, "when there is money to be made and people are competing."

MAYOR BILL BRYANT'S HAND "EVERYWHERE" IN COMMUNITY HE SERVES WITHOUT PAY

There is a saying around Summersville that when you eat or sleep there, you must deal with Bill Bryant.

Mayor William S. Bryant owns more than his fair share of greater Summersville and makes no bones about it.

Some love him for it and others hate him.

Veteran Nicholas Countian Miss Sarah Hamilton says she can remember when the town had boardwalks and outhouses on the main street. Then came Bill Bryant, she beams.

"I've seen the city move from not much of anything to this bustling community. And Bill Bryant championed it. This has to be our greatest day. He goes out and dares to do this and dares to do that . . ."

On the other hand, retorts a town opponent, "Bill Bryant is like a pumpkin seed. You put one in the ground and it takes over the whole damn garden."

Whatever the recipe is for mixing financial wizardry with political savvy, Bryant has found it.

He doesn't have enough fingers and toes to count his investments. He owns Cardinal Homes, most of Inventive Molded Products Co., is vice president of Peerless Coal Co. and owns three corporations that operate hotels, motels and eating establishments in Nicholes County. Then there are his land holdings.

He confirms that his estate is worth a million dollars. With his wife and two daughters (he has a son attending Marshall) he resides in a stone mansion atop a knoll in Summersville. He has an ample supply of cars and a horse farm for a back yard. But he lets someone else farm it.

"I'm the type of guy who would rather stand with a glass of scotch and watch," he says.

Bryant explains frankly that he knows he manipulates and that he dangles money to get things for Summersville, but adds: "The town is prospering, isn't it?"

Bryant, besides traveling to make promotion for his town, says he gives at least $1,000 annually from his pocket to the city. He doesn't accept his $100 a month salary for beng mayor.

"Sure, my business is more important to me than being mayor," he says. "It would have to be. Politics is a hobby for me. Of course, the people here are terrific and this place is my life."

Bryant, a Democrat, is 48. He recently started in seventh, two year term, on 13th year as mayor of Summersville. The last four times he has been unopposed.

He doesn't know whether he wants to be mayor again. "I'm interested in the state Senate." His friends would like to see him governor. Bryant kind of smirks at the thought, but adds:

"I think I could do for West Virginia what I've done for Summersville." Bank official Larry Tucker, also President of the state's Young Democrats, says: "Bill will make us a fine governor in 10 years."

Asked what will happen to Summersville when Bryant dies, he says, "This is a real problem. I worry about that. Really, I do."

Yet, Bryant moves so fast it may be difficult for someone else to grab the reins. The federal government built the lake and dam, but people around the town say if it hadn't been for Bill there would be no dam.

The convaleacent hospital was partially financed by Hill-Burton Funds at a time when they were available only to nursing and convalescent hospitals. So, that's what the hospital is. But a tour indicates that with few modifications it might just as easily be a general hospital. When queried about this, hospital officials could only smile sheepishly and refer the reporter back to Mayor Bryant. The mayor, when questioned, gave an ornery smile.

Bryant runs the town, not from city hall, but from his second floor office atop the Farmers Merchants Bank or in an office in the St. Nicholas Hotel across the street. "I rarely use the mayor's office in the municipal building," he says.

The man on the street, knowing full well that Bryant may own the land he lives on, still, for the most part, speaks highly of him. Bryant appears to have the greatest admiration for the townspeople. Like a boy with a reconstructed village under the Christmas tree, Bryant shows off the area and the people with the greatest pride.

A native of Beckley, he came to Summersville area in 1948 as a payroll clerk for the Peters Creek Coal Co.

SUPREME COURT OF THE UNITED STATES

The Senate in executive session resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. WILLIAMS of Delaware. Mr. President, I ask unanimous consent to proceed for 15 minutes.

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

Mr. WILLIAMS of Delaware. Mr. President, the President has nominated Judge Haynsworth to be an Associate Justice of the Supreme Court; and the question before the Senate is, Should he be confirmed?

In the past several days I have been reviewing the testimony before the Judiciary Committee, and I have also carefully studied the committee reports containing both the majority and minority views. Likewise I have followed the arguments as presented in the Senate by those who would support and those who would oppose his confirmation.

It appears that the arguments being made against his confirmation are confined to two basic points:

First. There are those who oppose his confirmation because they do not want a man of Judge Haynsworth's conservative background to be a member of the Supreme Court. These opponents criticize some of his earlier decisions as a judge on the basis that they were not as favorable to labor and the civil rights movement as they would like.

Second. Others oppose his confirmation because, while they do not question his honesty, they do question whether or not he is sensitive to the delicacy of the position of a judge. They cite his failure to disassociate himself from certain business connections after becoming a Federal judge and point out instances where he made a financial investment in a company while they had a case pending in his court and instances where he participated in rendering decisions involving companies with which a vending machine company in which he owned a one-seventh interest was doing business.

I comment first on objection No. 1; namely, that Judge Haynsworth's conservative background would justify a vote against his confirmation. In my opinion agreement or disagreement with the man's political philosophy is no valid basis for opposition to his confirmation.

In fact, if this argument were to be accepted as the basis for a decision I personally would have enthusiastically endorsed the confirmation of Judge Haynsworth when his nomination was first announced, and by the same token I would have voted against many of the preceding Justices appointed by former administrations.

Under our Constitution nominations to fill vacancies on the Supreme Court are made by the President, and it is to be expected that in making this selection the President will nominate men whose social or political philosophy more nearly coincides with his own. Had Mr. Humphrey been elected President I am sure he would have named a liberal to fill this vacancy, and the country expects Mr. Nixon to name a man of more conservative background.

Therefore in my opinion objection to or approval of Judge Haynsworth's conservative record is not a valid basis upon which to base our decision.

The second point, however, relating to Judge Haynsworth's continued business activities after being appointed as a Federal judge does raise a valid question and one that must be resolved by each Member of the Senate. It is this point that gave me concern.

Mr. Haynsworth was appointed as a Federal judge in 1957 and was promptly confirmed by the Senate. I voted for his confirmation. He accepted that position on the basis of the Canons of Judicial Ethics that had been in effect since 1924.

Canon 26 of Judicial Ethics provides that:

A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss.

Canon 4 provides that:

A judge's official conduct should be free from impropriety and the appearance of impropriety; . . .

Canon 29 provides that:

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved . . .

Section 455 of title 28 of the United States Code provides that:

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest . . .

The Canons of Judicial Ethics from which I have just quoted were adopted by the American Bar Association in Philadelphia, Pa., on July 9, 1924, by a committee acting under the chairmanship of William H. Taft. They are still in effect.

In recognition of the strictness of this Judicial Code, in particular as it would limit the financial activities of any judge, Congress has provided a lifetime tenure of office plus an exceptionally liberal pension.

A judge, once confirmed by the Senate, not only has a guaranteed lifetime job—subject only to impeachment for bad behavior—but upon retirement is eligible for a pension equal to his full salary on the date of separation. If after his retirement the salary for the position which he held on the date of retirement is increased his pension automatically increases to that amount.

For example, Judge X retired 3 years ago at which time the salary of his office was $30,000; his pension was $30,000. Later as these salaries were increased to $42,500, his pension automatically increased to $42,500.

In cases of disability, if the judge has served less than 10 years, he is eligible for a minimum of one-half of the salary on the date of retirement, or if he has served a minimum of 10 years, then he is eligible for retirement benefits equal to the full salary of his office, regardless of his age. In addition, any future salary increases for that office are reflected in increased retirement benefits.

No contributions are deducted from the judge's salary to pay for his retirement benefits.

In addition, the judge can elect to obtain a liberal survivorship benefit for his widow, but there is a nominal deduction from his salary for these survivorship benefits—approximately 3 percent.

For example, in his present capacity Judge Haynsworth draws a salary of $42,500 with a lifetime tenure of office and then upon retirement he is eligible for a pension of $42,500 plus any increase in salary that may become effective for that office.

This lifetime tenure of office with retirement benefits at full salary plus liberal survivorship benefits for his widow was granted for the purpose of relieving a Federal judge of any worries as to his or his family's financial security and to offset the restrictions that were being placed upon a judge's having outside business arrangements.

The question now arises, Has Judge Haynsworth during his service as a Federal judge met these qualifications as circumscribed in the Canons of Judicial Ethics in a manner that would justify his promotion to a position as an Associate Justice of the Supreme Court? Would his confirmation help to restore the prestige of the Court that has been lost as the result of the recent exposure of the financial activities of certain of its members?

I shall not take the time to review the full committee report. It has all been placed in the CONGRESSIONAL RECORDS of last Thursday and Friday, but there seems to be general agreement of the fact that Judge Haynsworth did participate in rendering decisions in cases where he had some financial interest.

In some of the cases cited by his opponents his financial investment was of such insignificance that one can only conclude they were mentioned to cloud the record, but there were cases where even Judge Haynsworth admitted his financial holdings were such as to justify criticism of his actions.

Mr. MILLER. Mr. President, will the Senator from Delaware yield at that point?

Mr. WILLIAMS of Delaware. I yield.

Mr. MILLER. The Senator refers to a citation of cases by some of the opponents which were insignificant. I can recall when a certain bill of particulars was presented to Members of the Senate and it contained an array of cases in which Judge Haynsworth was said to have had a substantial interest, which would be stopped by the canons of ethics—these canons of ethics would have stopped him from sitting on those cases.

Then the White House assistant, Clark Mollenhoff, came out with what I think was a masterly demolition of many of these cases. In fact, my recollection is that the name of a litigant was the same name as another corporation in which Judge Haynsworth did indeed have a few shares of stock, but it was a case that whoever had researched the bill of particulars had confused the cases. So it ended up that Judge Haynsworth did not even have a single share of stock in that company.

Then there was the W. R. Grace & Co. stock, in which Judge Haynsworth had a minute number of shares, but because a subsidiary of Grace Lines was before the court, it was alleged that he had a substantial interest, which should have stopped him from sitting.

I assume my colleague is talking about cases like that when he says these cases were put in to cloud the record.

Mr. WILLIAMS of Delaware. Yes. That is what I had reference to. I am familiar with the cases recited in the original charges. I am also familiar with the rebuttals which were prepared by Clark Mollenhoff and Senators in their majority report, showing that there was no validity to the charges involved in some of those cases.

It is unfortunate that they had ever been mentioned.

I do not want my remarks to appear to indicate that I do not think a judge can have independent wealth or have his money properly invested. After all, if he owns nothing but Government bonds then does he have a bias in favor of the Government?

I think we should remember one point. We should not have to try to put paupers on the Federal bench. I do not think we want only paupers in Federal positions. If we are going to allow men with some resources to be appointed to those positions they must invest their money in something. There is a line of reasoning to be drawn. We should keep that in perspective.

I think, at the same time, the rule that they should disassociate themselves from business activities must be interpreted as meaning having an active part in the operations to which they would have to devote a substantial part of their time and in which they really had a major or a controlling interest.

I only point out that it would have been better had no reference been made to these minor cases in the first place. In my opinion, it would have been better to leave them out than to put them in and say thy do not mean much. I do not think that is fair, as far as I am concerned.

Mr. MILLER. The Senator has made the same point which I myself have. One of the difficulties I had was in sweeping away the smoke that has been generated over this nomination.

I might say for the benefit of my colleagues on the floor that at the time I arrived at a tentative decision on this case I contacted—it was not a case of their coming to me; it was a case of my going to them—the Justice Department and the White House, including Clark Mollenhoff, to indicate that I was having difficulty on some of these cases and that I would like to have a memorandum, if they had one. Mr. Mollenhoff responded most exhaustively on this subject. As I said earlier, I think he did a masterly job of demolishing some of the cases that had been cited.

I regret that I could not agree with him on some other facets of this case, but it seems to me that there was a lot of demagoguery connected with some of the opposition to this case, and a good example was accusing Judge Haynsworth of having stock interest in a company that was before his court, when he never even had a share of stock in that company.

Another example came out when charges were made that, because of a gift that he had made of a home to the university, he had received a tax deduction that was illegal. My colleague, being on the Finance Committee, certainly is familiar with that one. I would like to ask the Senator if that is not another example of a red herring or a smokescreen.

Mr. WILLIAMS of Delaware. The Senator mentions the case of the gift of the home to the university. I am familiar with that. It was through the cooperation of Clark Mollenhoff that I got the information and the details. I went over them, and personally I saw nothing wrong with that transaction. In fact, I would commend the judge for his charitable intent. Notwithstanding the statements of some of his critics, I personally saw nothing wrong because the fact was that this home had been given to the university—Mr. President, I ask unanimous consent to have an additional 15 minutes.

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

Mr. WILLIAMS of Delaware. That home had been given to the university by former Senator Daniels. The university then traded that $115,000 home with Judge Haynsworth for a home that

had been valued at $50,000 plus a payment of $65,000 cash. The university later sold that home for $50,000, so it was not overvalued. It was merely a trade.

Later Judge Haynsworth gave that home back to the university on the basis of a one-fifth undivided interest, for 5 consecutive years, which is permissible under the law. I may point out that Judge Haynsworth made some improvements on the home, air conditioning, and so forth.

Since he was reserving a lifetime interest in his home, the amount of allowable deduction was dropped from $115,000 valuation to between $50,000 and $55,000, or a little less than one-half of its current value. This reduction, was in accord with the actuarial table, which again was in accordance with the law. The judge had pledged a gift to the university, as I understand it, of $12,000 a year for 5 years. This value of the home was part of that gift, and he wrote his check to the university for the balance. He actually gave them more than the pledge.

I personally commend him for it and see nothing wrong with that transaction.

Mr. MILLER. I thank the Senator for yielding.

Mr. WILLIAMS of Delaware. Continuing, Mr. President, on December 26, 1967, Mr. Haynsworth purchased 1,000 shares of Brunswick Corp. stock. At the same time the company had a case pending before Judge Haynsworth's court—Brunswick Corp. against Long and others.

This case was argued on November 10, 1967, 5 weeks before the purchase of the stock, while the written decision on the case was rendered February 2, 1968, about 5 weeks after the purchase.

I quote Judge Haynsworth's own comment on this transaction as found on page 305 of the committee hearings:

Senator MATHIAS. You consider that your interest (in Brunswick) was substantial, then?

Judge HAYNSWORTH. Yes, I do, without question, though it was not in the outcome in terms of that, but much more substantial than I think a judge should run the risk of being criticized.

There are a series of other legal cases cited in the committee record where the nominee sat as judge on cases involving litigation with companies in which he or his vending company had financal connection, and the record shows that the litigants were not advised of this association nor did Judge Haynsworth refrain from participation in the decision rendered. Had this indiscretion been limited to one or two such incidents perhaps it could be accepted as an oversight, but it is hard to understand when it appears to be a pattern.

There is the case of his one-seventh ownership in Carolina Vend-A-Matic.

On April 5, 1950, 7 years before he was appointed a judge, Mr. Haynsworth, some of his law partners, and a couple of outside friends formed Carolina Vend-A-Matic, and with an initial investment of $3,000 Mr. Haynsworth obtained a one-seventh interest in the company.

This nominal sum did not represent his full investment, however, since he and his associates personally endorsed notes for the corporation in amounts of $50,000 or more. Therefore, in fairness it should be pointed out their individual liabilities were substantially more than the amount indicated by the stock investments.

The business of the company progressed at a good growth rate between 1950 and 1957, the date Mr. Haynsworth was nominated as a Federal judge, but after his elevation to the judiciary the company's business increased at a spectacular rate. For instance, gross sales were as follows:

1951	$169,000
1956	296,000
1957[1]	453,000
1959	714,000
1960	941,000
1961	1,697,000
1962	2,552,000
1963	3,160,000

[1] The year Mr. Haynsworth was appointed a judge.

In 1964 Judge Haynsworth sold his one-seventh financial interest in the vending company for a profit of over $400,000 on the original investment of $3,000.

Now, there is nothing wrong with a man making a profit on his business operations. That is a part of our free enterprise system; but does such a business operation coincide with the Canons of Judicial Ethics to which Judge Haynsworth subscribed when he assumed office?

Again I quote canon 26 of Judicial Ethics, which provides:

A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. . . .

On June 2, 1969, before his nomination to be an Associate Justice, Judge Haynsworth was testifying before a congressional committee holding hearings on improvements in judicial machinery, at which time he said:

Of course, when I went on the bench I resigned from all such business associations I had, directorships and things of that sort. (page 94, committee hearings)

Later, on September 17, 1969, after his nomination for the Supreme Court he was asked if this statement were in error, and he replied as follows:

Well, yes; to the extent that I said that I resigned from them all when I first went on the bench it was. It was correct at the time I appeared. At the time I appeared I had no directorships whatever. (page 94, committee hearings)

Earlier that day he had said:

My recollection is that I resigned when I went on the court in 1957, but the minutes for the next year and the years after that show my being reelected as vice president each year until 1964. (page 91, committee hearings)

Not only did Judge Haynsworth not resign his official capacity as an officer and director of the company but he continued to collect director fees between 1957, when he went on the bench, and 1963. In 1963 his director fees were $2,600. In addition, his wife continued to act as secretary to the company.

When asked why he continued to retain his investment and to serve as an officer or director of the vending company after becoming a judge he said:

I retained on this board of directors because, again, it was very closely held. I had no reason to think that my interest as a stockholder or as a director was known outside this small group, and I felt no compulsion at that time to resign. (page 42, committee hearings)

Continuing in his testimony before the Judiciary Committee he commented further:

I moved to sell my stock as soon as I could, once it became known of my stock interest I thought I should divest myself of that, and I moved to do that as quickly as I could. (page 43, committee hearings)

Judge Haynsworth emphatically denies that he ever contacted the executives of any company in an effort to solicit business for his vending company, nor is there any contradiction of his statement.

But there appears to be no denial of the fact that his vending machine company did have contracts for placing its vending machines in the plants of many corporations operating in that area, and these were companies which later could—and some did—become litigants in his court.

A question may well be asked, To what extent can the spectacular increase in sales and earnings of the vending company be attributed to the unspoken decision on the part of company management that it may be advisable for his company to sign a contract with a vending machine company in which a Federal judge had a major financial interest, especially in view of the fact that at some time they may have occasion to appear in his court?

Certainly it was the possibility of such a thought or conclusion that prompted the Canons of Judicial Ethics, which states that:

After his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. (Canon 26)

And further:

A judge's official conduct should be free from impropriety and the appearance of impropriety. (Canon 4)

After reviewing this record the questions which must be answered by each Senator are:

First. Did Judge Haynsworth after his confirmation as a Federal judge in 1957 disassociate himself from outside financial transactions in a manner which is in accord with the expected standards of a Federal judge?

Second. If confirmed by the Senate would he add dignity and help restore respect for our High Court?

Perhaps no single decision or action of Judge Haynsworth to which the committee report alludes is of such a grave nature as to require a vote against his confirmation, but when all the pertinent matters are viewed collectively one can discern a pattern which indicates that Judge Haynsworth is insensitive to the expected requirements of judicial ethics, especially the rule that requires judges to separate from active business connec-

tions and to avoid even the appearance of impropriety.

For years I have been critical of Federal judges' neglecting their judicial duties and directing their energies toward outside activities for the purpose of financial gain, and to confirm Judge Haynsworth as an Associate Justice of the Supreme Court in the light of his record would, in my opinion, be placing a stamp of approval on such outside financial operations. I believe this would be a mistake.

The restoration of the confidence of the American people in the integrity and fairness of our courts is of paramount importance. This objective can be achieved only by promoting to the High Court men whose past records demonstrate that they recognize the importance of avoiding the appearance of improprieties as well as refraining from the improprieties themselves.

It is with regret that I shall vote against his nomination.

Mr. President, in last week's issue of Newsweek there appeared an article by Samuel Shaffer entitled "Anatomy of a Decision."

This article refers to the problem experienced by Senator MILLER, of Iowa, in making his decision on this confirmation.

I ask unanimous consent that the article appear at this point in the RECORD.

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

ANATOMY OF A DECISION: HOW ONE SENATOR MADE UP HIS MIND ON THE HAYNSWORTH CASE

(By Samuel Shaffer)

WASHINGTON.—What are the private agonies of a senator as he makes up his mind on a controversial issue like the Haynsworth case?

For Jack Miller, 53, a quiet, hard-working Iowa Republican, the decision was particularly heart-rending. He is a conservative, a Nixon admirer and a man who would ordinarily be delighted to vote for the confirmation of a fellow conservative like Judge Clement Haynsworth to the Supreme Court.

But there were complications, rising from Haynsworth's record and from that of Miller himself. Indeed, for the Iowa senator, the Haynsworth case actually began last year when he joined the fight against confirming Abe Fortas as Chief Justice.

Miller and like-minded senators made a strong—and eventually successful—stand against Fortas for failing to avoid "the appearance of impropriety." And then when Haynsworth was nominated for the court, he too was accused of the same sort of "carelessness" in stock transactions and the observance of the canons of ethics of the American Bar Association.

When the Haynsworth hearings began, Miller was immersed in the lengthy deliberations on the tax reform bill and was unable to watch the proceedings at first hand. But he had his staff prepare a memo on each day's happenings and at night would check the memo against the official transcript.

The more he studied the evidence and Haynsworth's own testimony on the stock transactions, the more convinced he became of the judge's "carelessness."

By mid-October, Miller had already reached a "tentative" decision to vote against Haynsworth. He reported this state of mind—in an atmosphere of the greatest secrecy—to Attorney General John Mitchell. At Mitchell's request, Miller agreed to keep his decision tentative until Mitchell could furnish him with briefs detailing the Administration's side of the controversy.

The briefs, extensive as they were, did not change Miller's mind. Nor did the arguments of deputy White House counsel Clark Mollenhoff who weighed in with stacks of legal material and testimonials. Haynsworth's chief Senate defenders also attempted to change Miller's view.

Finally, late in the afternoon of October 30, Miller was one of 14 senators invited to the White House to hear the President himself defend the nomination. And all along, there was pressure, pro and con, from all sorts of people.

"You become concerned over whether you are interpreting the canons of judicial ethics too harshly," says Miller, "especially when good friends, including both lawyers and judges, reach a different conclusion. You are further tormented by letters and phone calls from people in your own home state who are on both sides of the issue . . . and you realize there are good people who have arrived at different conclusions from yours."

Still, the senator was not yet willing to announce his decision. On the weekend after his meeting with the President, Miller flew back home to Iowa. With him went a bulging briefcase of papers on the case, as well as the 762-page text of the hearings.

He returned to Washington the following Monday and grimly announced his decision: he would vote against confirmation. Immediately afterwards, the word in the cloakrooms was: "That's the biggest nail in the Haynsworth coffin."

For Miller is symbolic of the problems the President encountered in the Haynsworth affair. Without men like him, none of the natural enemies of the appointment of the conservative Southern jurist—labor, the civil rights forces, the liberal Democrats—could ever have mustered enough votes to put the nomination in doubt.

Miller, moreover, is just the kind of Midwestern Republican Richard Nixon has always considered an ally. . . . Miller won his first term in the U.S. Senate (in 1960) and helped carry the state for Nixon. Re-elected in 1966, he was a staunch Nixon man at the '68 convention. Through it all, he has been a competent, well-informed legislator, with the forceful but low-keyed way with a speech that is most effective among professionals. In fact, some Senate observers consider him the "Mr. Republican" of the future.

His desertion from the Haynsworth cause, thus, was a particularly hard blow for the Administration. But in the end, his conscience prevailed, as did his feeling—which is almost an article of faith among some conservative legislators—that the Supreme Court has lost the confidence of the American people. And the appointment of Haynsworth, he concluded, would do nothing to restore this confidence.

Miller did not reach this conclusion gladly. Quite simply, he says, "It was torture."

MODIFICATIONS OF THE SYSTEM OF SELECTING PERSONS FOR INDUCTION INTO THE ARMED FORCES

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 524, H.R. 14001.

The PRESIDENT pro tempore. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 14001) to amend the Military Selective Service Act of 1967 to authorize modifications of the system of selecting persons for induction into the Armed Forces under this act.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

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

Mr. MANSFIELD. Mr. President, may we have order?

The PRESIDENT pro tempore. The Senate will be in order.

Mr. STENNIS. Mr. President, I ask the attention of Senators. This is an important bill. I do not think it will be debated at length, but it has been through quite a round of conferences and discussions, and I think the debate ought to be heard by Senators who are present.

The PRESIDENT pro tempore. The Senate will be in order.

The Senator from Mississippi may proceed.

Mr. STENNIS. Mr. President, I again ask the attention of Senators who are present, and ask staff members to take seats and be quiet.

Mr. MANSFIELD. Mr. President, will the Senator yield to me briefly, without losing his right to the floor?

Mr. STENNIS. I yield.

Mr. MANSFIELD. I think perhaps there should be a quorum call.

Mr. STENNIS. Yes.

Mr. MANSFIELD. I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

The PRESIDENT pro tempore. Without objection, it is so ordered. The Chair recognizes the Senator from Mississippi.

Mr. STENNIS. Mr. President, the pending bill, H.R. 14001, is a simple bill. So far as I know, it has no opposition, or perhaps only slight opposition. In substance, it repeals one sentence of the Military Selective Service Act of 1967.

The legislation to be repealed, in effect, prohibits the use by the President of a random system of selection for induction. Stated in the affirmative, the passage of the bill will permit the President, in his discretion, to use a random system of selection for induction. The significance of the bill can, I think, be better understood with an explanation of the legislative background of the issue.

Since the original enactment of the Selective Service Act of 1948, the President has always had the authority to designate the so-called prime age group for induction and establish the sequence of induction. Up until the present, this system has always operated on the basis of the oldest first from among those qualified and available in the class 1-A pool.

The Military Selective Service Act of 1967, I should emphasize, did not change the Presidential authority for designating the prime age group. As finally enacted, however, the law did contain the sentence to be repealed by this bill, which, in effect, provides that within whatever prime age group the President designates, he must use the "oldest-first" method. The President has already

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 92) for the relief of Mr. and Mrs. Wong Yui.

HOUSE BILLS REFERRED

As in legislative session, the following bills were severally read twice by their titles and referred, as indicated:

H.R. 1453. An act for the relief of Capt. Melvin A. Kaye; and

H.R. 1865. An act for the relief of Mrs. Beatrice Jaffe; to the Committee on the Judiciary.

H.R. 14794. An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending June 30, 1970, and for other purposes; to the Committee on Appropriations.

SUPREME COURT OF THE UNITED STATES

The Senate, in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. TOWER. Mr. President, the Senate will soon decide whether to approve the nomination of Clement F. Haynsworth to the post of Associate Justice of the Supreme Court. For over 2 months this man has undergone an examination of character, ability, and philosophy which has not been duplicated since the inquisition. In an attempt to find some reason to justify opposition to Judge Haynsworth's nomination, critics have invoked a standard of behavior that, if applied to all future nominees to the Court, would guarantee that the Supreme Court membership shall remain at eight until the millennium.

Justification for opposition, however, has simply not been presented. It has not been presented, Mr. President, unless one can consider a multipage collection of error and half-accuracies, known as a "bill of particulars," a meaningful indictment. The distinguished Senator from Kentucky (Mr. COOK) demonstrated the hollowness of the charges set out in this bill beyond any reasonable doubt.

He did such an outstanding job of refuting those charges that I shall not take the Senate's time to belabor the point. But I would like to briefly note that the Kentucky Senator's support of the Haynsworth nomination is particularly meaningful to me because of his own judicial experience and because of the searching analysis which he gives every issue before commenting on it. As one who stood on the opposite of the issue from the Kentucky Senator during the ABM debate, Mr. President, I can assure you with a great deal of confidence that he has reached his decision on this issue solely on the basis of his own judgment and knowledge.

Many of my colleagues have completely rebutted charges against Judge Haynsworth, which, if true, might have disqualified him under the traditional test applied to nominees to the Supreme Court. That test is best stated by canon 34 of the American Bar Association:

> In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to the law, and deal with his appointments as a public trust; he should not allow other affairs of his private interest to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

A careful review of the record, of the facts, shows that Judge Haynsworth has lived up to this standard of excellence.

I do not find anywhere in canon 34 the requirement that a nominee to the Federal bench has to be completely invulnerable to the attacks of those who differ from him on constitutional and judicial philosophy. It does not say in canon 34 or anywhere else that a man cannot be approved for service on the Supreme Court if those who oppose him are successful in raising—merely raising without proving—doubts about him.

No, Mr. President, this new standard created by the Haynsworth critics finds no precedent in law. Nor, I respectfully suggest, does it find any precedent in reason. Opponents outside this body have explained their decision thus:

> It is immaterial whether concrete *proof* of conflict of interest, lack of ability or question of character has been presented. But a doubt *has* been raised. Since the Supreme Court has already been the subject of considerable criticism, let us just fail to confirm this man and find somebody else.

Mr. President, if this reasoning were not so frightening, it would be ludicrous. It disturbs me greatly to think that responsible men and women will abandon the traditional Anglo-Saxon concept that the burden of proof is on the accuser in favor of this new circular argument. An argument that begins with an unproven presumption of doubt as to innocence and ends with a conviction because the unproved presumption has created an aura of incredibility.

In simple terms, this new test says that because fire creates smoke, wherever there is smoke, there is fire. Mr. President, hot air blowing over the ashes of political defeat can also create smoke. Let us not confuse the rhetoric and innuendo of those whose judicial and constitutional philosophy was rejected by the American people 1 year ago with fact and reason sufficient to justify opposition to the President's nomination. Mr. President, we must not adopt this new test and abandon one which has served the Republic well.

Mr. President, I firmly believe that each and every Senator here, makes a great effort to reach his decision on important issues independently. I also believe that this process of independent decisionmaking is absolutely essential to the continued existence of the Senate as a viable body. One cannot help, however, but be influenced by the background of those who stand on opposite sides of an issue.

The Committee on the Judiciary heard and received testimony which filled some 762 pages when reprinted. In addition to that, each Senator has been presented with the written and oral views of every conceivable labor, legal, business, and citizens group imaginable. In the course of my analysis of this plethora of information, it has struck me that those who have made the most careful examination, and those who have known and dealt with Clement F. Haynsworth the most, have supported him, while those who have conducted cursory examinations and have had only minimal exposure to Judge Haynsworth's judicial career have opposed him. I do not present this information as a statement of absolute, invariable, statistical analysis, but as an expression of one Senator's observation.

For example, let us compare the recommendations made by the American Bar Association standing committee on the Federal judiciary, and the American Trial Lawyers Association.

The standing committee of the ABA is composed of men of unquestioned good standing in the legal community who represent the various geographical districts of the country. The standing committee's function is to try and formulate standards of qualification for admission to the Federal bench. In order to bring about the application of these standards, the standing committee investigates each and every nominee to the Federal judiciary. It is rare, indeed, Mr. President, when the executive branch of our Government overrules the recommendation of the standing committee after its investigation.

Many times, Mr. President, Members of this body have experience acute unhappiness over the failure of that body to agree with their own judgment of a man's qualifications to sit on a Federal court. I think it is understating the truth to say that the ABA standing committee knows its own mind. That committee, Mr. President, met on September 5 in New York and stated, without reservation, that Judge Haynsworth met the qualifications for membership to the Supreme Court. Later, after the application of a great deal of pressure, the committee agreed to convene again and reassess its recommendation in light of all the charges made against Judge Haynsworth. Once again, the committee overwhelmingly approved the Haynsworth nomination.

Of course, a great deal of furor was raised over the fact that not all of the members agreed. Astute political commentators never tired of pointing out that the judge only received endorsement by a 2-to-1 majority. Mr. President, I greatly hope that these same commentators will have the opportunity to point out that I only received a 2-to-1 margin of approval the next time I take my record before the people of Texas. I do not know of a single elected official in this country who would not willingly suffer journalistic analysis of why he only received a 2-to-1 vote of confidence.

The American Trial Lawyers Association took a somewhat different approach to determining whether to recommend approval of the Haynsworth nomination. Not surprisingly, they reached a different result.

The American Trial Lawyers Associa-

tion is comprised of some 24,000 trail attorneys in the United States. In order to determine their feelings on the Haynsworth nomination, the executive board conducted a poll. At least they conducted a type of poll. A "selected sample" of some 1,204 trial attorneys was requested to reply to a questionnaire which gave them three choices: First, approve the nomination; second, disapprove the nomination; and, third, withdraw the nomination.

A total of 715 people returned the questionnaire and of those, 524 answered that the nomination should be withdrawn or disapproved. In short, 524 out of 24,000 announced their conviction that Clement F. Haynsworth should not become a member of the Supreme Court. That represents a percentage of 2.15. On the basis of the opinions of 2.15 percent of the total membership of the American Trial Lawyers Association, the board of governors recommended that Justice Haynsworth not be promoted to the Supreme Court.

That, Mr. President, is an astounding conclusion. It is, however, representative of the opposition to the Haynsworth nomination.

Perhaps the most interesting of all the testimony before the Judiciary Committee was that given by John Bolt Culbertson. Mr. Culbertson gave a moving, though often humorous, explanation of his reasons for refusing to oppose the nomination of Clement Haynsworth.

John Bolt Culbertson is not a man who finds himself in philosophical agreement with Judge Haynsworth or the Republican Party very often. Politically, Mr. Culbertson must be described as a Democratic liberal. He would not be offended, I feel, if he were described as one who has favored a broadening of the interpretation of the Constitution as done by the Warren court. He is, in short, not a natural ally of Clement Haynsworth.

But, John Bolt Culbertson is an honorable man. He recognized his differences with the judge for what they were—differences of political persuasion. He also had the wisdom to observe that President Nixon had won a mandate from the American people, a mandate to appoint men to the Supreme Court who were not in total agreement with the philosophies of the past.

Mr. Culbertson recommended approval of the Haynsworth nomination in the unequivocal terms which have been the hallmark of his legal career. He said:

> I predict that Judge Haynsworth will prove to be one of the greatest Justices of the Supreme Court that has ever been on this Court. I believe that my friend of liberal persuasion can understand that if we have the right when our crowd is in power to appoint judges, then our opponents, by the same token, have this right when they win. As a South Carolinian, I shall be proud to have Judge Haynsworth on our highest Court, and if I were a Member of the U.S. Senate, I would vote for the confirmation of his appointment, and for this endorsement, I do not apologize to anyone.

I can add nothing to that.

Mr. President, I call upon all of my colleagues to carefully reassess their decision on this most important vote. Let us not be confused by innuendo nor convinced by inaccuracies. If we have philosophical differences with the nominee, let us refrain from insisting that he agree with us before we vote approval. As Charles Alan Wright, a noted constitutional scholar from my own State, said in his testimony before the Judiciary Committee:

> History teaches us that it is folly to suppose that anyone can predict in advance what kind of record a particular person will make as a Justice of the Supreme Court. The awesome and lonely responsibility that the Justices have in considering the great issues that come before them has made them, in many instances, different men than they were before. All that one can properly undertake in assigning a nominee to that Court, is to consider whether he has the intelligence, the ability, the character, the temperament, and the judiciousness that are essential in the important work he will be called upon to perform.

Clement Haynsworth has met the traditional requirements set for approval of this body for appointment to the Supreme Court of the United States. Let us act accordingly.

Mr. CURTIS. Mr. President, I rise to speak in support of the confirmation of the nomination of Judge Haynsworth. Perhaps nothing that I have said or will say will change any minds.

This matter is of the utmost importance. It is of great importance to the country. It is also of great importance to the Senate. I feel compelled, therefore, to state why I take the position I do.

First, I digress a bit to commend those Senators who have worked so long and hard in carrying out the task of sending to the Senate for confirmation the nomination of Judge Haynsworth to be an Associate Justice of the U.S. Supreme Court, whose name has been submitted to us by the President of the United States. I refer particularly to my distinguished senior colleague from Nebraska, Senator HRUSKA.

Perhaps no Member of the Senate has been more faithful in the attendance at the Committee on the Judiciary, the subcommittees, and all conferences pertaining to the matter of the nomination of Judge Haynsworth as an Associate Justice of the Supreme Court. Not only has Senator HRUSKA given his time, but also, he is a man of unquestionable character. In addition, he has a keen legal mind, he is a good scholar, and he is able to discern the wheat from the chaff. He is able to sort out and pass judgment on conflicting allegations.

So I want the RECORD to show my admiration for and my commendation of the fine work of Senator HRUSKA with respect to this nomination.

Mr. President, I feel that what is done in reference to this issue is of very great importance to the U.S. Senate. The U.S. Senate is going to establish a record here, a record that is going to be read for all time to come. I believe it is important that every Senator not vote on impulse or propaganda or publicity pro or con on this issue. We are called upon to examine the facts, examine the accusations, and then do justice. I cannot feel that to reject the nomination of Judge Haynsworth is justice, because it is well known that much of the opposition against Judge Haynsworth relates to his political philosophy.

Has any Senator risen and said, "I believe that Judge Haynsworth is corrupt"? Not one. Has any Senator ever cited an instance in which a decision in Judge Haynsworth's court was influenced by financial considerations of Judge Haynsworth? Never has such an accusation been made. Has any Senator or any other responsible person ever pointed to an instance in which Judge Haynsworth enriched himself by reason of any matter coming before him as a judge? The answer is "No."

Then, Mr. President, we come to this question: What do we mean when we say that judges and public officials should not only be free of wrongdoing—and certainly Judge Haynsworth has been scrutinized more than most Americans have been—but also, they should be without the appearance of evil or without the appearance of impropriety? We have to think about that. Does it mean that if someone mistakenly or recklessly, or even intentionally, accuses a good man and it happens that those accusations receive wide publicity, it is then correct to say there is the appearance of evil, there is an appearance of impropriety, because a great deal of complaint has received wide publicity?

That is where we reach the point in this proceeding where the Senate becomes on trial; because, if we adopt the principle that all one must do is to make some accusations, which accusations become widely publicized, and that that constitutes an appearance of impropriety, what is the result? The result is that a malicious individual or a malicious group, a mistaken individual or a mistaken group, an individual who did not carefully check his facts or a group that did not carefully check their facts, can fix upon any public official a charge or place him in a situation in which it is said that he has the appearance of impropriety and therefore should be rejected.

What is required of the Senate? The Senate is required to do justice, and we cannot follow a course of justice if we say that a man need only be accused of something, that the accusations be publicized, and that therefore there is an appearance of impropriety. In some instances there might truly be an appearance of impropriety. But if we go on that premise, we turn the selecting and the confirming power of the country over to the most vicious elements in the United States. If it is possible to hurl charges at a nominee or at an officeholder, cause those charges to be publicized, and that individual is accepted per se as having engaged in an operation that has the appearance of impropriety, then we have turned the appointing and selecting power over to outsiders, and we have created a situation in which the most vicious in the land have the authority of government. They could create a situation in which it would be said, "Because there is noise here, because there is smoke here, it has the appearance of impropriety."

I repeat, Mr. President, that to my knowledge not a single Senator has risen on this floor and said, "Here is a transaction in which Judge Haynsworth was dishonest." Not a single Senator has risen in his place, to my knowledge, and

said, "Here is a case in which Judge Haynsworth enriched himself by reason of a matter being litigated before him," or, "Here is a case in which the decision was influenced by financial considerations."

Some of these charges are so flimsy that even opponents of Judge Haynsworth have dismissed them as such.

What does that indicate? When does an advocate or an opponent resort to flimsy arguments? There is only one time and that is when he does not have any other arguments.

For instance, I hold in my hand a news release of the Frank Mankiewicz and Tom Braden column for the Los Angeles Times Syndicate, Los Angeles, Calif., dated Sunday, November 9, 1969. Here is what it states:

> Among the ways in which men with large incomes avoid taxes is to buy and sell property through tax-exempt institutions, claiming charitable deductions along the way. Judge Clement Furman Haynsworth, Jr. now lives in a home which has twice been donated to Furman University and the value of which has twice been claimed as a charitable deduction.

I do not know whether these men are ignorant, or whether they are careless, or whether they are malicious, but one does not have to go beyond the fourth grade to understand that the opening paragraph there, in effect, charges Judge Haynsworth of skullduggery in giving a home to a university.

Mr. President, I think it would be well to take the time to consider the facts in reference to this charge. Again, I wish to ask why opponents of Judge Haynsworth would resort to such nonsense if they had a case. If they had a case, they would bring it in here. They do not have a case.

Mr. President, here are the facts. In 1958, Senator and Mrs. Charles Daniel started construction of a large new home in Greenville, S.C. At that time, Mrs. Daniel, who held title to the home in which they were living, gave a ½ interest in that home to Furman University. In 1959, Mrs. Daniel gave Furman University the remaining interest in the old Daniel home.

The deductions for these gifts were taken on the Daniel tax returns in 1958 and 1959, but the deed was not recorded until May 1960. The delay in recording the deed was at the request of Mrs. Daniel, who did not want publicity in connection with the gift of the home to Furman University.

In May 1960, Judge Clement F. Haynsworth, Jr., purchased the Daniel home for the appraised value of $115,000. Furman University had no need for this type of home, but did need the money and accepted Judge Haynsworth's offer. In purchasing the home, Judge Haynsworth gave the university $65,000 in cash along with his former home, which had an appraised value at that time of $50,000. The former Haynsworth home was actually sold by the university for $50,000, so this was not an imaginary figure.

There was no arrangement or even discussion between Senator Daniel and Mrs. Daniel and the Haynsworths in connection with the gift of the house to Furman and the subsequent purchase by Judge Haynsworth. The Daniels, looking forward to moving into a new and much more elaborate home, permitted the old home to fall into disrepair in the last 2 years they were living in it, while paying rent to the university.

Upon moving into the old Daniels' home in June of 1960, Judge and Mrs. Haynsworth improved it with remodeling, air conditioning, and landscaping. The total cash outlay in connection with these improvements were in excess of $10,000.

In 1963, the Haynsworths concluded that the children were not coming home to Greenville to live, and they then decided to give the home to Furman University and retained a life estate. Under this arrangement, Judge Haynsworth and Mrs. Haynsworth retained the right to live in the house during his life and her life; during that time they were liable to pay real estate taxes, other taxes, insurance, and maintenance on the property.

In 1963, Judge and Mrs. Haynsworth held clear title to the home for which they had paid $115,000, and upon which they had expended more than $10,000 for improvements. The appraised value at that time was $153,000, and the replacement value was $184,000.

Judge and Mrs. Haynsworth could have retained the home for their estate. They could have sold it for something in the neighborhood of $153,000. They could have made a gift of the home to any university, including Furman University, and claimed something between $125,000—which includes the more than $10,000 cash outlay—and the $153,000 appraised market value as a tax base for deductions on Federal tax returns. Judge Haynsworth chose to give the home to Furman University, the school from which he was graduated and which was named after one of his ancestors. His close relationship with the university, and his membership at that time on the university advisory council, was no barrier to him making a gift of the family home to the university while retaining a life estate for himself and his wife.

Judge Haynsworth passed up the legal right to claim the "market value" of $153,000 on the home as the base for his tax deduction. Instead, he took the $115,000 figure, which represented the sum he paid for the home in 1960. He arranged to take the deduction over a 5-year period as provided in the Internal Revenue Service laws and regulations.

Mr. President, I have spent a little time considering the tax laws of the country. If an individual gives some property to a college or hospital or something else, he gives the property away and he is entitled to a deduction for the fair market value of it.

If one wishes an insight into the character of Judge Haynsworth, he did not claim a tax deduction for the fair market value of $153,000. He did not claim a tax deduction for the $10,000 in improvements he put in the home. He claimed a tax deduction of $115,000, the very price he paid some years before—and all values have gone up as is well known.

Yet somebody here would so misstate the facts, either intentionally, unintentionally, accidentally, or somehow, that he would imply that a man who is generous, a man who decides in favor of the tax collector, is impugned to have done something wrong.

Mr. President, does that mean the man has the appearance of evil, or does that mean he has the appearance of impropriety? Actually there was no implication made. Again I wish to repeat that if the Senate ever goes to a system of turning down a nominee for confirmation because someone makes a charge, then we give veto power to outsiders and that power can be exercised by some of the most vicious individuals in the land.

When one gives something away and retains a life estate interest, he does not get a full deduction. This is not a new problem for the Internal Revenue Service. They take the donor's age and his life expectency and work out something according to the table.

Here is what happened. The deduction for the remainder interest in the house, after taking the lower value, in 1963 was $9,844.46; in 1964, $10,000-plus; in 1965, $10,000-plus; in 1966, $10,000-plus; in 1968, $11,000-plus; or a total of $52,673.44.

The variations follow the Internal Revenue Service tax table where a life estate is retained by persons of the ages of Mrs. Haynsworth and Judge Haynsworth.

Instead of being an illegal or questionable act, this was a commendable act. Judge Haynsworth had no conversations or arrangements with Senator Daniel in connection with his purchase of the home, and all the evidence indicates that these were two separate and unrelated gifts of the same home to Furman University. Judge Haynsworth is not now and has never been a trustee of Furman University.

Since early 1961, he has been a member of a Furman University Advisory Council. This council was established by the university in 1960, 5 months after Judge Haynsworth had purchased the old Daniel home. Judge Haynsworth was appointed to this council in early 1961 and has served on it since that time.

This advisory council is a "visiting board" with no authority in the operations and administration of the university. It has only the authority to advise and recommend.

Mr. President, we would have a much better land if more people in the United States gave their property to good causes; if more people who could afford to do so would leave their property to some worthy institution that is seeking to find a cure for cancer or some other dreaded disease. If more people gave their property to the cause of education, we would have a better country. If more people gave their property to the church, our society would be better. This is what Judge Haynsworth did. There is not one iota of evidence that he received special treatment; in fact, he did not receive as much tax benefit as he was entitled to.

Yet someone could publish a column and imply that his action was illegal; that it was wrong; that Judge Haynsworth was dishonest.

Mr. President, why do people do such things? I will tell you why: It is because they do not have a case. If they had a

case of substance, they would bring it here. They would bring in canceled checks. They would do some other things. If they had a case against Judge Haynsworth, somebody would appear on the scene and say, "I had a suit pending in the court on which Judge Haynsworth sat. I received an injustice because"—and then he would tell the facts. Has any litigant ever made such a claim? Not at all.

I will tell the Senate what has happened. There are some pressure groups that do not like Judge Haynsworth, and they have opposed his nomination and made all sorts of charges. Some of the pressure groups have been quite vocal against Judge Haynsworth. It might be interesting to note that the same pressure groups have spent hundreds of thousands of dollars to elect men to the U.S. Senate and House of Representatives. If a nominee for a judgeship or other high office is opposed by a pressure group—and in this instance I am referring to some of the top union bosses in the country—I wonder whether it would not be in the interest of justice that those who have received large sums—$20,000, $30,000, or $40,000—as campaign contributions from unions should step aside and not vote on the pending nomination.

Certainly we should apply the same rules to ourselves as we apply to others. Would it be unreasonable to suggest that any Senator who had accepted $10,000, $20,000, $30,000, or $40,000 in campaign contributions from the unions should step aside in the Judge Haynsworth controversy? Certainly they have a financial interest in one of the parties because, according to the record, not all, but some, union officials, have vehemently opposed Judge Haynsworth.

I am not suggesting that that be done. I merely invite the attention of the Senate to the possibility that, perhaps, some of those who are battling so hard to defeat the President's nomination might serve as outstanding examples of ethics and virtue if they were to step aside voluntarily and not participate in the decision to confirm or not to confirm the nomination.

It has been said, or at least it has been implied, that there is a connection or a similarity between the Haynsworth situation and the Fortas case. They are dissimilar in many respects, and I shall mention two of them.

Judge Haynsworth has submitted to a complete investigation and has answered every question. He has not withheld any facts.

What happened in Judge Fortas' case? He resigned, and there has never been any investigation of him. That is one difference.

Here is another: Judge Fortas did receive funds from a foundation as a fee, not once, but for a lifetime, from a client that did have problems that could well come before the Court.

There is absolutely no similarity between the Haynsworth and the Fortas cases.

Mr. President, I read with interest the statement of the very distinguished Senator from Kansas (Mr. DOLE). If anyone has any doubt or questions about Judge Haynsworth and the so-called Brunswick case, he can get the answer in just a few paragraphs from Senator DOLE's statement. I shall not repeat it here, but I commend it to Senators for reading.

All of us have so much material to read, and we do not get it all done. One of the things that make Senator DOLE's statement such a good one is that he has been able to boil it down and concisely state the issue. He comes to the conclusion that there is nothing wrong about it that should hinder or prevent the confirmation of the nomination of Judge Haynsworth.

Mr. President, there is one man living in the United States who has resigned from the Supreme Court and has had something to say about this matter. I refer to former Justice Charles E. Whittaker. He has been on the inside. He is now a private citizen. I am sure that he has been moved by nothing but his desire to see justice done and the truth prevail. I want to refer to a statement made by him on November 10, 1969:

> Charles E. Whittaker, who served as an Associate Justice of the U.S. Supreme Court from 1957–1962, said here yesterday he was convinced that opposition to the confirmation of Judge Clement F. Haynsworth, Jr., to the Court is spurred by his philosophy, not by his ethical character.
>
> Whittaker said that his study of the records of hearings before the Senate Judiciary Committee in the light of criticism of Haynsworth's appointment compelled him to speak out on the matter.

Incidentally, Judge Whittaker read all of these hearings; and they are voluminous. He said a thorough review of the hearings has convinced him that Haynsworth is guilty of no improper or unethical conduct. Justice Whittaker said:

> I say simply that it seems to me to be a shame that his opponents are willing to falsely assault his character in order to obtain his defeat because they want a more "liberal" Justice appointed to the Supreme Court. It seems evident to me that any proper sense of moral decency requires those who oppose Judge Haynsworth's confirmation to state their real reasons for opposing him rather than to resort to false charges of unethical conduct.

Justice Whittaker said he is convinced that Haynsworth is guilty of no misconduct in two cases brought up in the hearings. Regarding the Brunswick case, Whittaker said:

> The record shows that quite aside from this being a piddling suit on a promissory note to foreclose a chattel mortgage that resulted in a judgment of $1,426, Judge Haynsworth owned no stock in the Brunswick Company at the time the case was heard and decided. The record shows that after the case was heard and decided another judge had been assigned to write the opinion. Judge Haynsworth, on the recommendation of his broker, purchased some shares in the publicly-held Brunswick Company.

Mr. President, the unsound ground upon which the opposition to the confirmation of the nomination of Judge Haynsworth stands is illustrated by this particular case. It was presented as though it might be a great case, involving a merger or some internal transaction which, as a result of the lawsuit, would greatly enhance the value of the stock of the company. But it was not that at all. It was a suit over a promissory note for $1,500. It was a publicly held corporation. Judge Haynsworth bought it on the advice of his broker. Senator DOLE's statement, to which I referred quotes the testimony of the broker wherein he said he recommended that to many of his clients.

Continuing with reference to Judge Whittaker, in another case in which Haynsworth has been criticized for his financial interests, Whittaker said:

> The record shows that he did not own stock in either litigant in the case, but only held some shares in a vending company which on a lease basis maintained some of its vending machines in a plant of one of the litigants.

Mr. President, to be a Judge of the Supreme Court of the United States is to assume a great responsibility. Who would be able to judge that better than someone who had sat on it and who is now free to speak out as a private citizen? The testimony of Judge Whittaker in behalf of Judge Haynsworth is worthy of consideration.

Mr. President, a question has been raised about the fact that Judge Haynsworth heard cases that involved firms and those firms, in turn, had vending machines for sandwiches, pop, and so on, in their plants, and that Judge Haynsworth was part owner of the vending company and therefore did wrong in sitting on those cases.

If there had been something dishonest, something unfair, going on, if there had been a situation where the judge's position on the bench was being used to promote business for a company of which he was part owner, certainly his competitors would have known about it.

Mr. President, the competitiors of the Carolina Vend-A-Matic Co., or one of the principal ones, the leading competitors, was Alex Kiriakides, Jr., of the Atlas Vending Co. of the same city.

This competitor has written a letter to the Senate Judiciary Committee stating his concern over what he calls "the slanders which are being circulated in the press about Judge Haynsworth and Carolina Vend-A-Matic."

Kiriakides makes these important points:

First. The food vending business in South Carolina and in the United States has had a phenomenal growth, and "the experience of Carolina Vend-A-Matic was not in the least unique to it."

Second. His own business, Atlas Vending, experienced comparable growth, as did others in the area.

Third. He competed with Carolina Vend-A-Matic for locations in textile plants and other industrial plants, and the practice in the area was to make the awards on the basis of open bidding.

Fourth. The business was not developed on the basis of anyone using anyone's influence on anybody.

Kiriakides said:

> I know that Judge Haynsworth's name was never used in an attempt to influence anybody. As a very active competitor, I knew what was going on in the business, and I would have heard of it if it had been.

Mr. President, when someone who is accused of an impropriety has a leading competitor in the business referred to, and that leading competitor of the concern involved volunteers the statement

that there is nothing wrong, that there was not any influence peddling, that there was not any using of Judge Haynsworth's name to enrich anybody, that it happened to be a business that operated on open bidding, the Senate should consider that statement carefully.

I wish to make just one further point: I hope that, as my colleagues read this RECORD, and particularly my colleagues on the Republican side, they will remember that Judge Haynsworth was appointed to the circuit court of appeals by the late Dwight D. Eisenhower. President Dwight Eisenhower's is one of the most revered names in the history of our country. His notions on political questions may not meet with unanimous approval throughout the land, but one thing everyone knew: Dwight Eisenhower would not stand for anything that was wrong, illegal, or dishonest. Search the record throughout his administration. He fearlessly acted every time the facts justified it. In concluding, I wish to leave with the Senate this thought: If there was any doubt about Judge Haynsworth's ethics, or his honesty, Dwight Eisenhower would never have made him a judge of the circuit court.

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

Mr. CURTIS. I yield.

Mr. DOLE. First of all, I concur with what the Senator has said. He has put his finger on the real question involved in this nomination, that is, whether any group, whatever it may be—business, labor, or agriculture—should have veto power over appointments. That is really what is at stake here.

It was said by Mr. Meany during the hearings that his organization opposed the appointment of Justice Parker in the Hoover days and successfully blocked that appointment, and that they intended to do so again if possible. The Senator has clearly stated what I consider to be the real issue. It is not the philosophy; it is not that he may be antilabor; it is not that he may be anticivil rights. I do not believe he is and am certain the Senator from Nebraska would agree. No one questions the man's honesty; no one questions the man's integrity. As the Senator has just stated, certainly President Eisenhower would not have nominated him back in 1957 had he not been a man of honesty and integrity.

Again I state that the Senator has put his finger on the basic issue: whether or not any special interest group should bave veto power over a Presidential nomination.

Mr. CURTIS. I thank the Senator. I might also add that President Richard Nixon would never send the name of a dishonest or unethical man to the Senate for confirmation.

Mr. BOGGS. Mr. President, on the confirmation of Judge Clement F. Haynsworth, Jr., to be an Associate Justice of the Supreme Court of the United States, after full and careful consideration and evaluation of the record, pro and con, I have reached the conclusion that I will support the nomination.

A review of the record confirms my opinion that Judge Haynsworth is a man of great integrity and of imminent judicial qualifications. His 12 years as a judge on the U.S. Court of Appeals for the Fourth Circuit offers ample evidence of his sound judicial temperament.

The opponents to Judge Haynsworth come from two sources: Those who differ with his judicial philosophy and those who question his ethical sensitivity.

The first point I do not believe is a valid basis for a decision. In 9 years I have voted on the confirmation of five nominees to the U.S. Supreme Court, most of them representing the liberal side of our political spectrum. Never in any of those cases did I base my opinion on the judicial philosophy of the nominee. I do not intend to do so now.

I have always rested my decision on the basis of character, qualifications, and experience.

During the past 2 months Judge Haynsworth's ethical conduct has been scrutinized more closely than that of any other nominee in the history of the Supreme Court, to my knowledge. The questions involving his ethical conduct have been reviewed twice by the American Bar Association, then by the Senate Committee on the Judiciary, and by many Senators working individually. Volumes have been written and spoken about Judge Haynsworth's conduct.

I do not believe his opponents have built a case substantiating the charge of ethical insensitivity.

I put great store in the endorsement of the American Bar Association, which offered its recommendation of Judge Haynsworth, then, upon request, reviewed its study and came back with the same recommendation. The American Bar Association is the custodian of the reputation of the legal profession. Its code of ethics is the rule by which attorneys must practice and judges must perform above and beyond the requirements of the law.

I would like to quote from Judge Lawrence E. Walsh, chairman of the American Bar Association's Committee on the Federal Judiciary. He said:

> I think it was Senator Tydings who posed the three questions which must be considered at this time: first, integrity, second, judicial temperament, and third, professional ability. As far as integrity is concerned it is the unvarying, unequivocal and and emphatic view of each judge and lawyer interviewed that Judge Haynsworth is, beyond any reservation, a man of impeccable integrity.

I would like to point out that former Supreme Court Associate Justice Charles E. Whittaker, for whom everyone, to my knowledge, has the highest esteem, studied the record closely. He said that his thorough review of the hearings convinced him that Judge Haynsworth was guilty of no improper or unethical conduct.

In summary, after 2 solid months of consideration, Judge Haynsworth still carries the endorsement of the American Bar Association, the Committee on the Judiciary, Justice Whittaker, and of many other prominent legal experts. These endorsements confirm my opinion when, after my study and evaluation of the record, I decided to support the nomination of Judge Clement F. Haynsworth, Jr., to the U.S. Supreme Court.

Mr. GOLDWATER. Mr. President, in considering the nomination of Judge Clement F. Haynsworth, Jr., to the Supreme Court, the Senate of the United States is called upon to exercise one of its most important responsibilities. Needless to say, this nomination by President Nixon has perhaps been subjected to the closest scrutiny ever conducted by this body into matters of judicial ethics. The debate over Judge Haynsworth's confirmation in which we are now engaged constitutes the concluding chapter of that scrutiny.

Our colleagues on the Judiciary Committee have already examined, in the most microscopic detail, Judge Haynsworth's sensitivity to ethical questions. The junior Senator from Indiana (Mr. BAYH) has provided us with a bill of particulars. The ranking Republican member of the Judiciary Committee (Mr. HRUSKA) and the distinguished junior Senator from Kentucky (Mr. COOK) have made several outstanding speeches which have been an invaluable aid to all Senators in evaluating the charges against Judge Haynsworth. The Senators I have mentioned and all other members of the Judiciary Committee should, I believe, be congratulated for their diligent work in providing the Senate with as detailed a record as possible so that we could properly evaluate the qualifications of the nominee.

Mr. President, it was my intention originally to leave this debate entirely in the hands of the Judiciary Committee and other Members of the Senate who have been trained as lawyers. However, the determined efforts to influence this matter through a process which might be described as "trial by news media" have convinced me that my own experience with the subject of "appearances" in the public media might prove helpful to some Members of this body who do not understand thoroughly the workings of all facets of news and public information.

The President of the United States in his staunch defense of Judge Haynsworth has himself drawn attention to one of the most dangerous aspects of the situation we find confronting us today. Mr. Nixon drew attention to an editorial in the Washington Post which was quite candid in saying that the charges against Mr. Haynsworth on the ethical side were not warranted, or at least were not with the foundation that should be, but that because a doubt had been raised, the judges' name should be withdrawn. This involves us quite directly in the whole concept of what is becoming known today as "the appearance of impropriety." There are those among the critics of Judge Haynsworth who insist that, like Caesar's wife, he should be above any hint of suspicion and that if charges against him give the appearance of impropriety, they are sufficient to disqualify him for the post to which he has been nominated.

As the President quite aptly pointed out, the application of this concept would mean that anybody who wants to make a charge can thereby create the appearance of impropriety, raise a doubt and cause the withdrawal of a Presidential nominee.

Mr. President, here I would like to ask the Senate's indulgence while I delve for a few moments into a personal experience of mine with the whole erroneous, misleading concept of appearance created by

the press, radio, and television of this country in the handling of ethical allegations. I am here to state flatly and categorically that appearances are very often misleading and in a political contest of some heat, just as in a confirmation debate which arouses partisan passions, appearances are much more likely to be downright false.

I doubt if it is necessary to remind this Senate that in 1964 I was pictured by my critics in the public media of this Nation as a man totally ruthless and almost completely devoid of any humanitarian feelings. In a few short months of campaigning, I became—judging from the appearances of me which sprung up in the public print and on television—a candidate who was determined to abolish the American social security system and start World War III by the indiscriminate use of nuclear weapons. Once the charge was made, the appearance followed immediately, and try as I would to point to the many times I had voted for the enlargement and extension of social security, as many times as I tried to explain that no President, no matter how powerful, could abolish the social security system, my efforts were unavailing. By the same token, I was unable to erase the appearance of nuclear irresponsibility by any of my explanations of what I felt was required to keep this Nation strong and to honor her commitments. Never did I urge the indiscriminate use of nuclear weapons, nor did I ever suggest that they be placed in the hands of junior officers in the U.S. military. But I was never successful in substituting this for the appearance that had been created.

Because of this, Mr. President, I think I know what I am talking about when I speak of the danger of leaning on the whole idea of the appearance of impropriety. It can become dangerously close to the abhorrent practice which all Americans deplore—the practice of character assassination.

As close as I am to this whole debate, I found the charges being leveled in the newspapers and on the air coming so fast and furious that I had to deliberately sit down and review every word of testimony, every word of allegation, and every word in defense of Judge Haynsworth which I could get my hands upon. This was necessary for me, as a U.S. Senator, to keep the record straight in my own mind. And if this is true, one can imagine what the impression is with the casual reader of American newspapers and the casual listener of our broadcasts and the viewer of televised news reports.

Judge Haynsworth is accused of something called conflict of interest. Let me make it absolutely clear that there is not now, nor has there ever been, any implication at all that Judge Haynsworth's conduct could have—by the furthest stretch of the imagination—violated a criminal statute. On the contrary, the attack has been limited to the charge that he failed to disqualify himself from several cases in which he might have stood to make a tiny financial gain. The most that can be said is that it is conceivable that his decision in a few cases might have increased his stock value by an infinitesimal amount. For example, it has been estimated that if one construes the facts of the so-called Grace Lines case as strongly as possible against Judge Haynsworth, it is conceivable that his decision in the case might have increased the value of his stock by a value of 48 cents.

It should be pointed out that both the Federal disqualification statute and the Canons of Judicial Ethics attempt to provide a judge with some guide to the types of cases in which he could disqualify himself so as to avoid charges of the appearance of impropriety. And it should not be forgotten that at least three courts of appeal have held that a judge is as much under a duty to sit where he is not disqualified as he is under a duty to disqualify himself where required to do so. In other words, it should be thoroughly understood that these rulings make it impossible for a judge to "bend over backwards" but must make a careful judgment on the facts of each case.

I submit that the atmosphere surrounding this case is such that almost any kind of stock ownership on the part of a judicial nominee becomes almost prima facie evidence of impropriety. This, undoubtedly, is the result of the disclosures which led to the resignation some months ago of Justice Abe Fortas after his dealings with a convicted stock manipulator were revealed. Judge Haynsworth is suffering from the historical fact that his appointment occurred shortly after the Fortas revelation. However, there is no tangible similarity between these two cases, and I shall go into that in more detail later on in my remarks.

As has been pointed out in numerous newspaper editorials, men appointed to the Federal judiciary very often are men of substance—highly successful lawyers, for examples—and as such have assets to look after. If they are totally to escape any appearance of conflict problems, they would have to limit their assets to cash and Government bonds, and anyone acquainted with today's security situation will have to admit that this kind of stewardship of assets which a man hopes to pass along to the inheritors of his estate is a highly questionable investment program. In this connection, too, there is something to be said for a judge's confidence in the future of the American business community and the free enterprise system.

But, be that as it may, under the principles applied by Judge Haynsworth's critics, a man who held stock in any corporation would have to be intimately acquainted with all of its affairs, since, in the critics views, it would be a conflict if he sat on any case involving one of the corporation's customers. Imagine what this would mean if the judge happened to hold stock in one of the Nation's giant conglomerates. He would be hard put to acquaint himself with the nature of the multiple activities of such a corporate entity, much less examine the nature of the businesses conducted by its customers. And if you really want to carry this to its dizziest, impractical heights, just imagine the burden this would place on a judge with a sizable stock portfolio made up almost entirely of conglomerate issues. We are led to wonder what would happen to a judge's interest if he held stock in a mutual fund which is charged with conducting all kinds of investments on the stockholder's behalf, but not necessarily with his permission.

Mr. President, I believe that this alleged conflict of interest concept can be carried much too far and to such ridiculous lengths that we will soon be reaching a point where we exclude from public service—executive, judicial, or legislative—all men whose accomplishments and capabilities have brought them heavy financial reward.

Now, Mr. President, I should like to point out several of the points which differentiate in my mind the charges which led to the resignation of Justice Fortas and the attack presently being made on Judge Haynsworth.

Last spring, an account of certain dealings between Justice Fortas and Louis Wolfson was made public. The story indicated that Justice Fortas, while serving on the Supreme Court of the United States, had received a payment from the Wolfson family foundation. At about the same time, Wolfson had been investigated by the Securities and Exchange Commission and indicted by a Federal grand jury on multiple felony counts. Successive statements by Justice Fortas indicated that the $20,000 actually paid to him had been for work he was expected to do during the summer recess of the Court in connection with charitable projects of the Wolfson Foundation, and that the agreement had been canceled and the initial payment returned when it became apparent to Justice Fortas that he would not be able to do the contemplated work. However, it was further learned that there was an agreement between Justice Fortas and the Wolfson Foundation which called for payments of $20,000 every year to Justice Fortas as long as he lived and after his death for life payments to Mrs. Fortas as long as she lived.

When these facts were made public, a demand arose for the Justice, in effect, to either explain or resign. Faced with this alternative, Justice Fortas chose to vacate his seat, an action which resulted from his own decision and not from any formal action or decision by Congress. From this it can easily be seen that there is a vast difference between the charges which caused Fortas' resignation and the allegations of tiny conflict of interest against Judge Haynsworth.

If you give Judge Haynsworth all the worst of it, you have to admit that these conflict of interest cases—if they benefited Mr. Haynsworth at all—benefited him very indirectly and very infinitesimally. On the other hand, Justice Fortas had contracted to receive $20,000 for every year for the rest of his and his wife's lives and had actually accepted the first payment prior to retiring. But the biggest and most important difference between these affairs stems from the fact that Justice Fortas chose to resign rather than explain, while Judge Haynsworth has testified freely and fully before the Judiciary Committee and submitted to cross-examination by all of its members on all of his affairs. He also furnished voluminous personal records of a kind never before asked from any nominee for high office. Whereas Justice Fortas de-

cided against disclosing all the facts, Judge Haynsworth was more than willing to reveal everything.

Mr. President, it is doubtful whether the financial affairs of any nominee for any judicial position have ever been subjected to more microscopic scrutiny in all the long history of this Republic. Throughout it all, Judge Haynsworth has conducted himself in exemplary fashion and cooperated with every phase of what can only be described as an unprecedented and uncalled for investigation.

For all of these reasons, I find absolutely no merit in the suggestion that Judge Haynsworth acted improperly or in a fashion not in the best keeping with the Federal judiciary. Some small examples of conflict of interest may accidently have crept into his affairs, but I would remind this Senate that the important consideration is intent. Obviously, there was no intent on Judge Haynsworth's part to enhance his financial condition at the expense of his judicial integrity.

From my examination of the record, I believe he is an honorable man and he is a fair man and he is eminently qualified to serve this Nation on the highest Court in the land. I congratulate President Nixon on his selection, and I applaud his steadfastness in supporting the nominee. For all these reasons, I shall be happy to add my voice to those in this Chamber who will join in confirming the nomination of the newest member of the U.S. Supreme Court.

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

Mr. GOLDWATER. I yield.

Mr. DOLE. I have listened with interest to the statement of the Senator from Arizona. I believe he pointed out early in his statement how appearances of impropriety or appearances of being on the wrong side of an issue can be created. Certainly, the Senator has had experience with this, as he has indicated. The Senator has known from personal experience what certain people in the news media can do, whether it be with respect to Judge Haynsworth, the Senator from Arizona, or anyone else; and I do not make blanket accusations with reference to all of the media. However, many times some are so busy reporting what they believe should be the outcome that they fail to report both sides of the news.

The American people, by and large, and some Senators, read the headlines—there were the incidents to which the Senator referred, and the house transaction which the Senator from Nebraska has discussed—and that Judge Haynsworth may have violated a criminal statute, and these charges raise serious doubts.

Now, some of the media feel, as an afterthought, that they should tell the other side of the story. But maybe it is too late; perhaps the man and his future have been destroyed. I hope that did not happen.

I believe the Senator from Arizona, having had firsthand experience, has set the record straight.

Mr. GOLDWATER. I thank the Senator.

I might point out that all of the judgment made by people around the country on Judge Haynsworth, prior to the publication of this book of testimony, was made because of things they had read in the press, seen on television, or heard on radio.

I listened to the distinguished Senator from South Carolina (Mr. HOLLINGS) yesterday, as he very meticulously and in great detail read chapter and verse of testimony supporting the judge that I have never seen on television, read in newspapers, or heard on the radio. And I might say I did not see it in this morning's Washington Post, either. I might say it was the most brilliant speech I have heard on the floor of the Senate since I have been in the Senate; and yet the Washington Post, in its useful, ignoring way, tucked it away.

Mr. DOLE. It was on page A8.

Mr. GOLDWATER. I usually read only the funny papers in that paper.

I had letters from many lawyers in my State urging me to vote against Judge Haynsworth. That was weeks ago. They are lawyers who would consider me as being to the left. Most of them have written since and said that they had changed their minds after reading the RECORD.

I think it is very proper that we call attention to the way this case was handled earlier. I am not critical of any Senators in this body. I am sure the distinguished Senator from Indiana did not ask the press to handle it in this way. This is the way the press is taking out after people with whom they disagree. They destroyed President Johnson, and they are trying to destroy President Nixon. They will destroy anyone in public life with whom they do not agree.

This is not relevant here, but that is why I applaud the Vice President's statement so strongly. I hope he intends to keep it up, because I intend to keep it up.

I was glad to relate the situation I went through. I am not being "sour grapes" about it. It is history. But I do not want to see it happen to any man.

Mr. DOLE. Mr. President, will the Senator yield further?

The PRESIDING OFFICER (Mr. CANNON in the chair). Does the Senator yield?

Mr. GOLDWATER. I yield to the Senator from Kansas.

Mr. DOLE. Mr. President, I have taken great encouragement from a statement I received, from former Associate Justice Charles Whittaker. As the Senator knows, he was confirmed in 1957 and he served with great distinction for about 5 years as Associate Justice. He had read the record.

I have heard from lawyers who said, "If the news accounts are correct, you should not vote for Judge Haynsworth's confirmation." They enclosed clippings which were not correct, they were biased.

If one reads the entire record, and this is the point I made yesterday and the day before, and it is the point I was making in reaching my decision, if one relies on all statements by Senators for or against, all witnesses for or against, one can arrive at different conclusions. But if one reads the record with the thought in mind that the President has the right to nominate, and ours is the right to advise and consent, and if one reads the record hoping he can find a way to vote for confirmation, not improperly, but looking at the record in that light, most will agree Judge Haynsworth is a man of honesty, ability, and integrity, and should be confirmed.

This is the conclusion of former Associate Justice Whittaker after reading the record, not the headlines.

Mr. GOLDWATER. I thank the Senator.

Mr. STENNIS. Mr. President, I wish to commend the Senator from Arizona for his timely remarks on this matter.

To give or withhold consent to the nomination of a Supreme Court Justice is one of the most solemn, delicate, sensitive, and important functions of the Senate. Not only is this one of the highest offices in the land, but, subject to good behavior, a Judge of the Supreme Court may serve for life. For this and other reasons the issue now before us is of particular importance.

Elective officers must submit their records, good or bad, to their constituencies every 2, 4, 6 years, and they can then be turned out of office by the people for any reason. However, a Supreme Court Justice can, and usually does, have a lasting impact since he participates in the shaping of the law over a period of many years without being accountable to any authority except his learning, judicial philosophy, integrity, and judgment. The decisions in which he participates may affect human conduct, rights, and relations for generations.

In the last few decades the importance of these positions has greatly increased. Whether a man is conservative, liberal, or middle of the road, whatever he may be, we must all agree and admit that the Supreme Court has become, in a major way, sort of a superlegislative body. I would not suggest that the justices acted in bad faith in this. If that was the case we would have to go into it at great length, but it is a fact of life. We are passing on a position now that, by acquiescence and custom, carries the equivalent of vast legislative power.

I am not happy about this situation, but if they are going to exercise legislative functions, it is all the more reason why we should have justices of different ideologies and philosophies. I am satisfied that Judge Haynsworth measures up in every respect and that he has the experience, learning, integrity, and political philosophy, and other attributes which will enable him to serve on the Supreme Court with distinction.

Therefore, I believe we should give our consent to the confirmation, and I shall do so.

A wide variety of charges have been hurled against Judge Haynsworth questioning his fitness to serve and his sense of ethics. I do not challenge any of my colleagues who raise these questions and question his fitness to serve; but I do severely challenge their conclusions. I challenge the logic of their reasoning. However, it is easy to understand that the gravity of these charges would confuse and concern segments of the population as well as some Members of the Senate. Nevertheless, upon analysis, almost all of the allegations are found to

be unfounded and, in my judgment, none of them disqualifies him.

I shall not discuss the charges and the rebuttals thereto in any detail. This has already been done by those who have intimate familiarity with the facts.

However, I would like to say I have been furnished with a detailed memorandum listing the charges and the replies thereto. I have also discussed the matter with Senators who have the knowledge of the facts.

From this I have concluded that those who oppose Judge Haynsworth have failed to meet the burden of proving that the Senate should refuse to confirm him. In supporting this nomination now I am in good company. Aside from the fact he was selected by the President—and I shall refer to that later—the six other sitting judges of the Fourth Circuit on October 10, 1969, stated their "complete and unshaken confidence" in the integrity and the ability of Judge Haynsworth.

Just a few days ago former Supreme Court Justice Charles E. Whittaker said "there is no support in the record for the charge of unethical conduct that are being widely hurled at Judge Haynsworth." That is a sweeping statement. Judge Whittaker added that the Haynsworth opponents must be "doing these things for other reasons—perhaps because they do not like his nonlegislative and conservative judicial philosophy."

Mr. President, I have had the privilege of knowing Justice Whittaker, not as an intimate friend, but I knew him personally when he was a member of the Supreme Court. I have had special reason to hold conferences with him, some long ones by telephone and others by memorandums, in connection with some special duties I had as a Senator. He has one of the finest legal minds backed by a fine character that one could possibly find.

Those are sweeping statements by Justice Whittaker, that he finds no support in the record that in any way shows unethical or questionable conduct on the part of Judge Haynsworth. They are the most powerful statements, to me, from one of the most complete witnesses on the subject that could possibly be furnished to the Senate.

Mr. BAYH. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I am glad to yield, briefly if I may, because I have other duties.

Mr. BAYH. The Senator would perhaps prefer that I did not interrupt him now, but I want to make one observation, and I appreciate his yielding to me for that purpose. I appreciate Justice Whittaker's statement, too. I have not had the good fortune to meet him. I took issue the other day with our distinguished friend from Kansas (Mr. DOLE) when he introduced this statement into the RECORD. It was implied that those of us who oppose the nominee because of his ethical conduct were shielding other motives. I thought that the statement of the Senator from Mississippi just now was a rather sweeping statement, also, and not in the best interests of our discussion.

The distinguished Senator from Delaware, who spoke on the floor of the Senate a few moments ago, made his determination on the ethical question. I would hate to see that we were not considered sincere in our conclusions.

Mr. STENNIS. I do not think there is any basis whatsoever for the Senator's observation if he imputes a bad motive to Justice Whittaker. I do not think there is any purpose on his part to——

Mr. BAYH. Let me make myself clear——

Mr. STENNIS. I do not believe there was any desire in the mind of Justice Whittaker to impute bad motives to anyone.

Mr. BAYH. If I may interrupt there——

Mr. STENNIS. Of course.

Mr. BAYH. I believe that the RECORD will show that I did not impugn his motives, but the Senator from Mississippi is suggesting that those who are opposed to Judge Haynsworth on grounds of ethics are hiding their real motives.

Mr. STENNIS. I think the words speak for themselves. I do not think Judge Whittaker impugned the Senator's motives. I certainly am not. In making a strong statement here I say that one reason why I am for him is that I like his judicial philosophy. That is why. I do not think he is leaning toward the legislative-judicial approach as much as some.

I said at the beginning that we have different types on the Court, and if we have those who lean one way, we had better have some leaning the other way in order to give balance.

I am not giving special praise to anyone but those who know Justice Whittaker know the caliber and the character of his fine mind and know that his testimony here is of tremendous value, and I commend to any Senator any subject that he deliberately speaks on, particularly in this field. Of course, we do not have to accept his views.

I understand that 16 out of the 19 living former presidents of the American Bar Association have likewise expressed their support of and confidence in Judge Haynsworth. None of the remaining three have opposed him.

The American Bar Association committee on the Federal judiciary has twice endorsed Judge Haynsworth—once after examination of the charges against him. Judge Walsh, who headed and chaired this committee, a former Deputy Attorney General of the United States, a former Federal judge, and certainly one of the distinguished and eminent members of the American bar today, testified as follows:

> All of the persons interviewed regarding Judge Haynsworth expressed confidence in his integrity, his intellectual honesty, his judicial temperament, and his professional ability. A few regretted the appointment because of the differences with Judge Haynsworth's ideological point of view, preferring someone less conservative. None of these gentlemen, however, expressed any doubt as to Judge Haynsworth's intellectual integrity or his capability as a jurist.
>
> A survey of Judge Haynsworth's opinions confirmed the views expressed by those interviewed as to the professional quality of his work.

I direct your attention, Mr. President, particularly to Judge Walsh's statement that a few persons "regretted the appointment because of differences with Judge Haynsworth's ideological point of view." I think that this is a very relevant matter which has a very significant bearing on the issue we are considering.

I certainly do not impugn the motives of any Senator who opposes Judge Haynsworth. But I do believe that some, possibly many, of the opponents are subconsciously influenced by widely disparate views in personal, judicial, political, and philosophical ideologies. With these, perhaps without any conscious realization of the fact, the barrage of charges against Judge Haynsworth become an excuse and not a real or valid reason for opposition.

In short, I am suggesting that much of the opposition stems from the widespread, but fallacious, view that Judge Haynsworth is overly conservative, intensely antilabor, strongly against civil liberties, and sectional in his personal, political, and judicial approach, outlook and philosophy. Having taken a position of opposition to Judge Haynsworth on a political and philosophical basis, it was only natural to look around for a firmer basis for opposition and for reasons to buttress the argument that he should not be confirmed.

Let us take a brief look at how quickly these charges of conservatism, antilabor and anticivil liberties bias and sectionalism got started and how quickly they grew.

On August 18, 1969, President Nixon announced his selection of Judge Haynsworth. The next day, August 19, an editorial appeared in the liberal New York Times saying that the choice of Judge Haynsworth was "disappointing" and that the President "has sought out an obscure judge with little reputation for the kind of depth, social sensitivity, and philosophic insight that ought to be considered the prime qualifications for a Justice of the Nation's highest court." It said that Judge Haynsworth's record "has surely been marked by an extremely cautious reluctance to interpret the Constitution in the light of changing conditions."

On the same day, August 19, an editorial in the equally liberal Washington Post referred to Judge Haynsworth as a "not particularly distinguished Federal judge." It said further:

> We cannot avoid the feeling that he (President Nixon) chose a symbol more than a man. Judge Haynsworth comes out of the Southern aristocracy, and, whether fairly or unfairly, is widely believed to be more conservative than the President on the important legal issues of his time. His nomination will be read, no doubt, as a victory by the "law and order" boys and by those who would go slow on desegregation and civil rights.

A story in the New York Times on the same day, August 19, under the byline of Warren Weaver, Jr., stated in its opening paragraph that Judge Haynsworth's nomination "aroused immediate opposition today among civil rights, labor, and other liberal groups." It pointed out that statements of opposition "came from representatives of the Urban League, Americans for Democratic Action, and the Leadership Conference on Civil Rights, a confederation of more than 100 groups."

A story in the Washington Post on August 19 conceded that Judge Haynsworth had never defied the Supreme Court but stated that he was "faulted by civil rights lawyers chiefly for failing to move vigorously in the face of obstructionism and massive resistance by southern officials."

Opposition to Judge Haynsworth on doctrinaire and ideological grounds continued to mount, particularly among the civil rights groups, labor organizations, other liberal groups, and liberal columnists. Finally, on August 26, 1969, in a Washington Post column by Frank Mankiewicz and Tom Braden, who have been among the most persistent critics of Judge Haynsworth—and they have a right to criticize—it was charged that Judge Haynsworth "was in clear violation of the canon of ethics for 7 years on the bench." With this the opponents were in full cry.

I have outlined the foregoing comments for the purpose of showing how the opposition to Judge Haynsworth commenced with allegations that he was conservative, antilabor and anticivil rights and then progressed to the hue and cry that he was as guilty of improprieties and unethical conduct of sufficient gravity to disqualify him. Without questioning anyone's sincerity, I think the latter charges are excuses rather than valid reasons for opposition.

Let me say that I do not believe that all judges should not be cast in the same mold. Basically, in my judgment, the rap against Judge Haynsworth is that he exercises judicial restraint rather than being a judicial activist in the tradition of some justices. But if the opposition to Judge Haynsworth is on this basis, then this should be made clear so that the American people will fully understand the precise issue involved. It should not be clouded by flimsy charges against Judge Haynsworth's ethics and integrity.

I commend Senators who have come on the floor and given as the reason for their opposition to this nominee the ground that they did not like his judicial philosophy and they did not like his approach to interpretation of the Constitution of the United States. They have at least said what was in the back of their minds, and brought it out here, for whatever it was worth.

I say frankly that I am for the nomination, for one reason, because I do like his judicial approach. I do like his philosophy. We know this nine-man Court—and I make no attack on the Court—has become, in some ways, a superlegislative body. We need different types of philosophy on that Court just as we have different philosophies in this body—not to the degree that we have it here, but—and I speak with all deference to every present member—there are some on the bench who make it necessary to have someone on there to offset what seem to me to be extremely liberal views and what seem to me to be personal and individual interpretations of the Constitution of the United States.

As I see it, it just boils down to this: There is nothing wrong, there is nothing unethical, in what Judge Haynsworth has done that disqualifies him; it is a question of whether or not we are going to take him or reject him based on the philosophy he has, which is reflected in decisions which have been honest and fully developed. He has written 300 decisions himself, and has taken part in more than 1,000 decisions in cases that were important enough to get to the circuit court of appeals.

This is too important a matter to be decided merely on charges about being conservative or liberal, or prolabor or antilabor. Surely, it should not be determined solely on that basis.

We have to take a broader view. I think the great number of cases involving labor he took part in have been shown in the RECORD, when his decision was in favor of labor, as we use that term. Certainly, in the civil rights cases, no one has proved that he tried to defy the Supreme Court of the United States.

He was not quick to jump forward or move ahead. He was not a crusader in that subject, or in any other field so far as that matters.

I think this man has shown a tremendous judicial temperament and willingness to work and labor—and it is work of the hardest kind—and has applied himself rigidly in the court that is next to the Supreme Court of the United States.

We should not let the recent sound and fury that have been raised in this matter obscure the fact that much of the opposition has poured forth through the columns of the press and elsewhere.

Certainly, the original opposition, was motivated far more by disagreement with some of his decisions and his personal and political philosophy than by any thought of a conflict of interest. This is a matter which should be gotten back into clear and sharp focus.

I have been unable to find any substantial support for the charges that Judge Haynsworth has been guilty of unethical conduct or that he has given the appearance of impropriety. To the contrary, those who know him best express "unshaken confidence" in his ability, honesty and integrity.

I do not like to rake up the past, but I must say that I think one of the most significant facts in connection with Judge Haynsworth's nomination is that it came only 3 months after the resignation of Judge Fortas from the Supreme Court. Because of this, it was both inevitable and proper that Judge Haynsworth and his record would be examined very, very closely in an effort to determine whether he should be confirmed. There can be no quarrel with this as long as the examination and the inquiry is confined to matters which genuinely and legitimately relate to Judge Haynsworth's qualifications as a judge.

However, let us avoid the mistake of inferring that there is a connection, no matter how slight, between the Fortas and Haynsworth cases. Certainly, there should be no inference, because accusations were made against Justice Fortas and he resigned that, since accusations have also been made against Judge Haynsworth, he should not be confirmed. This would be a complete non sequitur. Mere accusations alone do not establish Judge Haynsworth's lack of qualifications. He must be judged by the facts which are either proven or can be proved to the satisfaction of this body.

In this connection, I think that it is important to realize that, as distinguished from the Fortas case, Judge Haynsworth had made the fullest sort of disclosure of the facts and records involving his personal, public, and judicial activities and the facts and records pertaining to his financial and private business transactions. I have been advised by the Committee on Judiciary that he has voluntarily made available to them his income tax returns, list of holdings, and all other financial data, including those connected with him personally, his family and with the businesses with which he had been associated. I was told that the extent of the disclosure which he has made and completeness of the examination of his financial records are unprecedented in the case of any judicial nominee.

Judge Haynsworth's actions in furnishing voluminous records has permitted a careful and factual examination of the charges made against him on their merits, and I think they have established beyond question that Judge Haynsworth was not guilty of any act of impropriety which disqualifies him from serving on the highest court of the land.

Judge Haynsworth is not a personal friend of mine. I have never met him. I do know others, however, who strongly vouch for his ability, honesty, and integrity. This fact, the records in this matter and the decisions and opinions by Judge Haynsworth as a judge of the court of appeals for the fourth circuit have convinced me that he is fully qualified for the office for which he has been nominated and will discharge his duties with distinction if he is confirmed, as I veritably believe he will be.

As President Nixon said in his news conference on October 20:

> I have examined the charges. I find that Judge Haynsworth is an honest man. I find that he has been, in my opinion as a lawyer, a lawyer's lawyer and a judge's judge. I think he would be a great credit to the Supreme Court and I am going to stand by him until he is confirmed. I trust he will be.

That quotation, Mr. President, as I have said, was from a statement by the President of the United States. I wish to make just two additional major points about this matter.

As I have stated, I do not know Judge Haynsworth, and I have never mentioned the name of anyone to President Nixon for membership on the Supreme Court. I shall mention a conversation I had with the President only because he gave out a public statement a few days later that covered the points I shall mention. I did talk to President Nixon, soon after he became President, about appointments to the Supreme Court; but no individual was discussed, and I had no man in mind. I think it is the duty of every Senator to discuss his ideas and philosophy on this subject with every incoming President. That is what I shall continue to do.

I was tremendously impressed with the President's saying that he considered appointments to that Court as purely his personal responsibility. As I say, he made that statement a few days later, or I would not be quoting him. They are purely his personal responsibility. We

know he has to take the advice of someone on many matters to which he cannot give his personal attention, but he outlined, a few days later, that he considered nominations his responsibility. That was in connection with another appointment, not this one, but it was his position that he was solely responsible; that he made his own investigations and reached his own conclusions as President.

That is reassuring. It is to me, and I believe it is to the American people. I am not close to the President, but I believe this: If he had sent a name to the Senate and found out later that he had made a mistake, he has manhood enough to say so, and he would have. Instead of that, he looked into this matter, under the challenges that have been outlined here, and he came out, under his responsibility as President, and said to the Senate and the American people, "I have looked into these charges, and I find nothing in them that disqualifies this man." He said, "I am standing by my guns." I think he is doing a service to the Nation when he does that; and when he makes another appointment, I believe he will do the same thing and have the same attitude about it.

Even if Judge Haynsworth's personal, political, and judicial philosophy does lean to the conservative side, that recommends him to me. As has been said by others, our Supreme Court needs balance, and the Court needs a man who is not an extreme liberal but respects the Constitution and is conservative in his approach to it. Perhaps he will restore the judicial restraint which has often been conspicuously lacking in recent years.

I believe that Judge Haynsworth's nomination should and will be confirmed and urge upon my fellow Senators that they seriously consider this issue and vote for its confirmation.

I wish to refer now to a speech that I heard Monday by the distinguished Senator from West Virginia (Mr. BYRD). I said then that I thought it was a landmark in the history of the Senate on these matters, and I should like to adopt that speech, by reference, as a part of my thought. The way the Senator went into many points was illuminating, logical, sound, and solid in conclusions. The way he discussed the question of "substantial interest," as used in the statute, and the words "personal interest," as used in the code of ethics, and then applied them to the facts in this case, was an outstanding contribution to this debate and to all other debates on this subject.

I shall say just one further word to illustrate the transaction concerning the Brunswick stock. Much has been made of the fact that while the case involving Brunswick Corp was pending before the circuit court of appeals, Judge Haynsworth bought a thousand shares of stock in that company. It has been shown during the debate that the amount he bought was an infinitesimal part of the total outstanding stock; that the value of it was not high, relatively, when compared with the amount involved in the litigation. The outcome of the litigation could have had only a minimal financial impact on Judge Haynsworth.

What happened was that a case involving Brunswick was pending before the fourth circuit court of appeals. A simple legal question was involved. It was a question of conflict as to which lien was superior; the seller's lien on the bowling alley or the landlord's lien on the land where the bowling alley operated. It was the kind of case that lawyers who specialize in that kind of law have often tried.

The court heard the argument and decided the case that afternoon or the next morning; I have forgotten which. The assignment to write the opinion was given to another judge, not Judge Haynsworth. The court then went on to its other business. The docket was very busy at times. The conclusion the court reached was not written as an opinion until 3 or 4 months later. In that interim, a thousand shares of Brunswick Corp stock had been bought by the broker for Judge Haynsworth. The judge said that he had overlooked it.

I come now to the part that is a little personal. We do not like to use ourselves as illustrations. However, I had the responsibility, for almost 10 years, of being a trial judge in a court of unlimited jurisdiction, involving civil and criminal cases. Those who practice law know that that involves a world of cases, some of them highly important. The amounts involved are unlimited, and the criminal docket carries homicide cases and every other kind of criminal offense.

I have held 3 or 4 weeks of court and have been almost overwhelmed by the great number of cases that involved the signing of decrees, including those which would take a man's house away from him, or would sentence him to the penitentiary or sometimes sentence him to the loss of his life. That is not pleasant. I have often taken home 15 motions for new trials or other motions that I had taken under advisement before rendering decisions.

What does a judge do? He passes on the easy ones first and forgets them. He works hard and worries over and over again about the hard cases.

I do not have any doubt that that was what happened in Judge Haynsworth's case. The Brunswick case was easy; it involved a conflict of liens. The court decided that it was an easy case. Another judge wrote the opinion, and the case passed out of Judge Haynsworth's mind. Just as he said, he overlooked it.

The case later came up on a motion for reconsideration or a new trial, or whatever terms might apply in that circuit. But those hearings are often informal, particularly in simple cases of this kind. So I think that those circumstances have been built on, built on, and built on, and talked about, shown on television, and written up by columnists, until they have been built into a mountain. As a matter of fact, we have here just a mole hill. It is something that might happen to any judge. It does not reflect on his integrity. It does not detract from the man one bit. It merely shows how busy the courts are these days and how much the judges have to do.

I think Judge Haynsworth will be a valuable addition to our court. I have no doubt that he will apply himself there as assiduously and sincerely and effectively as he has always done. He will not be any trail blazer, but he will uphold the Court as he sees it.

I hope and trust that his nomination will be confirmed by the Senate so that he can be put to work soon.

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

Mr. STENNIS. I yield.

Mr. SPARKMAN. Mr. President, I was greatly interested in the Senator's entire discussion. However, I was particularly interested in his relation of his own experience and his reference to the so-called Brunswick case.

The thought occurred to me that I do not recall ever having heard any Senator who was opposed to the Haynsworth nomination say that Judge Haynsworth is not an honest man and is not a man of integrity.

Mr. STENNIS. Mr. President, the Senator is correct. All of the testimony and all of the debate is to that effect. The leaders of the opposition in the Senate agree that he is a man of honesty and integrity.

Mr. SPARKMAN. Mr. President, I do not recall that any Senator has said Judge Haynsworth is not an able, conscientious, and sincere judge.

Mr. STENNIS. The Senator is correct.

Mr. SPARKMAN. Are those not the two principal requirements by which to predict whether a man will be successful on the Supreme Court of the United States?

Mr. STENNIS. The Senator is correct. That is the kind of man we are looking for. All Justices cannot all have the same judicial temperament or political philosophy. However, we are looking for a man of honesty and integrity. That is exactly the type of man we are looking for.

The Senator also mentioned ability. It takes great legal ability to be a good Justice of the Supreme Court.

Mr. SPARKMAN. Mr. President, we know that the judges will not always decide cases in the same manner.

Mr. STENNIS. The Senator is correct.

Mr. SPARKMAN. Mr. President, it occurs to me sometimes when people talk to me about voting for or against a nominee that a great many people overlook the fact that we have only one duty to perform and that is to confirm or refuse to confirm. We do not have the power to select or nominate. That power vests in the President of the United States and in him alone.

Mr. STENNIS. Mr. President, the Senator is correct. The President of the United States represents all of the people in performing that duty under the Constitution of the United States.

Mr. SPARKMAN. Mr. President, I agree with the Senator from Mississippi. I think that President Nixon has been absolutely careful and conscientious in approaching this nomination.

Mr. STENNIS. Mr. President, I thank the Senator.

Mr. President, I yield the floor.

Mr. HOLLAND. Mr. President, I have been in heavy conferences between the Senate and the House, four of them in the last few weeks. I have not been able to prepare an address on this pending

subject in which I am so vitally interested.

I do not want the debate to close without making the clear and unqualified statement on the floor that I strongly approve the confirmation of Judge Haynsworth to be an Associate Justice of the Supreme Court of the United States; that I have had my office follow very carefully the charges made and have the deep conviction that they have not been sustained; that I have received hundreds if not thousands, of letters from my State, most of which strongly approve his nomination and support the nomination; that I have watched the editorial columns in my State, which I regard as most illustrative of public opinion there and are edited by citizens of the highest training and character; and that, beyond that, I have sought the advice of four Federal judges who have served with Judge Haynsworth during his present service as a judge of the circuit court of appeals of his circuit, and all of them—and they are of varying philosophies—speak of him in the highest terms and say they think it would be a tragedy if he were not confirmed as a member of the U.S. Supreme Court.

I have also sought the advice of certain lawyers who have practiced before his court, one of whom, incidentally, said that the judge had decided against him in the gravest case he had there. All of them speak of Judge Haynsworth in the very highest terms and feel that his nomination should by all means be confirmed.

I have even been approached by various churchmen and educators and businessmen who know Judge Haynsworth well. I do not have that privilege myself. While I have met him from time to time, I do not know him well. Without exception, all of these contacts—and they have been with people whom I trust very greatly—have been contacts favorable to Judge Haynsworth. And not only have they been just favorable, but they have also been strongly insistent upon confirmation of his nomination and strongly insistent upon the idea that he has made a fine record as a judge of the circuit court of appeals in his area.

Mr. President, I have known for a long time that the sound editorial writers in our State are very apt to voice the opinion of our people in a way which very clearly exemplifies what our people are thinking.

Out of a large number of editorials from our State, I have found one that did not favor the nomination. All the others which I have seen—and I have seen a great many—have favored it. I have chosen two editorials in particular because they are written by highly trained men, whom I know personally to be moderate liberals, rather than conservatives, and who, I think speak the attitude of the sound-thinking people in the areas covered by their papers.

One is from the Tampa Tribune, of Tampa, Fla. The title of that editorial is "Victory for Pressure, Defeat for Fairness."

I am going to read most of that editorial. It reads in part:

When the Senate votes this week on the nomination of Judge Clement F. Haynsworth to the Supreme Court, it will come face to face with this issue:

Are organized labor and civil rights groups to hold a veto over Supreme Court appointments?

No matter what may be said in debate, that is the underlying question.

Much has been made of "conflicts of interest" in Judge Haynsworth's service on the Fourth Circuit Court of Appeals.

But the "conflicts" occurring in Judge Haynsworth's various stock holdings are so technical that they constitute an excuse, not a reason, for Senators to vote against him.

Consider the two principal complaints that have been raised against Judge Haynsworth.

That he cast the deciding vote in a 1963 decision permitting a textile firm to close one of its plants, in a labor dispute, although he owned an interest in a vending machine company doing business with the textile firm. Judge Haynsworth's personal stake in the profits from the vending contracts with the textile firm was estimated at $390; his role in the case was cleared by the Justice Department.

That he bought stock in the Brunswick company while a law suit by the company was pending before his court. The facts are that the case, involving foreclosure proceedings against a bowling alley, had been unanimously decided in the company's favor before the stock was purchased, although the decision had not been published. Judge Haynsworth admits the purchase was a mistake—but inasmuch as the benefit to his stock interest from the foreclosure suit amounted to a total of $4.96, he could hardly be suspected of venal intent.

No reasonable person, examining the whole record of Judge Haynsworth's conduct, could reach any conclusion other than that he is an honorable man.

It is pure hypocrisy for Senators who never uttered a word in criticism of Justice Douglas[1] $12,000-a-year handout from a gambling-financed foundation to express concern about Judge Haynsworth's "conflicts."

Some are honest enough to say, as Senator Jacob Javits of New York did last week, that they oppose Haynsworth because of his philosophy.

Javits joins the NAACP and other civil rights groups in interpreting Haynsworth's philosophy as being "relentlessly opposed" to the Supreme Court's integration decisions.

We do not so interpret it. We think Judge Haynsworth's opinions show that he has attempted to apply the principle laid down by the Supreme Court in a manner fair to both races; he has *not* adopted the extreme view that it is the duty of the court to remake the social system rather than simply forbid compulsory segregation.

In the same way, we think Judge Haynsworth has attempted to render balanced judgments in labor-management disputes.

But balance is not what labor bosses or civil rights zealots want in a judge. They want bias—in their favor. They want a judge who proceeds on the theory that unions and minorities enter the courtroom clothed in a presumption of right.

Thus we find, one by one, Senators who are dependent on labor and Negro support lining up against Haynsworth. One of his chief critics, Senator Birch Bayh of Indiana, is said to have received $70,000 in campaign funds from labor unions in his last election.

Mr. President, the other editorial entitled "Haynsworth Showdown Approaches," appeared in the Florida Times-Union of November 18. It reads:

The United States Senate faces a crisis of conscience this week when it comes time to vote on the nomination of Chief Judge Clement F. Haynsworth of the Fourth Circuit Court of Appeals to become a Justice of the Supreme Court of the United States.

Attempts have been made to impugn Haynsworth's honesty. They have failed. His critics once rode a tide of "conflict of interest" charges but the conclusiveness of the rebuttals has driven them back to the lesser, although still serious, charge of "insensitivity to judicial ethics."

Attempts have also been made to equate the Haynsworth case with that of former Justice Abe Fortas who accepted $20,000 as a fee from a private foundation and then, when asked to explain or resign, chose to resign. The two cases cannot be equated.

Haynsworth is perhaps the first Supreme Court nominee in history to lay bare the entire record of his financial transactions. A fifth generation attorney, from a wealthy family, he has numerous stockholdings.

Despite a concerted effort to connect Haynsworth's rulings while a judge with a desire to increase the value of his financial holdings, the attempt has failed.

Even the New York Times—which predictably wants no part of Haynsworth—couldn't find that accusation backed up by the facts. The Times says it opposes the nomination because Haynsworth does not have a distinguished enough background to sit on the Supreme Court.

And the Washington Post said: "It is not that he lacks integrity or honesty or that he has been involved in conflict of interest situations. These issues, it appears, were raised as strawmen by his own friends simply because they can be disproved so readily."

If Sen. Birch Bayh of Indiana can be classed as a friend of Haynsworth, perhaps the Post is correct. Bayh has been the principal author of the conflict innuendoes. However, if he is a friend of Haynsworth, the judge doesn't need any enemies.

Each so-called conflict case explodes like a bubble when explored. We've dealt with several of them here previously but perhaps the prize case trotted out by the liberals should be looked at again.

There are a lot of winks and nudges and caught-you-with-your-hand-in-the - cookie-jar looks when the Brunswick case is mentioned by the school that opposes Haynsworth on the basis of conflicts of interest.

The Circuit Court of Appeals decided the Brunswick versus Long case unanimously on Nov. 10, 1967. Haynsworth bought 1,000 shares of Brunswick stock in December of the same year. The written opinion was not handed down until February 1968.

To sustain the conflict charge, Haynsworth would either have had to have made the ruling anticipating buying of Brunswick stock or have bought Brunswick stock with the knowledge that the ruling, when finally written, would enrich him.

However, even had the entire $90,000 been recovered, it would have amounted to less than one-half cent per share of stock or a grand total of $5 on Haynsworth's 1,000 shares.

The truth of the matter is that all Haynsworth's opponents have done up until now is show him to be a scrupulously honest man. Their probing has perhaps been the most intensive in history.

If they set a precedent of rejecting him on conflict of interest or insensitivity to judicial ethics on the basis of what has so far been dug up, then it is probable that no judge can ever be found to fill the post.

Meanwhile, Bayh did not disqualify himself in the Haynsworth case despite the fact that he received $42,000 last year from the United Auto Workers, part of $68,000 in campaign funds overall from organized labor which is his announced ally in the fight against Haynsworth.

Let the senators vote their honest convictions but let them not attempt to hide behind a conflict of interest smokescreen. They should at least have the integrity to say—as some have—that Haynsworth is too con-

servative for their tastes, or even that a vote for him would alienate organized voting blocs in their states.

The record of appeals court decisions denying that there was any basis for disqualification in cases where judges had a much more substantial interest than Haynsworth, give a pallid hue to the disqualification argument. In fact, they raise serious doubt that Haynsworth could have legally disqualified himself in any of the cases in question.

The Senate and the nation will have to live with the precedents being set in this case. If they result in the destruction of an honest man through innuendo, then the precedents will indeed be ones that will come back to haunt the Senate for years to come.

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

Mr. HOLLAND. I am glad to yield.

Mr. BAYH. The Senator has read two editorials referring to campaign contributions to the Senator from Indiana; and both editorials reach the conclusion, or at least the inference that the Senator from Indiana cannot in good conscience oppose the nomination on ethical grounds because of obligations he has to organized labor as a result of contributions.

I just wonder. Does the Senator from Florida associate himself with these inferences and conclusions?

Mr. HOLLAND. Since the Senator puts it that way, the Senator from Florida does think the Senator from Indiana should have disqualified himself and should not have attempted, under his present situation, to have spoken for the interests which are backing him and backing him strongly in this effort.

The Senator from Florida had not proposed to say that unless questioned, but I have never been one of those who run from a question and I must say I have been grievously disappointed in the position taken in this matter by the Senator.

Mr. BAYH. I have great respect for the Senator from Florida, and the fact that my actions would disappoint the Senator is not taken lightly.

Will the Senator yield further?

Mr. HOLLAND. I yield.

Mr. BAYH. Does the Senator feel, after reading the record, that it is impossible for a man in good conscience to disagree with the qualifications of Judge Haynsworth on ethical standards? Does the Senator believe that if a man proposes ethics as his basis for opposition rather than philosophy, labor, or civil rights, that man is being devious?

Mr. HOLLAND. The Senator from Florida does not look into the mind of the Senator from Indiana or the mind of anyone else. The Senator from Florida simply says that when the record in the Senate shows immense financial support obtained by his friend from Indiana from the sources named, and when the Senator from Indiana has fought the battle of these particular people here against the confirmation of the nomination of Judge Haynsworth, he feels the Senator from Indiana has followed a highly unfortunate course, and the Senator from Florida has said so simply because the Senator asked.

Mr. BAYH. I thought the nature of the Senator's association with these editorials should be made clear.

Mr. HOLLAND. Just a moment on that point. The Senator from Florida introduced these editorials as expressive of the high opinion of good people in Florida; and he thought from reading them and other editorials, that they expressed the opinions of most people who have expressed themselves on this subject in writing. The letters of the Senator from Florida indicate the same feeling. He realizes the Senator from Indiana is not elected by the people in Florida. But the Senator from Florida always claims the right and the Senator from Florida always will claim the right to speak in the Senate on what he regards as the opinion of the good people he represents, and he would not expect to make this a personal matter, but an expression of the sound thinking of the fine people in Florida.

The Senator from Indiana brought this on himself when he asked a question which the Senator from Florida cannot answer honestly but in one way.

The Senator from Florida thinks these editorialists expressed a sound view, which is also the view of the Senator from Florida.

Mr. BAYH. I wonder if the Senator from Florida and those who editorialized have looked at all of the campaign contributions and records concerning the Senator from Indiana that are listed according to Federal statute. Or have they looked only at the $68,000 that has been contributed by a number of different groups representing the working men and women of our State?

Mr. HOLLAND. These are working men and women representing organized labor, which made contributions.

Mr. BAYH. Representing working men and women of my State, and I see no other way.

Mr. HOLLAND. The organized labor group made the contribution and——

Mr. BAYH. Yes; they made it from contributions made by members.

Does the Senator realize that my campaign cost between $700,000 and $800,000? The contributions made by the so-called labor bosses represent about one-twelfth of this, whereas the representation of the laboring men and women of my State represents about one-sixth of my constituency. It seems to me that if the Senator is going to suggest I have to be a tool of organized labor, I would have gotten twice that amount.

Mr. HOLLAND. Maybe the Senator should. I do not know what he has done for organized labor. I am simply saying, that to have a man defeated here by statements and efforts and innuendoes of organized labor and civil rights groups would be a great tragedy. When that man has made a fine record in the enforcement of law in this Nation, who is highly respected by his brother lawyers, many of whom I have talked with, and who is highly respected by citizens of this State and his area, it seems to me would be a travesty and a tragedy to have such a man defeated by such an attack.

Mr. BAYH. Mr. President, will the Senator yield further?

Mr. HOLLAND. I yield.

Mr. BAYH. The Senator is entitled to his opinion. I have the greatest respect for it. I think it is possible to have respect for a brother Senator without necessarily agreeing with everything he says.

Mr. HOLLAND. Of course.

Mr. BAYH. I only rise because of the strong inference, if not direct allegation, that my involvement in this matter is because of the antilabor or anticivil rights position of the judge, and that this is directly related to contributions I received from these groups. In my judgment, such an allegation comes very close to the rule of this body which prohibits one Senator from impugning the motives of another Senator.

I suggest I have gone as far as I can, despite allegations of the Senator, to put these matters on a case-by-case basis, to talk only facts in this field of ethics.

For any Senator to cast off these arguments on ethics as specious allegations flies in the face of Senators such as JOHN WILLIAMS, ROBERT GRIFFIN, MARGARET CHASE SMITH, and others, who have expressed agreement with the Haynsworth philosophy on labor and civil rights, but who are concerned about the matter that concerned the Senator from Indiana.

Mr. HOLLAND. I am glad my distinguished friend finds some comfort in the expressions of some of his friends and my friends. All I can say is what I have said already. I think these two editorials speak soundly the views of most Florida people. I can produce many other editorials to the same effect but none to that effect I thought were so well studied, and none I knew to be written by moderate liberals, as are the two editorial writers here, James A. Clendinen, of the Tampa Tribune, and William E. Sweisgood, of the Florida Times-Union in Jacksonville, Fla.

I had not expected to bring any personal matters into this, but I am not going to run away from a question that asks for my personal expression.

Mr. BAYH. I say with envy that the distinguished Senator has been here much longer than I. I have not had a chance to make one-half the contribution to this body and to the country that the distinguished Senator from Florida, who has decided not to run for reelection, has made during his long tenure of services. I do not believe, however, that the Senator from Florida can introduce in the RECORD, reading them as he did, editorials containing the allegations about his colleague from Indiana, without expecting some people to make the reasonable inference that, indeed, the Senator from Indiana did make.

Mr. HOLLAND. The Senator by his questions made it necessary and the Senator from Florida stated how he felt about this matter.

In closing, I am no stranger to judicial ethics. I served for 8 years as judge of a minor court as to jurisdiction in criminal and civil cases, but major jurisdiction in the field of wills, minors, and the like, because it was unlimited in probate matters.

I later received with some pride an offer for an appointment from a Governor of the State of Florida, the offer of an appointment to be a circuit judge, which I declined. I also received an offer from the President of the United States to serve as a district judge of the United States, which I declined. I declined both

offers because my years of experience led me to believe I did not want to be a judge of other people's matters, but an advocate. That is what I have tried to do since then and until now.

I must say I think this man Haynsworth, to whom I am not close at all, has been assaulted and attacked in a way which will bring great discredit upon the Senate in the event such attacks are seriously considered and confirmation is denied.

I think he has, by a long course of conduct, extending through his college days, extending through his war days, and extending through his many years of experience on the next to the highest Federal court, the Circuit Court of Appeals, shown such character, sense of honor, and sense of integrity as well as high legal ability that his nomination as a member of the Supreme Court is entitled to confirmation.

I strongly hope that Judge Haynsworth's nomination will be confirmed.

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

Mr. HOLLAND. I yield.

Mr. ALLOTT. Mr. President, I want to compliment the distinguished Senator from Florida on his remarks and his conclusions. Having served in the Senate with him for 15 years, I shall always be grateful for those 15 years of association. There are few people, if any, whose opinions in such a sensitive and delicate area I value as much as those of the Senator from Florida.

His remarks, coupled with the just-concluded remarks of the Senator from Mississippi (Mr. STENNIS), if I had heard nothing else or read nothing else, would go far toward persuading me of the justness of the position they have taken.

Having served so long with the Senator from Florida and having had 25 years in the practice of law before coming to the Senate, I know of the deep legal knowledge, sense of fairness, and sense of ethics from which the Senator from Florida speaks.

To have him speak in this way on behalf of a man who has never yet had anything proven against him, and when most of Judge Haynsworth's opponents frankly openly now admit they find in him no dishonesty or lack of legal ability, will be persuasive, I am sure, to a great number of Senators.

That these admissions have been made and that the Senator has studied the record and concluded as he has carries great weight. Furthermore, that he has talked with people who have been on the court with Judge Haynsworth and to lawyers who have practiced before him in that Federal appellate jurisdiction, is greatly persuasive to me. It reveals his reputation among those who are in position to know, first hand.

Mr. President, I received a letter the the other day from a Representative in that State—a Democrat—in which he stated the party position, but he concluded by saying, in essence, If I had to go to court and have my case adjudged and I wanted to be completely sure that the judge was fair and impartial and understood the law, I can think of no judge in the United States before whom I would rather appear than Judge Haynsworth.

Mr. President, this merely confirms what the Senator from Florida has said. I appreciate being able to listen to his persuasive arguments, which I believe cannot be answered.

Mr. HOLLAND. I thank my distinguished friend. I have expressed only my own deep convictions on this matter. It has been a great privilege for me to serve with the Senator from Colorado. We have served together on several committees. I have always found him willing to call a spade a spade, speaking from conviction.

He and I happen to be associated in a common view concerning a very serious matter before the country.

I thank the Senator from Colorado.

Mr. MURPHY. Mr. President, I am glad that I was in the Chamber today to listen to the colloquy which has taken place in the past few minutes.

As a longtime member of labor unions, with probably a longer membership than anyone in this body, beginning in 1920, when I first belonged to the Mine Workers of Pennsylvania, I am surprised time after time about statements made about organized labor, that organized labor says this and organized labor does that.

Having had years of experience in the field of labor, I wonder, sometimes, whether it is organized labor speaking or certain labor leaders.

In the old days, there were many who used to speak for organized labor who had not held an election in many years. I remember one important case in which he had not stood for election in 18 years. I remember some of those dealings.

Mr. President, I believe firmly in the right of collective bargaining and in the rights of the laboring man; but it does not necessarily follow that I will always go along with the judgments of so-called labor leaders. My concern over the years has always been with the rank and file.

I was active in helping to form a union in Hollywood. My concern was the same as that of many of my fellow actors, Robert Montgomery, James Cagney, Frank Morgan, and the rest, so that they could put their status as important stars on the line in order to help the small actor, some of whom could not speak very well or very loudly for themselves.

Mr. President, throughout my political career, I am glad to say that I have never asked for the endorsement of organized labor. I did not think it would be fair because I had been a part of it and active so long that I felt I should not go out and say, "Now you owe me something."

I have never been endorsed by organized labor. My opponent in California, before I came to the Senate, was endorsed by organized labor, even though he had no labor record at all. So far as I know, he never belonged to a labor union. But he was endorsed.

Mr. President, I have always opposed labor unions getting involved in politics. I have always held the belief that the job of the labor union was to represent wages, hours, and conditions of work of the working man, that once a labor union gets tied in with one political party or the other, it weakens its position, in my judgment. Such a labor union becomes a pressure group. I have witnessed that since I came to the Senate. I have been accosted in the hallways. They come up to me and say, "Now, you are going to support us, aren't you?" I say, "Yes, if I think you are right, or if I think it is in the best interest of the whole country or my whole State, but not merely because one labor leader, or two or three, decides that this is to be the position."

I was in Hollywood when we were told that if every member of the union did not donate $1, none of us would be permitted to go on the air. I remember that my good friend, Cecil B. DeMille, opposed it. He went to the people of the country, but he was taken off the air. The union had the power to deny him the right to work.

Thus, I have been through these periods of pressure. I know what they are. I think it is a shame if anything like this should be permitted in this Chamber, particularly in the selection of a man who is to sit on the highest legal body in this land.

Mr. President, I have reviewed the record regarding Judge Haynsworth's nomination. I have listened to the debate, I have read the speeches of my colleagues, and I intend to vote for the confirmation of this judge.

A great deal has been written and said about this nomination. It has been one of the most discussed incidents since I have been in this body.

The record of the hearings goes on and on. Here is the record, Mr. President—762 pages of hearings—762 pages of careful examination by those who were determined at the outset, it seems to me, that, regardless, this man's nomination was not to be confirmed.

Why, in the beginning, I was never sure. I thought that perhaps there were some who thought it might be an attempt to preserve the character of the present Court; to deny the new President of the United States the right to make a selection for the Court whose philosophy might be a little different from the Court as it had been constituted.

Then, as the debate went on, it began to revolve around two points—so-called opposition by some labor leaders, and an objection because there was a feeling that perhaps there was racial bias on the part of this judge.

I have listened and I have read and I have studied, and I do not find any evidence of these allegations. I do not find any. As a matter of fact, to the contrary, the more I read, the more I listen, the more I study, the more I am convinced that this man is a highly qualified judge, a very respectable member of his community, enjoys the highest reputation.

How, suddenly, does he become a rascal? Who says that now is the time that we reverse the entire structure of this man's life and reputation? Think of the mental anguish that this must be causing him.

It would be very easy to say, "I would like to withdraw my name," from the very beginning, or the President of the United States to withdraw the name. No great problem. But I think it is to the credit of the President and to the credit of Judge Haynsworth that when we find what has been referred to as the appearance of impropriety is without substance, it would be wrong to withdraw his name. It would be unjust. It would be dishonest.

So the name is not withdrawn. The name is before us. And on Friday, this distinguished body will make its decision.

In reading the record, Mr. President, in listening to the charges, I have been troubled by the charges of prejudice and bias made by some of the opponents. I have also been troubled by the onesided, what seems to me to be highly organized campaign that was conducted by some special interests in the press, television, and the rest, who oppose this nomination.

I believe there are a number of reasons why these charges should be rejected, and I shall explain more fully in a moment.

It is those who do not want a neutral Supreme Court who seem to accuse Judge Haynsworth of being anticivil rights or antilabor. In fact, what many of these opponents want is an avowed partisan, a partisan in agreement with their political philosophies, whose views will correspond exactly with theirs. In other words, they do not want an unbiased man; they want a man with friendly bias, friendly to their particular point of view.

Mr. President, appointments to the Supreme Court cannot and should not be based on whether the appointee's views are biased in any particular direction. To the contrary, insofar as we are able, we should find a man whose point of view should be expressed without bias; that his judgment should be based on the law and the proper practice of the law—equal justice to all under the law.

This distinguished body has a duty under the Constitution to consider the professional capability and the integrity of the nominee, and to advise and consent to the nomination if these criteria are satisfied.

Concern for the Court and for our responsibility counsels us to reject the pressure of those who would attack Judge Haynsworth recklessly, and decide whether their disagreement with the judge's philosophy is sufficient to justify the damage they may inflict upon the Court by using pressure to deny this man his position on the Court.

The very independence of the Supreme Court is threatened if a nominee can be successfully opposed not because he is unqualified, but because his philosophy is opposed. This is dangerous. This is very dangerous.

Judge Haynsworth's record cannot be properly attacked as biased simply because a careful study of the record reveals that he is an intelligent, sensitive, fair, open-minded, reasonable, and even-handed man. Indeed, the irony and unfairness of the organized opposition lies precisely in the fact that those who do not want neutrality have charged him with bias and with prejudice.

The record of the Judiciary Committee's hearings is replete with such evidence. I would like to highlight some of the more important areas to illustrate these points.

Possibly the most vigorous lobbying done against Judge Haynsworth's confirmation has come from some leaders of organized labor. The AFL–CIO has made Judge Haynsworth's nomination a "special" issue. On its face, the AFL–CIO opposition is based on charges that Judge Haynsworth is "antilabor."

In fact, however, this opposition, as I read it, as I understand it, is without merit and based, rather, on the fact that organized labor does not feel Judge Haynsworth is sufficiently biased in what I would consider a prolabor position.

What are the facts concerning Judge Haynsworth's labor record? Simply that, by no objective analysis of his labor record, could one conclude that he is antilabor. The AFL–CIO attempt to make it seem so, in my opinion and in my judgment, is completely unjustified.

No attempt was made to evaluate all of Judge Haynsworth's labor decisions. Instead, they based their attack upon a carefully selected group of cases, the neutral character of which, in my opinion, is distorted.

This body would, I believe, commit a grievous error were it to succumb to such a one-sided opposition without making a complete, full, and independent evaluation of Judge Haynsworth's entire list of decisions in the matter of labor trials.

Such an examination, Mr. President, reveals that there were at least 45 prolabor decisions in which Judge Haynsworth participated. I refer the Members of the Senate to the memorandum in the committee hearings on page 384.

This omission cannot be justified in any serious attempt to reach an objective appraisal of Judge Haynsworth's labor views.

In what perspective shall we place the AFL–CIO attack? While it was arguably proper for the AFL president, George Meany, to state frankly to the committee that "he would not approve of a decision against labor," this is not a position which the Senate can, in good conscience, adopt.

George Meany has a position. He is depended upon to be biased. He is the leader of the labor movement. He must take labor's point of view. He cannot do otherwise. That is his obligation. That is why he was elected.

For the Senate to fail to confirm Judge Haynsworth's nomination, despite the demonstrated lack of substance to these charges, would be to yield to political pressure, I believe, to decree that only nominees with particular political views can serve on the Supreme Court of the United States.

During the committee hearings, Judge Haynsworth's civil rights record was also sharply attacked. Again, a review of the whole record—as opposed to a few cases thrust at us by his opponents—persuades me that these charges against Judge Haynsworth are likewise unjustified. The judge has frequently voted in favor of persons claiming deprivation of their federally protected rights. I refer the Members of the Senate to the cases which appear in the committee report. There are many of them listed there.

Perhaps even more persuasive is the testimony of those who are nationally known for their concern for the protection of the rights of minorities. Prof. G. W. Foster, of the University of Wisconsin, a prominent civil rights advocate who worked on the 1965 school desegregation guidelines, testified in Judge Haynsworth's behalf as follows:

> Judge Haynsworth is not a segregationist and on this point I believe I have some special competence to speak. For more than a decade much of my time has been taken by problems of school segregation. Particularly between the years 1958 and 1966 I came to know a number of the federal judges across the South. For better or worse I am probably more responsible than anyone else for the original HEW School Desegregation Guidelines when they first appeared in 1965.
>
> In the area of racially sensitive cases, I have followed closely the work of the federal courts in the South over the entire span of time Judge Haynsworth has been on the Court of Appeals for the Fourth Circuit. *I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent and open-minded man with a practical knack for seeking workable answers to hard questions.* Here and there, to be sure, were cases I might have decided another way. I am not aware, though, of any opinion associated with Judge Haynsworth that could not be sustained by reasonable views of reasonable men.

Mr. President, here is an expert. He finds no bias. He finds no cause to oppose Judge Haynsworth. He dealt with him. He is the man who wrote the guidelines for desegregation.

He goes on to say:

> *Judge Haynsworth is an intelligent, sensitive, reasoning man. His record as a judge shows him to be a man capable of continuing growth and responsive to the needs for change where needs are persuasively shown to exist.* And in my judgment, the question posed by his nomination is not whether you or I might have made a different nomination but whether Judge Haynsworth possesses the qualities required to become a fine Justice of the Supreme Court. My answer, based on Judge Haynsworth's record and the reputation I know him to have among the Federal judges with whom he has worked, is that he will make a first-rate Associate Justice. [Hearings at 603, 611, emphasis added]

I have read Judge Haynsworth's civil rights decisions, and I agree with Professor Foster's conclusions. Judge Haynsworth has shown a commitment toward ending racial discrimination that is an impressive asset, along with his other qualifications.

I urge the Members of this body to take a careful look at the whole record in connection with this important nomination. Judge Haynsworth is not the average, colorless official—as some of his opponents would have us believe. He has a justly deserved reputation for scholarly analysis and sensitive, even handed, and extremely well-written decisions. This man has applied himself. He is a scholar. He is admired by his fellows.

One illustration of Judge Haynsworth's even-handed, constructive, and unbiased approach to the law is his treatment of the law of criminal procedure—an area of the law which has been the subject of some of the most intense controversy in these late days. An analysis of Judge Haynsworth's record in this area leads me to the same conclusion reached by Prof. Charles Wright, one of the country's leading authorities on criminal procedure, who stated:

> Judge Haynsworth has been in the vanguard, often ahead of the Supreme Court, in protecting persons accused of a crime against any tilting of the scales of justice that might lead to the conviction of an innocent man. At the same time, he has been reluctant to set free a person who is undoubtedly guilty because of some minor imperfection.

I am not a trained lawyer, Mr. President, but this seems to me to be a judge

who has concern for the general welfare as well as for the rights of the condemned, or the man on trial.

Let me give an illustration of just one of many cases.

Judge Haynsworth has done much to make the writ of habeas corpus freely available to those who claimed to have been denied their constitutional rights. In the case of Rowe against Peyton, the Fourth Circuit was asked to consider the vitality of the 1934 Supreme Court decision known as McNally against Hill, which precluded a habeas corpus action against a consecutive sentence to be served in the future. In a most scholarly opinion, Judge Haynsworth correctly anticipated that the Supreme Court would no longer follow its earlier precedent. In addition to displaying the judge's scholarship, that opinion exemplifies Judge Haynsworth's ability to predict changes in doctrine and to create just solutions to problems in an area of traditional judicial cognizance. Judge Haynsworth emphasized that it was to the advantage of both the defendant and the State to have a present remedy to test the validity of future sentences, stating:

The problem we face simply did not exist in the 17th century.

He went on to state:

Now that recently it has arisen, if there is a substantive right crying for a remedy, it seems most inappropriate to approach a solution in terms of a 17th century technical conception which has no relation to the context in which today's problem arises. It is to the great interest of the Commonwealth and for the prisoner to have these matters determined as soon as possible, when there is the greatest likelihood that the truth of the matter may be established. Justice delayed for want of a procedural remedial device over a period of years, is indeed justice denied to the prisoner and, in an ever larger sense, to the Commonwealth of Virginia.

The problem we face simply did not exist in the Seventeenth Century. Now that recently it has arisen, if there is a substantive right crying for a remedy, it seems most inappropriate to approach a solution in terms of a Seventeenth Century technical conception which had no relation to the context in which today's problem arises. (at 713)

It is to the great interest of the Commonwealth and to the prisoner to have these matters determined as soon as possible when there is the greatest likelihood the truth of the matter may be established. Justice delayed for want of a procedural, remedial device over a period of years is, indeed, justice denied to the prisoner and, in an even larger degree, to Virginia. (at 715)

The law today abhors a right without a remedy just as the common law did. The genius of the common law was the improvisation of remedies to obtain adjudication of substantive rights. * * * Our recitation of its history discloses that the writ of habeas corpus has not been a static thing. There is nothing in that history to suggest that it should be restricted to the need of a much earlier time. (at 716–17)

The State brought the case to the Supreme Court. Said a unanimous Supreme Court:

Writing for a unanimous court, Chief Judge Haynsworth reasoned that this Court would no longer follow *McNally* [the earlier Supreme Court decision], which in his view represented a 'doctrinalre approach' based on an 'old jurisdictional concept' which had been 'thoroughly rejected by the Supreme Court in recent cases.' We are in complete agreement with this conclusion and the considerations underlying it. (*Peyton* v. *Rowe* (1968), 391 U.S. 54, 57.)

The willingness of a unanimous Supreme Court so precisely to quote Judge Haynsworth's criticism of one of its former decisions in the course of agreeing with his views is indeed a tribute that is without parallel. The decisions of Judge Haynsworth in the area of appellate review of prisoners' petitions are quite obviously not those if a mediocre judge. This is an outstanding man. His entire record points this out and delineates it clearly. Nor are they the decisions of an insensitive judge who has been too much the businessman, as some would have us believe. Instead, Judge Haynsworth has eagerly undertaken the painstaking consideration of these petitions, usually brought by friendless, helpless, and impoverished men who have already been afforded the usual channels of redress, and whose claims have been found meritless. An examination of Judge Haynsworth's criminal decisions, and numerous other areas, reveals the work of a judge who is utterly dedicated to his office and to his duty and to his chosen calling—a purveyor of justice.

After a thorough review of the record, I have concluded that Judge Haynsworth is extraordinarily well qualified. I urge the Members of the Senate to make their own independent study, make the study and do it carefully. We should look at the entire record and not take the pieces out of context. A nominee to the Supreme Court of the United States should not be judged on the basis of accusations alone.

Judge Haynsworth's professional qualifications are impeccable. He received the full endorsement of the American Bar Association Standing Committee on the Federal Judiciary after their thorough investigation of his opinions and numerous interviews with judges and lawyers in the Fourth Circuit. He received the extraordinary tribute of 16 former American Bar Association presidents, who publicly announced their support of his nomination. I do not think this has ever happened before. As Judge Walsh said, summarizing the ABA committee investigation:

All of the persons interviewed regarding Judge Haynsworth expressed confidence in his integrity, his intellectual honesty, his judicial temperament and his professional ability.

Mr. President, what more can we seek? What other qualities are you looking for? What happens to this unfounded attack that we hear so often referred to as the appearance of impropriety—not the substance, not the act, not the fact, but the appearance of impropriety.

I have discussed Judge Haynsworth's qualifications and the nature of the charges made against him because I am persuaded that the Senate is being subject to irresponsible political pressure to reject the nomination of a distinguished jurist who will make an outstanding Associate Justice. For the Senate to yield to this political pressure, despite the demonstrated lack of substance in the attacks made against Judge Haynsworth, would mean that henceforth only nominees with particular views, or acceptable to certain organized groups, are entitled to sit on the Supreme Court. Oh, this is a very important decision. This is more than merely a vote on a man's confirmation. This is an extremely important decision. This result would undermine the independence of the judiciary as a whole and the Supreme Court in particular. Instead of carrying out the law as they see it, judges will be expected to make "popular" decisions. May the good Lord help us and preserve us from that. Nominees will be subject to the whim and clamor of constituents of Senators who are fighting the old war against the South or the new war in Vietnam or of the strange half-heated up war in the Middle East.

I urge the Senate not to follow this disastrous course. The true liberal will realize, upon reflection, that this Nation cannot be so divided and remain the Nation of all the people. There must be a tolerance for a diversity of views, within the Nation, and on the Supreme Court in particular.

Mr. President, I insist that just as the Supreme Court cannot decide constitutional issues on the basis of political expediency, the Senate cannot afford to deny confirmation on the basis of political expediency. To do so would be to undermine the Nation and the Court's concern for the rights of all groups, and to establish the practice that a nomination to the Supreme Court can be blocked by the lobbying of powerful special interest groups concerned with only one side of the issue. This is justice with half of the scales gone. It is unthinkable. It must not be permitted.

The Senate has a duty under the Constitution to consider the professional capability and integrity of the nominee, and to advise and consent to the nomination if these criteria are satisfied. It would be a serious error for this body to give controlling weight to the clamor of groups who are opposing the nominee because he is not biased in their favor, and for reasons having nothing to do with this nominee or the Supreme Court.

I commend President Nixon for making this nomination. Although the attacks have been furious, the charges against Judge Haynsworth have been shown to be without foundation insofar as I have read and studied them. The evidence is overwhelming that Judge Haynsworth is a conscientious and able judge who is widely regarded for his intellectual honesty, his integrity, and his professional ability.

President Nixon has been unwavering in his support of the nominee. In my opinion, Mr. President, Judge Haynsworth deserves that support, and I ask that the Senate advise and consent to Judge Haynsworth's nomination.

The other day I rose in the Chamber to speak briefly about the term we have heard so often of late—"the appearance of impropriety." No rules have been broken, but somebody said it might look as though a rule had been broken. The whisper, the rumor, the tool of the character assassin.

I have had some experience in those areas. In my town of Hollywood, years ago, we went through a great deal of that type of character assassination. No substance, no direct confrontation, no

direct accusation, but the whisper—the appearance of impropriety.

I am sure that had there been impropriety and had the facts of impropriety been obtainable, they would have been brought forth. We would have heard them in this Chamber. But, so far as I know, we have not. I have not heard them. I have not been able to find them in the record. It is the appearance.

As I said a few days ago in this Chamber, I recall an instance when an attempt was made to destroy by character assassination a man who is a good friend of mine. There was a rumor, then it was published, then it was recited, and then it was spread across the country like wildfire, that he had done something wrong. It was an attempt to destroy his political life.

Then in preparation was a second rumor—that he had an inordinate amount of furniture in his house. Where did he get the money to buy it? Nobody said he had done anything wrong. But they posed the question, and the question took on all the characteristics of assault, of accusation. Where did he get it? The fact of the matter is that he did not have it. There was no truth. It was, once again, the appearance of impropriety, started by a rumor, a dishonest, evil rumor, without any basis or foundation.

Then there was a third attempt, which was never activated but was prepared—a letter which, once again, added coals to the fire, in the attempt to destroy this man's political character, his political life.

I was privy to the entire story. I knew about it. It was part of my duty at the time to find out about it. Three attempts were made to create the appearance of impropriety. The man against whom this was designed is now the President of the United States, who enjoys, I believe, the confidence at this moment of a higher percentage of the people of this great country than any other President in my lifetime. Yet, this entire, great political career might have been destroyed by the creation of the appearance of impropriety.

Mr. President, this has been a most important experience for me. I have listened to the debate and I have read the record, and I would not presume to influence the decision of any colleague. It would be improper. But I would beg my colleagues to read the entire record, read the carefully prepared remarks of the distinguished Senator from Colorado that are in the record, and read the remarks of the Senator from South Carolina (Mr. HOLLINGS)—a magnificent presentation. I am not a lawyer; I have had no legal training; but I have an appreciation and an understanding when I see a properly prepared case. I understand logic, I know truth from falsehood, I know fact from fiction, and I know where the appearance begins and where the actuality stops.

The vote which will occur on Friday, I believe, is as important as any vote that has occurred in this Chamber since I came to the Senate, and we have had some very important votes.

So, Mr. President, I beg that the attempts of the outside pressure groups be laid aside. They are not representative. They do not count here. This matter is clearly defined: Is the man capable? Is he honest? Is he trustworthy? What is his reputation among his fellows? If we look at it carefully, I am quite sure that a great majority of my colleagues will join me in voting to confirm the nomination of Judge Haynsworth.

I yield the floor.

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

Mr. MURPHY. I am glad to yield.

Mr. ALLOTT. First, I appreciate the very kind remarks the Senator has made about my discussion the other day of this matter.

I have been following this debate very closely, have studied the record, have been reading stories in the newspapers about it, and have listened to the news commentaries in the evening on television. As I gather at this point, some of those who are self-proclaimed in opposition to the confirmation of this nomination most unshakably seem to concede—there may be an exception to this, but I do not recall one—that there is no question of this man's honesty. Is that the impression of the Senator from California?

Mr. MURPHY. That is exactly my impression.

Mr. ALLOTT. Second, there is no question about his integrity.

Mr. MURPHY. The Senator is absolutely correct.

Mr. ALLOTT. There is no question about his legal ability.

Mr. MURPHY. I agree. That is the impression I have received from all of the media, throughout the hearings.

Mr. ALLOTT. It is unfortunate that the stories which were issued, the press releases, in the first instance created the impression that these things did exist. Now we are some 6 weeks later, perhaps more than that, and some of these impressions of dishonesty and lack of ethics still persist, despite the fact that those who originally made the statements, and even though their opposition continues, now say that these things are not true, that there is no question of the man's honesty, no question of his integrity, and no question of his legal ability.

Mr. MURPHY. After the damage has been done. It is like throwing a pebble into a clear stream, into the still water. Once those ripples start, it is impossible to stop them.

I wonder if those who started the rumors at the outset should not have been more careful in their accusations, if they had perhaps come to their second conclusion first, if they had perhaps waited until the hearings were finished, until the debate was finished, and then said, "We think this man is honest, decent, intelligent, and capable," or, "We still think that there are reasons why his nomination should not be confirmed."

This is the whole point, and the Senator has made it so well, just as he did the other day—the impropriety of this approach, of the accusation which presumes, assumes, and sometimes even creates the guilt which does not exist.

Mr. ALLOTT. I have been somewhat impressed by some of the inconsistencies I find. I was much impressed with the words of praise of Judge Haynsworth by the distinguished senior Senator from Maryland. I do not know how he could have been more forceful in praise of the man, his integrity, ability, and standing on the court. Yet, he has subsequently come out in oppositon to the nomination.

Mr. MURPHY. He is going in both directions at one time.

Mr. ALLOTT. He was either wrong in the first instance, in which event he should perhaps ask to have his remarks corrected, or he is wrong now.

As far as I know there is only one relevant constitutional qualification for a member of the Supreme Court. Actually, I have not checked it recently, but I am sure it is true, that a member of the Supreme Court does not even have to be a member of the bar.

Mr. MURPHY. I did not know that. Does the Senator mean there is still a chance for me?

Mr. ALLOTT. There is still a chance for the Senator from California.

The one thing that is necessary is that a member of the Supreme Court must be able to take the oath to support the Constitution and the laws of the United States.

I know of no other relevant qualifications for a judge. I would say that if a man supports the Constitution, the integrity and honesty would have to go as a corollary to that.

I wish to make one other point. This matter has been argued and debated very much. I compliment the distinguished senior Senator from California because he feels about this matter the way I do.

Here is a man who spent his life as a lawyer. His father's life was spent as a lawyer; and his grandfather's life was spent as a lawyer. All of that took place in one State. I wonder if these people who so glibly—and I do say "glibly"—said, "perhaps he raised an appearance of lack of ethics"—thought about the man, his family, his children, the sons he has, his sons' sons, and his daughters' sons and daughters. He will probably go through life, if his nomination should not be confirmed, remembered as the man the Senate refused to confirm.

I do not know whether we all realize how much we hold when we hold the good name, something a man spends a lifetime creating, in the palm of our hands. If anyone had shown dishonesty, if anyone had shown a breach of ethics, that he has represented two people at the same time on opposite sides of the fence, then I could seriously consider whether or not the nomination should be confirmed. But all of the substantive argument seems to have evaporated and we are left only with the preconceived notion people have formed in their minds.

I am reminded of an old saying by a man who was a very great theologian, a man who was the bishop of Colorado at one time, Bishop Irving P. Johnson, who said:

> When most people say they are thinking, they are merely rearranging their prejudices.

I realize, as does the Senator from California, and he feels as strongly about

this matter as I do, that we are dealing with a man's life.

A while ago the Senator from Florida spoke of the reasons why he left the bench. He stated that he was tired of settling things in people's lives. That was why I left the district attorney's office of my State. I thought I did not want to have that much power over anybody's life; and like the Senator from Florida, I decided I would rather be an advocate. That is why I am here.

I hope and pray that when the Senate votes they will think not only of making a decision one way or another, but remember that they hold in the palm of their hands a man and his family and what they do will affect that family for a long, long time to come.

I know the Senator feels as deeply as I do about that. I appreciate the Senator's wonderful remarks here today and I appreciate the Senator permitting me to intervene.

Mr. MURPHY. Mr. President, I thank the distinguished Senator. As always, his remarks are a very helpful addition. The presentation which the Senator made several days ago was one of the most masterly presentations I have ever seen. I hope all Senators will take the time to read his presentation and understand it. Let us be certain that we in this Chamber are not guilty of bias in this consideration.

Let us make certain in our voting that we approach this matter with the same degree of honesty, integrity, and intelligence that we hope to find in Judge Haynsworth, and which he seems to enjoy from the record of his life and his family; and the respect in which he is held.

I hope that when we pass judgment we will be able to pass the same test that we have imposed on this distinguished judge in our considerations here.

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

Mr. MURPHY. I yield to the Senator from Colorado.

Mr. ALLOTT. I heartily agree with the Senator.

I have just picked up from my desk an article entitled "Opponents Cruelly Unfair to Haynsworth," which was written by James J. Kilpatrick, and published in the Washington Star on October 26, 1969.

Among other things Mr. Kilpatrick said in the article:

> What we are witnessing, in the trumped-up "case against Haynsworth," is a triumph of the propagandist's craft. Into a smoking pot, the judge's opponents have flung a shrewd mixture of truth, half-truth, whole lies, base insinuations, and old-fashioned politics. By heating up this farrago, they have created great clouds of unfounded doubt; and they have succeeded in making this phony doubt the very basis of their opposition.

In a subsequent paragraph, Mr. Kilpatrick said:

> The trouble is that the smokescreen is so thick, that busy men—and Senators are busy men—cannot conveniently take the time to penetrate the fog.

Would the Senator object if I were to ask unanimous consent that the article be printed in the RECORD at this point?

Mr. MURPHY. I would be pleased to do so on behalf of the Senator.

Mr. ALLOTT. I thank the Senator.

Mr. MURPHY. Mr. President, I ask unanimous consent that the article to which the Senator referred be printed in the RECORD at this point.

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

OPPONENTS CRUELLY UNFAIR TO HAYNSWORTH

(By James J. Kilpatrick)

The question is, or will be within the next two weeks: Will the Senate advise and consent to the nomination of Clement F. Haynsworth to become an associate justice of the Supreme Court?

It is a pity that 40-odd members of the Senate already have indicated their intention to vote against confirmation. Once a Senator has taken a position publicly, he hates publicly to change his mind. Yet the case against Haynsworth is so flimsy, so specious, so lacking in real substance, that many of these forty-odd Senators might be prompted by a close study of the record to reconsider their opposition.

What we are witnessing, in the trumped-up "case against Haynsworth," is a triumph of the propagandist's craft. Into a smoking pot, the judge's opponents have flung a shrewd mixture of truth, half-truth, whole lies, base insinuations, and old-fashioned politics. By heating up this farrago, they have created great clouds of unfounded doubt; and they have succeeded in making this phony doubt the very basis of their opposition.

It is cruelly unfair to Haynsworth. The South Carolinian is not the most brilliant nominee that Nixon might have found. He lacks color; he lacks style; and these can be important on the Court. Yet other qualities also are important on the Court: self-restraint, precision, a sense of strict construction. These Haynsworth has; and if he is not a Holmes or Hughes or Brandeis, he is a cut above the average nominee of this century.

On one point I am absolutely satisfied: I am satisfied of Haynsworth's integrity. When the record is seen clearly, and not through a smokescreen, the record discloses not even the appearance of impropriety.

The trouble is that the smokescreen is so thick that busy men—and Senators are busy men—cannot conveniently take the time to penetrate the fog. It may be instructive to see how such a smokescreen is contrived.

In his statement of Oct. 8, Indiana's Senator Birch Bayh charged that in at least five cases, Judge Haynsworth "held a financial interest in one of the litigants substantial enough to require disqualification under 28 USC 455 and to constitute impropriety under the canons of judicial ethics." It is a serious charge; if proved, it would justify Haynsworth's rejection.

But it is not true. One of the five cases listed by the Senator was Merck v. Olin Mathieson Chemical Corporation. Judge Haynsworth never held stock in either corporation. Bayh's staff was in error. Another of the listed cases was Darter v. Greenville Community Hospital. Haynsworth's "substantial" holding amounted to precisely one share—one pro forma share, paying a 15-cent annual dividend—in his home town's hospital. A third case was Farrow v. Grace Lines. Haynsworth held no stock in Grace Lines. He did hold 300 shares in W. R. Grace & Co., which owned Grace Lines along with 52 other subsidiaries. The Farrow case involved a $50 judgment.

Still another of Senator Bayh's charges was that Judge Haynsworth violated ethical canons by not disqualifying himself in Kent Mfg. Corp v. Commissioner of Internal Revenue. But it turned out, after the Senator's charge had been added to the stew, that Bayh had the wrong Kent Manufacturing Corporation. Sorry 'bout that.

Very well. I do not impugn Bayh's motives, only his staff work. But the damage is done. In a race of this kind, which must be quickly run, truth cannot catch up with falsehood. A Senator who might be predisposed to vote against Haynsworth, if only to soothe black and labor interests, is likely to recall vaguely that Bayh listed a whole string of cases in which the judge was a big stockholder in companies before his court. The refutation of these baseless charges will go unnoticed.

Perhaps Nixon himself should not have accused Haynsworth's opposition of engaging in vicious character assassination. Presidents are expected to speak in softer accents. Yet that is exactly what the case against Haynsworth amounts to. It is like John Randolph's dead mackerel in the moonlight, a work of artistry that both shines and stinks.

Mr. ALLOTT. Mr. President, in the article by Mr. Kilpatrick, I believe the sentence following that which I last quoted is the most pertinent:

> It may be instructive to see how such a smokescreen is contrived.

Mr. MURPHY. Mr. President, the Senator from Colorado has raised a very important point. In these days of communication at the speed of light, where we have mass media, where we are told that every night there are 40 million people looking at television screens, where we are told about the big audiences attracted by the big stars, audiences of 75 to 80 million people and events such as the lunar landing will command an audience in numbers unheard of, I think how cautious we must be of the work of the propagandists. We have seen this in the war in South Vietnam; we have seen one of the most respected newspapers print figures taken out of propaganda written in Hanoi, without explaining to the reader and without telling the listener the source.

So in these days, the point the Senator from Colorado raises about propaganda is important. The Senate has an obligation to make certain that we deal in basic facts; that we cut through propaganda; that we cut through all appearances of impropriety and base our judgment on actual facts.

As I said in conclusion before, we should ask ourselves: Is this man honest, capable, and intelligent? Is he a decent man? Is he a good jurist? Will he make a good Associate Justice? The answers to these questions should be the basis of our judgment.

I yield the floor.

Mr. BAYH. Mr. President, a copy of a letter to Senator EASTLAND has been sent to me by one of its writers, professor of law, Herman Schwartz, of the State University of New York at Buffalo. Professor Schwartz and several other professors, who signed the letter, believe, as I do, that Judge Haynsworth was under no duty to sit in the Darlington case, which has been discussed so much in the Judiciary Committee and on the floor of the Senate.

I ask unanimous consent that the letter be printed in the RECORD, for the consideration of the Senate and the public.

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

NOVEMBER 12, 1969.

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

DEAR SENATOR EASTLAND: In a recent appearance before the Senate Judiciary Committee on the Nomination of Clement F. Haynsworth, Jr., to be an Associate Justice of the Supreme Court of the United States, John P. Frank, Esq., testified with respect to whether Judge Haynsworth should have voluntarily recused himself from the *en banc* adjudication of *NLRB* v. *Darlington Mills, Inc.*, 325 F. 2d 682 (1963) because of his interest in Carolina Vend-A-Matic Co., a supplier of one of the litigants. Mr. Frank stated that since, in his judgment, Judge Haynsworth "was not disqualified, it was under the strict federal rule of duty, his plain responsibility to participate, and he would have shirked his duty if he had not done so." Although noting a special circumstance supporting Judge Haynsworth's decision to sit, Mr. Frank stressed that this obligation not to recuse himself existed "regardless of that circumstance." Hearings 121. Judge Lawrence E. Walsh, Chairman of the ABA Standing Committee on the Federeal Judiciary, concurred in this judgment. Hearings 139. With all due respect to their views, and in full recognition of Mr. Frank's expertness in this area as reflected both in his published writings and the quality of his testimony, the position that under the law Judge Haynsworth would somehow have been derelict in his duty had he voluntarily recused himself from participating in the determination of the case seems unsound.

1. *A judge's discretion when not legally disqualified.*

Mr. Frank's Memorandum and testimony argue and imply that if a judge is not subject to involuntary disqualification, he must sit. But there is surely an obvious distinction between *requiring* a judge to disqualify himself for interest, bias or other reason, and *allowing* him to, in order that "justice . . . satisfy the appearance of justice." *Offutt* v. *United States*, 348 U.S. 11, 14 (1954). Both the possibility of such an option, and examples thereof, are set forth in the very cases cited by Mr. Frank and elsewhere. Thus, in *Wolfson* v. *Palmieri*, 396 F. 2d 121 (2d Cir. 1968), the Court found that the affidavits presented were legally insufficient to show the trial judge's bias under 28 U.S.C. § 144, but added:

"To be sure, there are circumstances in which a judge may wish to rescue himself although a legally sufficient affidavit of bias and prejudice could not be presented against him. But whether such considerations make it wise to withdraw must be left to the informed discretion of the individual trial judge . . . The state of mind of the defendant cannot be made the test for the selection of the trial judge. On the other hand, if there be a real doubt created as to prejudice, this alone may be an important factor to be considered by the judge." 396 F.2d at 125–126. (emphasis added.)

The same point was made in a concurring opinion by Chief Judge Hastie in *Green* v. *Murphy*, 259 F.2d 591 (3rd Cir. 1958).[1] After finding the affidavits inadequate, he said:

"This does not mean that the trial judge cannot or should not in all the circumstances of this case, including the understandable indignation and irritation disclosed by the opinion on the question of disqualification, consider whether, however free of bias he may feel, the also important appearance of complete impartiality in the administration of justice would not best be maintained by stepping aside. *Judges from time to time elect not to try cases, which they are sure they can try fairly and objectively, because of their concern to avoid any substantial doubt which circumstances beyond their control may create in the public mind about the impartiality of their administration of justice in the matters at hand.* But this consideration must be left to the discretion and sensitive perception of each trial judge in the circumstances of each case." 296 F.2d at 595–596. (emphasis added.)

This option was availed of by a judge in litigation involving James Hoffa, as noted in another case cited by Mr. Frank, *United States v. Hoffa*, 382 F.2d 856 (6th Cir. 1967). The Court of Appeals noted that "after ruling that the affidavit was insufficient, [the trial judge] voluntarily and contemporaneously recused himself." 382 F.2d at 861. See also *Lampert v. Hollis*, 105 F. Supp. 3 (E.D.N.Y. 1952) where, despite a ruling that his shareholding in one of the litigants was much too remote (20 shares out of 13,881,016), the trial judge nevertheless notified the parties of his interest and apparently offered to withdraw; the parties agreed he should sit.

That there must be this option seems obvious. Legal disqualification is an extreme measure, particularly when it arises in the context of one judge passing on another's refusal to recuse himself, as so many of these cases do; it is especially unappealing when the issue arises, as it not infrequently does, in the context of an attack on a judgment already rendered on the merits, by a disappointed litigant seeking a way to reverse the judgment. See, *e.g., In re Farber*, 260 Mich. 652, 245 N.W. 793 (1932); *Tucker v. Kerner*, 186 F.2d 79 (7th Cir. 1950); *Webb v. Town of Eutaw*, 9 Ala. App. 474, 63 So. 687 (1913); *Darlington v. Studebaker-Packard Corp.*, 261 F.2d 903 (7th Cir. 1959); cf. *Voltmann v. United Fruit Co.*, 147 F.2d 574 (2d Cir. 1945) (the appellate court observed that the trial judge learned during the trial that his son-in-law was a partner in the law firm of one of the parties and while he probably would have disqualified himself had he learned of this *before* trial, he need not have disqualified himself *after* trial began.) The distinction was drawn sharply in *Farber*, a case much relied on by Mr. Frank, where the judge owned shares in a bank that had loaned money to the bankrupt. Rejecting an attempt to set aside the judge's decree solely because of the ownership, the Court said:

"The claim was not made before decree. The bank is not a party to the suit. The record did not disclose that the corporation is indebted to the bank. It is not claimed that Judge Parker knew there was such a debt. *The question, therefore, is one of law, not affected by consideration of propriety or delicacy.*

"Where a judge, or a corporation of which he is a stockholder, is not a party to the suit, the interest which will disqualify him must be a direct interest in the subject-matter of the litigation or in the outcome of the suit, so that he or the corporation will be directly affected through pecuniary or property loss or gain or accrual of right or liability. [citing authority]

"Without anticipating the effect of special circumstances, in any given case, *especially when brought to the attention of the court before hearing*, a general rule of law that a a judge is disqualified from sitting in the case because a corporation, of which he is a stockholder, is a creditor of one of the parties, has no foundation and reason, nor does it bear any relation to the preservation of the court from the shadow of suspicion which is the purpose of the statute." 245 N.W. at 795. (empbases added.)

2. *The substantiality of Judge Haynsworth's interest.*

Considerations of this kind permitted—and perhaps should even have encouraged—Judge Haynsworth not to sit on the *Darlington Mills* case. For it cannot be said, as Mr. Frank seems to, that Judge Haynsworth's interest in the litigation was so clearly negligible, and his eligibility to participate so clearly beyond doubt, that voluntary recusal was not even to be considered. See his references to the *Farber* and *Webb* cases at Hearings 130, discussed below. Judge Haynsworth was a founder, a one-seventh owner of, and still much involved, both financially and through his wife, with a supplier of one of the litigants. His situation was similar to that in *Commonwealth Coatings Corp. v. Cont. Cas. Co.*, 393 U.S. 145 (1968), where the Court set aside an arbitration award because one of the three arbitrators of a unanimous decision had not disclosed that he had performed services for one of the parties during the preceding four to five years. Admittedly, *Commonwealth* arose five years later, but it hardly seemed to apply principles which were novel, at least as to judges. Nor was the Court treating arbitrators more stringently than judges, as both Mr. Frank and Judge Walsh asserted. All the opinions filed in the case—the majority, concurrence and dissent—indicated that if anything, they were applying looser standards for arbitrators than for judges. The only indication to the contrary appears in one statement in the majority opinion: at one point, the Court commented that because arbitrators are triers of fact and law, they should be even "more scrupulous." Apart from this brief remark, however, the opinions continually relied on well-established judicial principles, the majority opinion saying in its very first sentence:

"At issue in this case is the question whether elementary requirements of impartiality *taken for granted in every judicial proceeding* are suspended when the parties agree to resolve the dispute through arbitration." *Id.* at 145. (emphasis added.)

The Court continued:

"We have no doubt that if the litigant could show that a foreman of the jury or a *judge in a court of justice* had, unknown to the litigant, any such relationship, the judgment would be subject to challenge . . . Nor should it be at all relevant, as the Court of Appeals apparently thought it was here, that '[t]he payments received were a very small part of [the arbitrator's] income . . .' For in *Tumey* the Court held that a decision should be set aside where there is 'the slightest pecuniary interest' on the part of *the judge. . . .*" *Id.* at 148. (emphasis added.)

And the Court relied on Canon 33 of the Judicial Ethics which reads as follows:

"33 Social relations . . . [A judge] should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that a social or business relations or friendships constitute an element in influencing his judicial conduct."[2] *Id.* at 149–150 (brackets in original.)

The concurrence implied that the standards are even higher for judges by saying:

"The Court does not decide today that arbitrators are to be held to the standards of judicial decorum of Article III judges, or indeed of any judges. It is often because they are men of affairs, not apart from but of the marketplace, that they are effective in their adjudicatory function." *Id.* at 150.

And the dissent agreed in this issue, concluding:

"Arbitration is essentially consensual and practical . . . The Court applies to this process rules applicable to judges and not to a system characterized by dealing-on-faith and reputation for reliability." *Id.* at 154–155.

[1] This case was not noted by Mr. Frank.

[2] The Court also seemed to indicate that judges should "sever all their ties with the business world," in pointing out that arbitrators could not. 393 U.S. at 148–149.

The *Farber* and *Webb* cases, cited by Mr. Frank, do not deny the delicacy of the situation and the necessity for choice, despite their holdings that a judge's mere shareholding in a customer is insufficient ground to disqualify him. In both cases, the issue was whether the interest was sufficient to actually set aside a judgment already rendered, a quite different question, as noted above and in *Farber*, from voluntary recusal prior to decision. Moreover, both cases seemed to involve mere shareholding. Thus, the *Webb* case involved a judge's shareholding in a bank which had loaned money to a litigant. In rejecting this as a basis for disqualification, the Court indicated how limited was its holding, saying:

"We are not of opinion that a presiding judge is shown to be disqualified to preside in a cause by proof of the *bare fact that he is a stockholder in a corporation* to which one of the parties is indebted" (emphasis added.)

The record shows that Judge Haynsworth's involvement in Vend-A-Matic obviously involved much more than the "bare fact that he is a stockholder in a corporation."

3. *A judge's obligation to sit.*

This is not to say that a judge may recuse himself for the wrong reasons, that is, simply in order as Senator Hollings put it, "to avoid hard or distasteful decisions." Hearings 38. As the oft-cited language in *In re Union Leader Corp.* put it, "There is as much obligation on the judge not to recuse himself *when there is no occasion* as there is for him to do so when there is. 292 F. 2d 381, 391 (1st Cir.) *cert. denied,* 368 U.S. 927 (1961) (emphasis added.) But this statement does not eliminate the need for judgment to determine "when there is no occasion" and no one could possibly have faulted Judge Haynsworth for concluding that his interest in Vend-A-Matic was such that he should withdraw himself from the case.

This is also not to deny that there are occasions when a judge should sit. Mr. Frank relies heavily on the opinion of Judge Rives in *Edwards* v. *United States,* 334 F. 2d 360, 362 n. 2 (5th Cir. 1964). In that case Judge Rives had been the dissenter in a 2–1 decision. When the case was set down for rehearing *en banc,* both members of the majority were no longer around to sit, one having died and the other being ineligible to sit because he was a visiting judge. The absence of the members of the earlier majority induced doubts in Judge Rives as to whether he should sit, but after reflection, he decided to participate. With all respect to the scruples of one of our most respected judges, Judge Rives' doubts seem quite unwarranted, for they apparently rested on the premise that the disagreeing judges of the earlier panel are the primary advocates of the contending viewpoints, and not the litigants themselves. This is, of course, a highly dubious proposition which finds no support in any statutory or other authority, but rather, as Judge Rives indicated, conflicts with clearly applicable precedent.

In the end, many of the arguments for an alleged obligation on Judge Haynsworth to sit seem to come down to arguments of necessity—primarily, that there would not have been a full court for an *en banc* hearing. But in the first place, Mr. Frank, as noted, eschews reliance on such special circumstances. Moreover, the common-law doctrine of necessity has usually required much more. As stated in the old leading case of *In re Ryers,* 72 N.Y. 1 (1878):

"Upon the facts of this case, as already stated, we may formulate a rule thus: That where a judicial officer has not so direct an interest in the cause or matter as that the result must necessarily affect him to his personal or pecuniary loss or gain, or where his personal or pecuniary interest is minute, and he has so exclusive jurisdiction of the cause or matter, by Constitution or by statute, as that his refusal to act will prevent any proceeding in it, then he may act so far as that there may not be a failure of remedy, or, as it is sometimes expressed, a failure of justice." 72 N.Y. at 15.

In a more recent case, a formal disqualification was ordered of one of three members of an administrative board even where one of the remaining two had abstained, the Court noting that a quorum would still have been possible. *Township Committee of Freehold Twp. v. Gelber,* 26 N.J. Super. 388, 98 A.2d 63 (1953); compare *Gordy v. Dennis,* 5 A.2d 69 (Md. Ct. Apps. 1939) (because disqualification would affect all the judges in a case involving a tax on judges' salaries, it was not required.) The same point can surely be made here where four judges remained.

4. *Conclusion.*

The Supreme Court said in *In re Murchison,* 349 U.S. 133 (1955):

"Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that 'every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law.' *Tumey v. Ohio,* 273 U.S. 510 532. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.' *Offutt v. United States.*" 348 U.S. 11, 14

On the applicable facts and law, Judge Haynsworth would not have "shirked his duty" had he decided that because of his interest in a supplier of one of the parties, the considerations set forth in *Murchison* and *Offutt* justified his voluntary recusal.

Respectfully submitted,

Kent Greenawalt, Michael Sovern, H. Richard Uviller, professors of law, Columbia Law School.

Vern Countryman, professor of law, Harvard Law School.

Alex Brooks, Leonard Chazen, Eva Hanks, professors of law, Rutgers—The State Univ. (Newark).

James B. Atleson, Robert B. Fleming, Mitchell Franklin, Paul Goldstein. Jacob D. Hyman, Kenneth F. Joyce, Al Katz, David R. Kochery, Joseph Laufer, W. Howard Mann, Robert Reis, Herman Schwartz, professors of law, State University of New York at Buffalo.

MESSAGE FROM THE HOUSE

As in legislative session, a message from the House of Representatives by Mr. Bartlett, 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. 1072) to authorize funds to carry out the purposes of the Appalachian Regional Development Act of 1965, as amended, and titles I, III, IV, and V of the Public Works and Economic Development Act of 1965, as amended.

ORDER FOR ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock noon tomorrow.

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

SUPREME COURT OF THF UNITED STATES

The Senate, in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

INTRODUCTION

Mr. FONG. Mr. President, the Senate is now considering the nomination of Judge Clement F. Haynsworth, Chief Judge of the Fourth Circuit Court of Appeals, to be Associate Justice of the U.S. Supreme Court.

Article II, section 2, clause 2, of 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."

A distinguished and very learned former colleague, Senator Paul Douglas, described this power of advice and consent conferred on the Senate as being substantial and as having great significance in our scheme of government. He said:

The advice and consent of the Senate required by the Constitution for such appointments (to the Federal 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 legislative and the executive, it was believed that the Judiciary would be more independent.

Under our Constitution, the power of the President to nominate constitutes only half of the appointing process. The other half lies within the jurisdiction of the U.S. Senate, on which has been conferred the solemn constitutional duty to confirm or deny confirmation of a nomination.

As Alexander Hamilton pointed out in his Federalist Paper No. 76, this requirement of senatorial approval would "be an excellent check upon a spirit of favoritism of the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachments, or from a view to popularity."

Another authority, James Bryce, described the Senate's confirmation function as follows:

It has been doubted whether this executive function (confirmation of appointments) of the Senate is now a valuable part of the Constitution. It was designed to prevent the President from making himself a tyrant by filling the great offices with his accomplices or tools. That danger has passed away, if it ever existed; and Congress has other means of muzzling an ambitious Chief Magistrate. The more fully responsibility for appointments can be concentrated upon him, and the fewer secret influences to which he is exposed, the better will his appointments be.

Thus, to assure the independence of

the judiciary as a separate and coordinate branch of Government, the power of the Senate to advise and consent with respect to the judiciary is at least equally important as the power of the President to nominate.

Mr. President, as a member of the Committee on the Judiciary, I have followed closely the course of the hearings on Judge Haynsworth. I have listened to and have read the testimony of all the witnesses who have appeared. I felt that as a member of the Bar I had a professional responsibility to weigh with utmost judiciousness all the speculations, the charges, the rebuttals, and the many reports and other data which came to my attention regarding the nomination.

I have discussed this nomination with the President, who asked my opinion of the Haynsworth nomination. I told the President that, on the basis of all the evidence and material, I was of the firm opinion that the nomination of Judge Haynsworth should be confirmed.

In arriving at this decision, one of the key factors I took into account, and one which I feel very strongly about, is the substantial presumption that Judge Haynsworth is a highly qualified nominee, that he is a very competent and able jurist, and that he is indeed very capable of being a fair and impartial Justice of the Supreme Court. This substantial presumption rests upon the thorough investigation and evaluation which has been given the nomination, not only by the President, but also by the American Bar Association and by the Senate Judiciary Committee.

Ever since my election to the Senate I have accorded such substantial presumption to all nominations to the High Court. It was for this reason that I strongly supported the nominations of Justices Arthur Goldberg, Thurgood Marshall, Byron White, former Justice Abe Fortas, and Chief Justice Warren Burger when their names were first submitted to the Senate.

Unless the substantial presumption of competence, integrity, and capability are overcome, regardless of any ideological or other philosophic differences I might have with the views of the nominee, I shall vote for confirmation.

In my judgment, a nominee's philosophy is not a proper ground for rejection by Senators, as long as his philosophy—judicial, social, political, or otherwise—is reasonable and prudent.

INTENT OF FOUNDING FATHERS

My view on this matter is sustained by Alexander Hamilton, who wrote in Federalist No. 66 as follows:

> It will be the office of the President to nominate, and with the advice and consent of the Senate to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the Executive and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice of the President. They might even entertain a preference to some other person, at the very moment they were assenting to the one proposed, because there might be no positive ground of opposition to him; and they could not be sure, if they withheld their assent, that the subsequent nomination would fall upon their own favorite, or upon any other person in their estimation more meritorious than the one rejected. Thus it could hardly happen that the majority of the Senate would feel any other complacency toward the object of an appointment than such as the appearances of merit might inspire, and the proofs of the want of it destroy.

Concerning the method provided for appointment of Federal judges, Hamilton declared:

> It is not easy to conceive a plan better calculated than this to promote a judicious choice of men for filling offices of the Union.

Defending the selection of judges by a single executive officer, he maintained that—

> One man of discernment is better fitted to analyze and estimate the peculiar qualities adapted to particualr offices than a body of men of equal or perhaps even superior discernment. The sole and undivided responsibility of one man will naturally beget a livelier sense of duty and a more exact regard to reputation. He will on this account feel himself under stronger obligations, and more interested to investigate with care the qualities requisite to the station to be filled, and to prefer with impartiality the persons who may have the fairest pretensions to them. He will have fewer personal attachments to gratify than a body of men.

Hamilton then went on to point out the inherent weaknesses of legislative bodies in making appointments to the judiciary:

> In every exercise of the power of appointing to offices by an assembly of men we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly. . . . The intrinsic merit of the candidate will be too often out of sight. . . . The coalition will commonly turn upon some interested equivalent: "Give us the man we wish for this office, and you shall have the one you wish for that." This will be the usual condition of the bargain. And it will rarely happen that the advancement of the public service will be the primary object either of the party victories or of party negotiations.

It is clear that the framers of the Constitution assume that the Members of the Senate would act on the President's judicial nominations primarily, if not solely, with regard to the qualifications and fitness of the nominees. It was, therefore, believed that the requirement of Senate approval would constitute a salutary safeguard against bad appointments.

REJECTION OF NOMINEES

In his scholarly review of the history of the Supreme Court, Charles Warren cites that of the 116 persons nominated by Presidents to be Justices of the Supreme Court, 21 failed to receive approval of the Senate. Only four were rejected for lack of qualifications or fitness: those of John Rutledge in 1795; Alexander Wollcott in 1811; George H. Williams in 1873, and Caleb Cushing in 1874. Seventeen nominees were rejected for political and philosophic reasons.

Thus, the Senate has confirmed more than 80 percent of persons named by Presidents to the High Court.

Since 1900, only five nominations to the Supreme Court have faced serious opposition in the Senate—those of Brandeis in 1916, Stone in 1925, Hughes in 1930, Parker in 1930, and Black in 1937. In each of these cases the opposition was due to the philosophy and the views of the nominee on social and economic issues. Of these five nominations, only that of Judge Parker was rejected.

Therefore, in the last 68 years, only one nominee has failed to be confirmed by the Senate for any reason.

It would be instructive to review some of these cases to show the great wisdom of our Founding Fathers in their intended approach to Senate confirmation, and to show the irrelevance of a man's philosophy in being considered for appointment to the Supreme Court.

THE BRANDEIS CASE

One of the most celebrated senatorial confirmation contests in our history took place over the appointment of Louis D. Brandeis to the Supreme Court.

Hearings were conducted by a Senate Judiciary Subcommittee over a period of 4 months, and were twice reopened. The hearing record filled two thick volumes of more than 1,500 printed pages.

The contest aroused public attention throughout the country, and the prestige and leadership of President Wilson were at stake. Had Mr. Brandeis been rejected, the appointment, according to constitutional historians, would have become an issue in the campaign and might well have changed the result of the presidential election of 1916.

The President sent this nomination to the Senate early in 1916, and for several months the outcome was uncertain. When the vote finally came on June 1, less than a month before the Democratic National Convention, the appointment was confirmed.

No nominee to the Supreme Court ever faced stronger or more determined opposition. A group of leading members of the bar and prominent businessmen were not content merely to protest the appointment, but also engaged counsel to oppose it. Each side marshaled witnesses and vied with the other to secure the support of nationally prominent persons.

But the bulk of opposition came from Boston, where members of old and highly respected law firms and financial interests resented Mr. Brandeis as an outsider, a Jew, and a skillful lawyer who asked no quarter and gave none in his battles with some of the largest financial interests of the country.

It was not his vigorous law practice, however, by which he incurred the hostility of many members of the bar, but rather his unpaid public activities in opposing the merger of the New Haven and the Boston & Maine Railroads, his fight for lower gas rates and for public control of utilities, his support of minimum wage legislation, and his war against trusts and monopolistic practices of the time.

His practice as a corporation lawyer enabled him to observe the abuses of power by large corporations and monopolies, and he developed a philosophy opposed to bigness, irresponsible power, and some of the banking and financial practices of his day.

He was considered by many as an objectionable crusader, a radical, a Social-

ist, and a person with dangerous economic ideas.

Moreover, during the presidential campaign of 1912, Brandeis had supported La Follette, refusing to follow the Progressives into the Roosevelt camp and instead actively campaigned for Wilson—in spite of the fact that Brandeis was a registered Republican.

The Democratic organization in Massachusetts even sent President Wilson a photostatic copy of Brandeis' registration as a Republican.

Reacting to the nomination, former President William Howard Taft was quoted as saying that the appointment was to him a fearful shock. Taft continued:

> It is one of the deepest wounds that I have had as an American and a lover of the Constitution and a believer in progressive conservatism that such a man as Brandeis could be put on the Court. He is a muckraker, an emotionalist for his own purposes, a socialist.

Taft went on to say, rather bitterly, that while Brandeis doubtless was motivated by high ideals, he also had "much power for evil," and that he thought when his own name—Taft's—had been suggested for the Supreme Court, "it was to laugh."

Another charge hurled at Brandeis was his "infidelity, breach of faith, and unprofessional conduct" as a lawyer. Opposing witnesses testified that Brandeis was "not straightforward," was "untrustworthy," and had "engaged in sharp, unethical legal practices."

Most of the Senate hearings on the nomination were given over to the testimony of these and other opposing witnesses, who were asked to cite specific evidence of unethical conduct by the nominee. But the evidence placed before the committee completely failed to substantiate these charges of unprofessional conduct, of untrustworthiness, and unethical practices.

One authority wrote:

> It is significant that the opponents to Brandeis elected to base their opposition on charges of this kind rather than state the real reason for their opposition: They regarded him as a dangerous radical.

The relations of Brandeis with the United Shoe Machinery Co. also came in for a good deal of attention. Because one of his clients owned a large block of stock in that company, Brandeis served on its board of directors for a period of several years; moreover, his law firm acted as consulting counsel to the company. In this capacity, Brandeis came more and more to question the monopolistic practices of the company and, in 1907, withdrew from the company's board and discontinued to serve it as legal consultant.

At the Senate hearings, the company president attacked Brandeis for criticizing practices which he had sanctioned when he was an officer of the company, and for using confidential information he had secured as company counsel later to oppose it. But, on intense questioning, the company president was forced to withdraw these charges, and only his assertion that Brandeis had misrepresented the facts was allowed to stand.

Another attempt to indicate that Brandeis was not straightforward was the accusation that, when he appeared before a congressional investigating committee in 1910 as a defense counsel for Louis R. Glavis, whose article exposing land frauds in the Department of the Interior had been published by Collier's magazine, he did not announce that he was being employed and paid by Collier's.

A number of other charges of unprofessional conduct were made against Brandeis but, after they were explored by the Senate committee, none was sustained. It was apparent from the testimony that most witnesses who believed Brandeis had been unethical actually had little firsthand knowledge of the circumstances and situation, and, in fact, had secured their information from a scurrilous advertising campaign conducted by one of his avid enemies, who had mounted a vigorous publicity campaign for years to destroy Brandeis' reputation at the bar.

Near the end of the Senate hearings, a memorial signed by seven former presidents of the American Bar Association, opposing the confirmation of Brandeis, was submitted to the committee, as follows:

> The undersigned feel under the painful duty to say to you that in their opinion, taking into view the reputation, character and professional career of Mr. Louis D. Brandeis, he is not a fit person to be a member of the Supreme Court of the United States.

Former President Taft headed the list, which also included Elihu Root, Simeon E. Baldwin, Francis Rawle, Joseph H. Choate, Moorfield Storey, and Peter W. Meldrin.

To counteract a report that the administration did not care whether or not the appointment was confirmed and to spur the Senate committee into action, President Wilson sent a strong letter of endorsement to the Senate committee, saying that the charges against Brandeis were not only unfounded but they "threw a great deal more weight upon the character and motives of those with whom they originated than upon the qualifications of Mr. Brandeis." The President went on to say:

> I perceived from the first that the charges were intrinsically incredible by anyone who had really known Mr. Brandeis. I have known him, I have tested him by seeking his advice upon some of the most difficult and perplexing public questions about which it was necessary for him to form a judgment. I have dealt with him in matters where nice questions of honor and fairplay, as well as large questions of justice and the public benefit, were involved. In every matter in which I have made test of his judgment and point of view I have received from him counsel singularly enlightening, singularly clear-sighted and judicial, and, above all, full of moral stimulation.

When the Judiciary Committee voted on the nomination on May 24, 1916, the vote was 10 to 8 to report it favorably.

On June 1, the Senate confirmed the appointment of Brandeis by a vote of 47 to 22.

SIGNIFICANCE OF BRANDEIS CASE

The Brandeis case brought into sharp focus several important aspects of the senatorial confirmation process. The case illustrates that a person who has played a leading role in civic and economic reform movements and has taken stands on controversial public issues, and particularly if he has had to deal with powerful groups in society, will face strong opposition. Such a person can be confirmed only with the greatest effort.

The case also shows that where charges as serious and as personal in nature as unethical practices, unprofessional conduct, and untrustworthiness are made—such as those against Brandeis—they should be thoroughly and fairly investigated. This was done, as I pointed out earlier, and they were shown to be utterly without merit. The Senate wisely voted to confirm him.

It is a widely accepted fact of our judicial history that Justice Brandeis went on to become one of the great Justices of the Supreme Court, and that many who opposed his nomination, charging that he was not trustworthy and had been guilty of unprofessional and unethical conduct, completely reversed their attitudes. Among these, former President Taft was foremost. Following his appointment as Chief Justice of the Supreme Court, Taft's biographer, A. T. Mason, wrote of the relationship of the former President with Brandeis as follows:

> Bubbling with enthusiasm, Taft reported that "Brandeis and I are on most excellent terms and have some sympathetic views in reference to a change in the relations of the Court to the Clerk as to financial matters. He cannot be any more cordial to me than I am to him so that honors are easy."

Taft came to regard Brandeis as an able and valuable member of the Court, though often they were on different sides.

Mr. President, I have dwelt on this very historic case for two reasons; first, because I perceive some very obvious parallels between this case and the instant situation relating to Judge Haynsworth; and, second, because as a lawyer and as one who has some appreciation for the development of the principles of American jurisprudence, I have long admired the tremendous contribution Justice Brandeis has made in this regard—and I feel that very few events in our history have had greater significance in the annals of American jurisprudence.

THE HARLAN F. STONE CASE

The nomination by President Coolidge of Harlan F. Stone to the Supreme Court in 1925 was strongly opopsed by a bipartisan group of Senate liberals, led by Republicans Norris and La Follette. This was the first of several attempts to block appointment to the Court of persons they regarded to be too conservative.

A former dean of the Columbia University Law School, and widely recognized as an able attorney and a man of the highest integrity, Stone had been appointed Attorney General by President Coolidge before he was named to the Court.

The opposition to him was based mainly on the fact that his law firm had been engaged as legal counsel by the Morgan interests.

In addition, during Judiciary Committee hearings on the nomination, Stone was interrogated at great length concerning an action the Justice Department had instituted, seeking an indict-

ment of Senator Wheeler in connection with a land fraud case in Montana, in which Stone had served as counsel. A special investigating committee of the Senate had absolved Senator Wheeler of any wrongful acts and the suit against him in Montana apparently had been dropped. But, on further investigation, the Department was attempting to secure his indictment and to bring him to trial before the Federal Court in the District of Columbia.

The Judiciary Committee reported the nomination favorably and it came before the Senate for action on February 4, 1925.

The principal speech against Stone was made by Senator Norris, who objected strongly to the practice which the Republican administration had followed by appointing persons identified with large corporations and great wealth to high positions in the Government. He said that, considering the high legal qualifications and personal integrity of the nominee, if the nomination of Stone had stood alone, he—Norris—would have entered no objection, but when he considered it in the light of a number of similar appointments, he felt impelled to protest.

The Senate overrode these objections overwhelmingly and voted 71 to 6 to confirm.

Justice Stone's subsequent record on the Supreme Court, as everyone knows, was very distinguished.

On June 27, 1941, when the nomination of Justice Stone to be Chief Justice was sent to the Senate, Senator Norris, who had opposed him in 1921, was moved strongly to support the nomination and indicated his change of heart as follows:

> The nomination by the President of Mr. Justice Stone to become Chief Justice of the United States is a very proper and commendable recognition of the ability, courage, and wisdom of Mr. Justice Stone, who has served as Associate Justice of the Supreme Court for quite a number of years.
>
> When Mr. Stone was appointed an Associate Justice of the United States Supreme Court, many years ago, I opposed the confirmation of his nomination and voted against it. In the years that have passed I became convinced, and am now convinced, that in my opposition to the confirmation of his nomination I was entirely in error.
>
> I am now about to perform one of the most pleasant duties that has ever come to me in my official life when I cast a vote in favor of his elevation to the highest judicial office in our land. I do this because, while it may not affect the country or the Senate, or even Mr. Justice Stone, it is a great satisfaction to me to rectify, in a very small degree, perhaps, the wrong which I did him years ago when I voted against the confirmation of his nomination to be an Associate Justice of the Supreme Court.

THE CHARLES EVANS HUGHES CASE

In February 1930, President Hoover nominated Charles Evans Hughes to be Chief Justice of the Supreme Court.

A former member of the Supreme Court who had resigned in 1916 to become Republican candidate for President, a former Governor of New York, and a former Secretary of State under Presidents Harding and Coolidge, the Hughes nomination was acclaimed across the country. Unquestionably, he was one of the ablest and most respected members of the American bar, and included among his clients many large corporations and persons of great wealth.

The Senate Judiciary Committee reported the nomination favorably, but Senator Norris, its chairman, filed a minority report. When the nomination came before the Senate, the same bipartisan coalition which had been against the Stone nomination, again opposed the Hughes appointment.

Their opposition was centered on what were alleged to be the economic views of Hughes.

Senator Borah asked:

> When during the last sixteen years has corporate wealth had a contest with the public . . . when Mr. Hughes has not appeared for organized wealth and against the public?

Considering that Hughes was a distinguished American of wide reputation and high standing, Borah said:

> I am only concerned with the proposition of placing upon the Court as Chief Justice one whose views are known upon these vital and important questions, views which ought (not) to be incorporated in and made a permanent part of our legal and economic system.

In his minority report, Norris wrote that Hughes had appeared before the Supreme Court 54 times "for corporations of untold wealth." Referring to Hughes' lucrative law practice, the Senator said:

> I am not willing that there should be transferred from that kind of surroundings one who shall sit at the head of the greatest judicial tribunal in the world. I am not willing to say that that kind of man, regardless of his ability, should go on the Supreme Bench.

The Senate vote came up April 13, and Hughes was confirmed 62 to 26.

In retrospect, there is wide agreement among scholars that the bipartisan group of Senate liberals misjudged their man in opposing Hughes, whose record on the Court was clearly that of a liberal Justice, frequently siding with Justices Holmes, Brandeis, Cardozo and Stone.

He became a Chief Justice who is considered to rank with Marshall and Taney. Like the Stone confirmation, the Hughes case concerned, not the ability and qualifications of the nominee, which were considered, but rather his economic and political philosophy.

Mr. President, again I feel that there are some important parallels between the Stone and Hughes confirmation cases and the Haynsworth case which we are now considering.

Had the opposition prevailed in defeating the Stone and Hughes nominations, the country would have been deprived of their great contributions to the Court.

THE JOHN J. PARKER CASE

President Hoover, in the spring of 1930, nominated John J. Parker to be Associate Justice of the Supreme Court—a nomination which was to be subjected to a vigorous attack in the Senate and in the Nation. Subsequently, it was to be rejected by a very narrow vote, the first nomination to be rejected in 36 years.

Judge Parker was a prominent Republican of North Carolina, a former candidate of his party for Governor and national committeeman from the State. In 1925, President Coolidge appointed him to the Fourth Circuit Court of Appeals, and he was serving on that bench at the time of his nomination.

He was highly regarded as a jurist, a reputation which continued to grow even after his nomination was rejected by the Senate. In 1945, he was named by President Truman as an alternate American member of the Nuremberg court for the trial of Nazi war leaders.

The opposition to Judge Parker in the Senate was based on three contentions: First, that he favored "yellow-dog" contracts and was unfriendly to labor; second, that he was opposed to Negro suffrage and participation in politics; and third, that the appointment was dictated by political considerations. Again, the opposition was led by a bipartisan coalition of progressive Republicans and most of the Democratic Members.

On the opening day of the public hearings, the Judiciary Committee chairman placed in the record some 20 pages of endorsements of Judge Parker by prominent persons in his State—a list headed by the State Governor, who was a member of the opposition party.

Appearing in opposition to the appointment were two principal groups.

Labor came out in stanch opposition to the nomination, contending that in the famous Red Jacket case in which an "injunction was sustained in a yellow-dog contract situation, Judge Parker had betrayed a judicial and mental bias in favor of powerful corporations and against the masses of the people." President William Green, of the American Federation of Labor, said that his confirmation would add "another injunction judge" to the Supreme Court, and, "as a result the power of reaction will be strengthened, and the broadminded, humane, progressive influence so courageously and patriotically exercised by the minority members of the highest tribunal of the land will be weakened."

In the so-called Red Jacket case, the Supreme Court upheld an injunction granted by a lower court enjoining the union from "inciting, inducing, or persuading the employees of the plaintiff to break their contract of employment"—that is, to join the union. Green contended that Judge Parker had shown in his language on that decision that he was quite in accord with the legal and economic policy of yellow-dog contracts. In other words, Judge Parker was charged to be antilabor.

The other principal opposition to Judge Parker came from the National Association for the Advancement of Colored People, which based its opposition entirely on a statement Judge Parker had made as a Republican candidate for Governor of North Carolina in 1920.

Replying to charges made by his Democratic opponents, Judge Parker denied that the Republican Party intended to enfranchise the Negro, and he said:

> The participation of the Negro in politics is a source of evil and danger to both races and is not desired by the wise men in either race or by the Republican Party of North Carolina.

To the NAACP, this statement was "an open, shameless flouting of the 14th and 15th amendments of the Federal Constitution," and that no man who

entertained such ideas "is fit to occupy a place on the bench of the U.S. Supreme Court."

When asked by Senator Borah if he knew "anything else in the career of Judge Parker to indicate that he was unfriendly to the Negro," the NAACP witness replied:

Nothing, except this statement here. . . . Frankly, we never heard of him until he was nominated by President Hoover.

By a vote of 9 to 8, the Judiciary Committee reported the nomination adversely. Three progressive Republicans—Norris, Borah and Blaine—were joined by two Republicans and four Democrats against the nomination.

On the Senate floor, one of the main opposing speeches was made by Senator Borah, who said:

I am opposed to the confirmation of Judge Parker because I think he is committed to principles and propositions to which I am very thoroughly opposed. . . . He is particularly identified with this kind (yellow dog) of contract.

Borah said:

If the Senate decides that Mr. Parker should be confirmed, it is in moral effect a decision of the Senate in favor of the yellow dog contract.

One other charge frequently made during the Senate debate was that the appointment was motivated by political considerations, that President Hoover, by selecting a prominent Republican from the South, hoped to build up the party in that region of the country. This charge gained considerable credence when Senator McKellar of Tennessee placed in the record a letter from First Assistant Secretary of the Interior Joseph M. Dixon to Walter H. Newton, secretary to the President, in which Dixon said that the appointment of Judge Parker "would be a master political stroke at this time."

The Senate rejected the confirmation by a vote of 39 to 41.

The rejection of Judge Parker, in the final analysis, resulted from the adamant opposition of organized labor and the NAACP and not for any want of capability, of integrity, or of stature in the community.

Nor did the facts support the charges made against Judge Parker; his record ever since the rejection continued to be that of a highly able and open-minded judge.

Here, again, it is unnecessary for me to draw out the very apparent parallels between this case and the Haynsworth case. The facts did not support the charges which were made against Judge Parker, and I feel that the country was deprived of a distinguished and able Supreme Court Justice; and similarly, as I shall subsequently show, the facts in the instant case before us do not support the charges which have been made against Judge Haynsworth.

FOUNDING FATHERS WERE RIGHT

By hindsight, these four cases involving judicial nominations to the Supreme Court—Justice Brandeis, Justice Stone, Justice Hughes, and Judge Parker—appear to underline strongly and sustain the wisdom of the Founding Fathers, who intended that the confirmation power of the Senate be limited to a consideration of competence, integrity, and capability.

These cases plainly indicate to me the folly of using a nominee's philosophy, if reasonable, as the basis of rejection by the Senate.

Justice Brandeis was very nearly voted down by Senators deeming him to be too "liberal"—but he became a Justice of great wisdom, fairness, and foresight. Justice Stone and Justice Hughes were attacked by liberals in the Senate who accused both men of being too closely identified with great wealth and therefore apt to be too "conservative"—but these Justices became two of the most distinguished liberals ever to sit on the Supreme Court.

Judge Parker was denied the opportunity to serve on the High Court because he was alleged to be antilabor and anti-civil rights—but he has been widely acclaimed by judicial historians as one of the most liberal men of his time.

Mr. President, these very significant contests over nominations to the Supreme Court appear plainly to provide the Senate with a guideline which bears directly upon this debate over the confirmation of the nomination of Judge Haynsworth.

That is to say, allegations relating to a nominee's philosophy are at best inadequate gages by which to judge the quality of a man, and most certainly no indication of the future course of action the nominee may take once he mounts the Bench.

The four cases I have been discussing seem clearly to indicate that the most reliable yardstick for judging a nominee's fitness to serve on the Supreme Court is his competence, his integrity, and his capability to be a fair and impartial judge.

Nevertheless, although firmly believing philosophic considerations are not appropriate grounds for confirmation, many charges have been made alleging that Judge Haynsworth is anti-civil rights and antilabor—charges which should not be allowed to stand. Because, on careful examination of the entire record of cases in which Judge Haynsworth has participated as a judge of the fourth circuit court, he is shown to be neither pro- nor anti-civil rights, and he is shown to be neither pro- nor anti-labor. Rather, Judge Haynsworth emerges from his writings as a workmanlike and careful judge who is always solidly grounded in the principle of stare decisis.

HAYNSWORTH'S CIVIL RIGHTS RECORD

The author of the original HEW school desegregation guidelines, Prof. G. W. Foster, Jr., of the University of Wisconsin Law School, a man who has long been active in solving the problems of school desegregation—a man who has followed closely the work of the Federal courts in the South—has presented to the Senate an insightful analysis of Judge Haynsworth's record in the area of school desegregation—hearings, page 602 and the following. After comparing Judge Haynsworth's decisions with those of the Supreme Court and other circuits, Prof. Foster states:

It is both wrong and unfair to charge that he (Judge Haynsworth) is a racial segregationist or that his judicial record shows him to be out of step with the Warren Court on racial matters. . . . His decisions, including those in the racial area, have been consistent with those of other sensitive and thoughtful judges who faced the same problems at the same time. I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent, open-minded man with a practical knack for seeking workable answers to hard questions. . . . In my judgment he ranks along with the best of the open-minded, pragmatic judges in the federal system, neither dogmatic nor doctrinaire.

A survey of all the decisions involving civil rights issues in which Judge Haynsworth participated shows no pattern of bias. In some cases, decisions were rendered in favor of the party claiming infringement of civil rights; others did not.

In the past 12 years, in some 25 civil rights cases, Judge Haynsworth was shown to be unwilling to go beyond the mandates of both the Supreme Court and Congress, preferring instead to follow Supreme Court and statutory directives, and where these were absent, to follow precedents of his own circuit or those of other circuits.

Judge Haynsworth's record shows that he voted more often to sustain a civil rights position than he did not. His work on the court reveals him to be an intelligent and openminded person, seeking to dispense true justice in extremely difficult situations.

The lengthy litigation in the Prince Edward County, Va., school desegregation case illustrates this point very well.[1] In 1959 Judge Haynsworth voted to strike down a lower court order giving that county 10 years to desegregate its schools. But, in 1963, after the public schools were replaced with "private" white schools, he wrote for a majority of the fourth circuit that closing the public schools to avoid integration was not violative of the Federal Constitution, that the county's action might violate State law, and that the Virginia Supreme Court should pass on the complex issues of the case. After the Virginia Supreme Court acted, the U.S. Supreme Court reversed this Haynsworth opinion. Two years later, he dissented when a majority of his court found Prince Edward officials in contempt for appropriating money to run the "private" schools while the case was pending.

Haynsworth's view on this issue of school desegregation is, as he wrote, that "schools that are operated must be made available to all citizens without regard to race, but what public schools the State provides is not the subject of constitutional command." In the contempt case, he agreed that the action of the county officials was "contemptible" and "unconscionable," but said the court lacked jurisdiction to hold them guilty of contempt. Thus, Judge Haynsworth's position with respect to the Prince Edward cases was always grounded in solid legal precedent and was in compliance with Supreme Court edicts.

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[1] *Griffin* v. *Board of Supervisors of Prince Edward County*, 322 F. 2d 332 (4 Cir. 1963), *Reversed*, 377 U.S. 218 (1964).

A similar pattern is to be found in his opinions dealing with the freedom of choice issue.[3] Until the Supreme Court ruled that such plans were unconstitutional and ordered the school board to take affirmative action to desegregate, his position was that the freedom of choice plan was acceptable, as long as each student was free to choose each year the school he attended, and as long as his choice was uninhibited by coercive action. Following the Supreme Court edict outlawing freedom of choice plans, he voted against them.

In other key cases, while the judge voted in dissent that a hospital receiving funds under the Hill-Burton Act could discriminate against Negroes on the ground that there was no "State action" present,[4] he subsequently reversed himself and concurred with the majority opinion in a case involving the same hospital, ruling that the hospital could not discriminate, because he felt it was his duty to accept the majority opinion of his own court as binding upon him.[4]

In 1966, in an opinion by Judge Haynsworth, the court ruled that the North Carolina Dental Society was required to accept Negro members, even though the State action involved was no greater than it was in the hospital case.[5] He wrote in the dental society case:

> The activities of the Society on State action, its practice of racial exclusivity is patently unconstitutional.

JUDGE HAYNSWORTH'S RECORD IN LABOR CASES

Just as in the civil rights cases, an evaluation of Judge Haynsworth's record in cases involving organized labor reveals him to be neither pro- nor anti-labor, but rather as a fair and judicious man intent on providing the fairest possible solution in this very complex area of law. Indeed, his record shows an even-handed treatment of litigation in which he rendered the decision according to law, that he considers a question clearly, without regard to whether a particular result is advocated by union or management.

Judge Haynsworth has participated in more than 100 cases involving labor-management relations. In more than one-third of these he has endorsed the union's position in its entirety. In a comparable number of cases he has supported management's position. In the rest, he has not been satisfied with either the union's position nor management's position and has taken a middle ground. In cases where there have been divisions of opinion among the judges of the fourth circuit, Judge Haynsworth has found himself supporting each side at different times.

Organized labor's evaluation of Judge Haynsworth's labor views relied upon several decisions which were reversed by the Supreme Court, and others where there was a division of opinion in the fourth circuit.

It is noteworthy that the Fourth Circuit Court of Appeals, in the years 1968–69 ordered enforcement of National Labor Relations Board cease-and-desist orders in 93 percent of the cases—a very high figure as compared with the circuit courts in other parts of the country, which provided enforcement in 81 percent of the cases.

Moreover, in the 12 years that Judge Haynsworth has been a member of the fourth circuit, he has upheld the union's contentions in nearly 50 cases, in whole or in part, and has written at least eight opinions which were favorable to labor:

In *NLRB* v. *Electromotive Manufacturing Co.*, 389 F. 2d 61 (4th Cir. 1968) the court enforced an order of the NLRB to reinstate a prolabor supervisor. Judge Haynsworth rejected the contention that supervisors were not protected under the Labor Management Relations Act and noted that the discharge of supervisors who encouraged union activity would impair the functioning of machinery provided to protect employees' rights and instead would restrain employees in the exercise of their protected rights.

In *United Steel Workers* v. *Bagwell*, 383 F. 2d 492 (4th Cir. 1967), an injunction action by the union against a city ordinance which made it unlawful to distribute circulars or place them on automobiles, in soliciting memberships in labor unions, the court held such ordinance unconstitutional. Judge Haynsworth, writing for the Court, said:

> A municipality may prohibit the distribution of commercial advertisement on its streets and the throwing of litter upon those streets and sidewalks, but its interest in keeping the streets clear does not warrant an ordinance forbidding the distribution to willing recipients of handbills expressing ideas and opinions.

In *NLRB* v. *Empire Manufacturing Corp.*, 260 F. 2d 528 (4th Cir. 1958), the court sustained the Board ordering reinstatement of certain employees who were dismissed because of their union activity. Judge Haynsworth's opinion found that the close coincidence of union activity, company threats, and the dismissals within a short time was enough to sustain the Board's orders.

In *NLRB* v. *Community Motor Bus Co.*, 335 F. 2d 120 (4th Cir. 1964), finding that it was the responsibility of the Board to determine the credibility of the supervisor and employee involved in the case, the court found that the employee had been wrongfully discharged because of his union activity.

In *Chatham Manufacturing Co.* v. *NLRB*, 404 F. 2d 1116 (4th Cir. 1968), involving a question of the proper court in which a petition should be filed for a review of a Board decision, in an opinion by Judge Haynsworth the court granted the Board's motion to transfer the case to the Court of Appeals for the District of Columbia on the ground that the union had filed its petition for review in the District of Columbia court first; the employer had subsequently filed a petition for review in the fourth circuit court, which was denied.

In *NLRB* v. *Webb Furniture Corp.*, 366 F. 2d 314 (4th Cir. 1966), the court enforced the Board's finding that the employer had refused to bargain after the union had substantially modified its demands and charged the company with the unfair labor practice of refusing to bargain in good faith.

In *NLRB* v. *Carteret Towing Co.*, 307 F. 2d 835 (4th Cir. 1962), the court, in an opinion by Judge Haynsworth, held that the NLRB had jurisdiction over employers engaged in towboat operations assisting naval and large commerical vessels in and out of harbors. The employer was held to be engaged in activities affecting commerce and thereby fell under the Board's jurisdiction.

In *Intertype Co.* v. *NLRB*, 371 F. 2d 787 (4th Circuit 1967), the court, in an opinion by Judge Haynsworth, enforced the Board's decision finding that the employer conducted illegal surveillance of union meetings and then illegally discharging employees because of union activities; the opinion stated that the supervisors did not innocently chance upon the meeting, but went there for the purpose of identifying those present.

In addition to these cases, Judge Haynsworth joined in at least 37 opinions which may also be considered as being favorable to labor. Taken in toto, at the very least, this record cannot be said to indicate any bias against labor. These cases, particularly the eight cases I have discussed, appear to represent an excellent cross-section of the many complex issues arising from labor-management relations.

There were, of course, cases in which Judge Haynsworth participated where decisions were unfavorable to organized labor.

The union witnesses who testified against confirmation cited 10 cases in which the Supreme Court reversed Judge Haynsworth's decision as evidence of his "anti-union" prejudice. A careful reading of these 10 cases fails to support this contention. Only by failing to examine the issues involved and the basis of reversal in each case can one reach the conclusion advanced by the union representatives.

Of the 10 cases cited, two did not involve labor-management issues at all. In one the question was whether a certain engine was involved in "train" or "switching" movements under the Safety Appliance Act.[6] The other involved the issue whether the nonprofessional employees of an architectural firm—clerks, draftsmen, fieldmen, and stenographers—were "engaged in commerce" so as to subject the defendant to the recordkeeping and overtime provisions of the Fair Labor Standards Act.[7] Thus these cases did not involve unions at all.

Nor did another case which raised the question whether employees who were dissatisfied with working conditions had to inform their employer of their complaints before walking off the job.[8]

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[3] *Bowman* v. *County School Board*, 382 F. 2d 326 (4 Cir. 1967), *Reversed*, 391 U.S. 430 (1968).

[4] *Eaton* v. *Board of Managers of James Walker Memorial Hospital*, 261 F. 2d 521 (4 Cir. 1958).

[4] *Eaton* v. *Grubbs*, 329 F. 2d 210 (4 Cir. 1964).

[5] *Hawkins* v. *North Carolina Dental Society*, 355 F. 2d 718 (4 Cir. 1966).

[6] *U.S.* v. *Seaboard Air Line Railroad Co.*, 361 U.S. 78, *reversing* 258 F. 2d 262.

[7] *Mitchell* v. *Lublin, McGaughy & Associates*, 358 U.S. 207 (1959), *reversing* 250 F. 2d 253 (4 Cir. 1957)

[8] *NLRB* v. *Washington Aluminum*, 370 U.S. 9 (1962), *reversing* 291 F. 2d 869 (4 Cir. 1968)

Of the remaining seven cases, three involved identical issues and were decided together, with the Supreme Court acknowledging that its position was not significantly different from that taken by the fourth circuit.[9] In two other cases the Supreme Court reversal was based upon fundamental policy changes made by Congress subsequent to the fourth circuit's decision.[10]

Another case involved the announcement by the Supreme Court of sweeping new rules, circumscribing the permissible scope of judicial review in arbitration cases.[11] In making this fundamental policy change the Supreme Court also reversed fifth and sixth circuit cases involving issues similar to those in the case from the fourth circuit.[12]

In the 10th case cited the Supreme Court remanded the case so that the NLRB and the fourth circuit could consider an issue not previously dealt with. Judge Haynsworth subsequently upheld the union's position based on the evidence presented at the remand hearing.[13]

In none of these 10 cases did the Supreme Court purport to reverse an "anti-labor" decision by Judge Haynsworth.

In this very sensitive and technically complex labor-management area, then, I believe that Judge Haynsworth has a commendable record of moderation and impartiality.

THE ETHICS CHARGES

There have been many charges made relative to Judge Haynsworth's conduct, implying that, at worst, he was guilty of violating specific canons of judicial ethics and was guilty of conflicts of interest, and at best, that he was guilty of poor judgment.

These objections centered upon the charge that Judge Haynsworth should have disqualified himself from sitting in at least two cases which he heard as a judge of the court of appeals for the fourth circuit—the Darlington case and the Brunswick case.

The relevant Federal law at 28 U.S.C. 455 provides:

Any Justice or Judge of the United States shall disqualify himself in any case in which he has a substantial interest.

Canon 29 of the American Bar Association, Canons of Judicial Ethics, provides in pertinent part:

A Judge should abstain from performing or taking part in any judicial act in which his personal interests are involved.

THE DARLINGTON CASE

Darlington Manufacturing Co. v. *NLRB*, 325 F. 2d 682, was orally argued before the fourth circuit on June 13, 1963, and was decided by that court on November 15, 1963.

Deering-Milliken, Inc., a party to this action, owned or controlled about 27 textile plants in the southeastern part of the United States. It granted space in these various plants to vending machine companies on the basis of competitive bidding for such rights.

Carolina Vend-A-Matic Co. was one such company and, during 1963, it obtained a little more than 3 percent of its gross sales from vending machines located in three of the Deering-Milliken plants—in which approximately 700 out of 19,000 Deering-Milliken employees were employed.

In 1950, 7 years before he was appointed to the court of appeals, Judge Haynsworth was one of the original incorporators of Carolina Vend-A-Matic. Again, prior to his judicial appointment in 1957, the judge was both a director and one of the vice presidents of the company. When he was appointed a circuit judge, he orally resigned as vice president, but continued to serve as a director until October 1963, when he resigned his directorship in Carolina Vend-A-Matic as well as in another corporation, in compliance with a resolution of the U.S. Judicial Conference adopted in September 1963.

During his tenure on the fourth circuit court, Judge Haynsworth served for several years as an uncompensated trustee of Carolina Vend-A-Matic pension and trust-sharing fund, and his wife served for 2 years as secretary of that company. Her role was limited to helping out at the office, handling only routine office matters.

It is undisputed, according to the record, that Judge Haynsworth took no part in the day-to-day conduct of the company's business after his appointment to the court; he played no part at all in obtaining locations for the company's vending machines and was largely unfamiliar with their location.

During 1963, Judge Haynsworth owned one-seventh of the stock of Carolina Vend-A-Matic. In that year the company had competed for three sites in the Deering-Milliken plants, but succeeded in obtaining only one. None of the Deering-Milliken officials who had charge of the vending machine rights knew that the judge was associated with Carolina Vend-A-Matic.

It has been charged that Judge Haynsworth should have disqualified himself in Darlington because he had an interest in Deering-Milliken within the meaning of the language of either the canons or the statute.

This contention is contrary to all the precedents involving judicial qualification, as two highly qualified witnesses so testified before the Judiciary Committee. The overwhelming weight of authority holds that where a judge holds stock, not in a party litigant, but in a corporation which has conducted business with the party litigant, the judge is not required to be disqualified from deciding the case—see, for example, *Webb* v. *Town of Eutaw*, 63 So. 687 (Ala. 1913); *In Re Farber*, 260 Mich. 652, 245 N.W. 793 (1932); *Central Savings Bank of Oakland* v. *Lake*, 257 Pac. 521 (Calif. 1927); *In Re Union Leader Corporation*, 292 F. 2d 381 (1st Cir. 1961); *Wolfson* v. *Palmieri*, 396 F. 2d 121 (2d Cir. 1968).

As Judge Lawrence E. Walsh, chairman of the American Bar Association Committee on Judicial Section, testified:

We believe that there was no conflict of interest in the *Darlington* case which would have barred Judge Haynsworth from sitting and we also concluded that it was his duty to sit (Hearings, p. 140).

Similarly, John P. Frank, a leading authority on the subject of disqualification, testified as follows:

In the light of the overwhelming body of American law on this subject and indeed I think without exception, I have reviewed the cases comprehensively for this appearance, being aware of its gravity and have worked on the matter previously, and I cannot find a reported case in the United States in which any federal judge has ever disqualified in circumstances in the remotest degree like those here. There was no legal ground for disqualification.

It follows that under the standard federal rule Judge Haynsworth had no alternative whatsoever. He was bound by the principle of the cases. It is a judge's duty to refuse to sit when he was disqualified, but it is equally his duty to sit when there is no valid reason not to (Hearings, p. 115).

When Carolina Vend-A-Matic was acquired by Automatic Retailers of America, Inc., in 1964, Judge Haynsworth exchanged his shares for 14,173 shares of the ARA Co., which was worth $437,000, on the market. This is the basis of the criticism of Judge Haynsworth for having made a substantial profit out of his investment in Carolina Vend-A-Matic.

The suggestion underlying this criticism is that the continued rise in sales of Carolina Vend-A-Matic after he became a Federal judge was due to the use of the prestige of his office to promote the company's business—so that his initial investment of $2,300—hearings, page 60—ballooned to $435,000. No evidence whatsoever was offered at the committee hearings to support this outrageous charge. Indeed, all the evidence effectively refutes the suggestion.

Mr. Alex Kiriakides, president of one of Vend-A-Matic's principal competitors, in a letter to the chairman of the committee, stated:

Because of the growing recognition that vending services provide the most pleasant and most efficient means of providing food and refreshment for industrial employees, the industry throughout the United States has experienced phenomenal growth. In the Southeast general industrial expansion has made the growth of all vending companies even more spectacular. The experience of Carolina Vend-A-Matic was not in the least

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[9] *NLRB* v. *Giessel Packing*; *NLRB* v. *Heck's, Inc.*, and *General Steel* v. *NLRB*, 37 Law Week 4536 (89 S.Ct. 1918) (1969), *reversing* 398 F. 2d 336 (4 Cir. 1968)

[10] *NLRB* v. *United Rubber, Cork, Linoleum & Plastic Workers*, 362 U.S. 329 (1959), *reversing* 269 F. 2d 694 (4 Cir. 1959). (Subsequent expression of congressional intent in the 1959 Labor Management Recording and Disclosure Act.)

Walker v. *Southern RR Co.*, 385 U.S. 196 (1966), *reversing* 354 F. 2d 950 (4 Cir. 1965). (Congressional dissatisfaction with operation of National Railroad Adjustment Board expressed subsequent to Fourth Circuit decision.)

[11] *United Steelworkers* v. *Enterprise Wheel*, 363 U.S. 593 (1960), *reversing, in part*, 269 F. 2d 327 (4 Cir. 1959).

[12] *United Steelworkers* v. *American Manufacturing Co.*, 363 U.S. 564, *reversing* 264 F. 2d 624 (6th Cir.)

United Steelworkers v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, *reversing* 269 F. 2d 633 (5th Cir.)

[13] *Darlington Manufacturing* v. *NLRB*, 325 F. 2d 682 (4 Cir. 1963), remanded in 380 U.S. 263 (1965), on remand 397 F. 2d 760, (4 Cir. 1968) *cert. den.* 393 U.S. 1023 (1969).

unique to it. My own business experienced comparable growth. A vending business in Spartanburg, just 30 miles to the west, had similar experiences. It is simply the case of having a service to offer at a time of rapidly rising demands for that service (October 6, 1969).

In other words, the astronomic rate of growth for Carolina Vend-A-Matic was indicative of the success vending machine companies were experiencing in those years.

Kiriakides also wrote:

This business (Carolina Vend-A-Matic) was not developed on the basis of anyone using anyone's influence on anybody. I know that Judge Haynsworth's name was never used in any attempt to influence anybody.

Another very relevant factor to consider with respect to the Carolina Vend-A-Matic situation is that at the time Judge Haynsworth was named to the Fourth Circuit neither the applicable statute nor the canons prohibited a judge from being either an officer or director of a corporation organized for profit, so long as he adhered in all respects to the law and the canons. But when, in 1963, the judicial conference recommended that Federal judges relinquish their offices and directorships in such corporations, Judge Haynsworth quickly and willingly complied.

Moreover, when in 1964, the entire record of Judge Haynsworth's participation in Carolina Vend-A-Matic was reviewed by the Fourth Circuit in connection with the Darlington case, Judge Sobeloff, speaking for the court, found after investigation that all the charges were "completely unfounded"—Hearings, page 15—and expressed complete confidence in Judge Haynsworth.

THE BRUNSWICK CASE

On November 10, 1967, a three-judge panel of the Fourth Circuit Court, consisting of Judges Haynsworth, Winter, and Jones, heard oral argument in the case of *Brunswick Corp. v. Long* 392 F. 2d 337. Immediately following oral argument the panel met and unanimously decided to affirm the judgment of the district court in favor of Brunswick; and Judge Winter was assigned to write the opinion of the court.

On December 20, 1967, a stockbroker in Greenville, S.C., who handled Judge Haynsworth's account, placed an order for the purchase of 1,000 shares of Brunswick stock for the judge's account at $16 per share. At the time Judge Haynsworth was unaware of the fact that the opinion and judgment in the Brunswick case had not yet been filed. The stock order was executed on December 26, 1967.

In the meantime, Judge Winter had prepared a draft opinion in the case and had circulated it to Judges Haynsworth and Jones on December 27. Judge Haynsworth noted his concurrence on January 3, 1968, and the written opinion was released on February 2, 1968. Petitions for a rehearing, and for certiorari to the Supreme Court were subsequently denied.

It is important to note at this point that according to the testimony of both Judge Winter and Judge Haynsworth, the Brunswick case was in fact decided on November 10, whereas the order to purchase the Brunswick stock was executed on December 26.

However, Judge Haynsworth's pecuniary interest in the case could hardly be called "substantial" within the purview and meaning of the statute.

In the Brunswick case, both litigants had filed competing claims to repossess used bowling alley equipment. Had the plaintiff been awarded priority for the full amount of his claim, and had the sale of the security been sufficient to liquidate the claim, he would have received $90,000. Assessing this figure against Judge Haynsworth's ownership of 1,000 out of more than 18,000,000 shares of stock outstanding, the total pecuniary effect of such a decision on Judge Haynsworth's interest in the Brunswick Co. would have been less than $5.

In any case, it is clear to me that because the decision had been rendered prior to the purchase of the stock, because Judge Haynsworth stood to make little, if any, financial gain by reason of the stock purchase and thus could not have been influenced in his judicial action, neither the statute nor the canons were violated.

THE APPEARANCE OF IMPROPRIETY

The Judicial Canons of Ethics No. 4 requires:

A Judge's official conduct should be free from impropriety and the appearance of impropriety.

It has been charged by those who oppose Judge Haynsworth's confirmation that where allegations are made charging violation of canons of ethics or conflict of interest statutes, even though all the evidence conclusively showed that no such violations occurred, there nonetheless may be an "appearance of impropriety" which thereby violates Canon 4.

No such position has ever been taken by the American Bar Association's Committee on Ethics, nor is such an interpretation warranted by the language of the canon itself. Unfounded accusations alone cannot and should not disqualify an otherwise qualified candidate. To accede to such a view would be to place a nominee's fate in the hands of anyone who would wish to make any kind of accusation, regardless of its merit. To take such a position is contrary to all our traditions of fair play and justice.

Mr. President, I am therefore impelled to the conclusion that all of the so-called ethics charges which have been made against Judge Haynsworth have not at all been substantiated, and that nothing in his judicial conduct during the 12 years he has served as a judge in the fourth circuit in any way justifies withholding the Senate's approval of his nomination.

RELEVANCE OF THE FORTAS CASE

Mr. President, I wish to make one more observation which would seem to be appropriate at this point. Many who oppose confirmation have charged that by my opposition to the nomination of Justice Abe Fortas to be Chief Justice of the Supreme Court in the last session of Congress, and by my support of the nomination of Judge Haynsworth, I am guilty of applying a double standard. This is simply not true.

The Fortas nomination was an entirely different case and, from my viewpoint, easily distinguishable from the Haynsworth case. When the nomination of Mr. Justice Fortas was sent to the Senate, my position was well known. As I said then, long before President Johnson submitted that nomination to the Senate, I opposed any judicial nomination at that time, regardless of its merit. I felt strongly that because a new President would be elected within a few months, he should make such appointments, as he would then have received the current mandate of the American people.

When I announced my position on September 25, 1968, I said that I had no way of prognosticating who would be elected President in November, but I pointed out that I had observed a deep-seated disquiet throughout the Nation. I felt that we had arrived at a crossroad in our history, and particularly at that point in our history I felt the Senate should not take any action which might thwart the orderly process of change.

I said further that after the November election, if the new President should decide to nominate Mr. Justice Fortas to be Chief Justice, I would at that time be quite disposed to vote for his confirmation, as I had in 1965, when he became an Associate Justice.

A new President having been elected last November, and President Nixon having sent the nomination of Judge Haynsworth to the Senate for its advice and consent, I now urge that the Senate vote for confirmation.

THE NOMINATION SHOULD BE CONFIRMED

In assessing the performance of Judge Haynsworth, Judge Winter, who was appointed to the district court from Maryland by President Kennedy, and to the Court of Appeals for the Fourth Circuit by President Johnson, testified before the Judiciary Committee:

But to begin, I would like to say that I have known Judge Haynsworth since he was appointed to the United States Court of Appeals, and I have had a very close association with him since I was appointed a District Judge in 1961, and even closer association since I was appointed to the Court of Appeals in 1966.

I think that I have had ample opportunity to observe the manner in which he conducts himself, the manner in which he has led his Court, and the quality and content of his written opinions.

To summarize my views, I would say that I know of no fairer judge, no more gracious, considerate or understanding leader, and no judicial officer more possessed of judicial temperament.

Judge Haynsworth and I have differed on the decision of cases. At times I have sought to give decisions of the Supreme Court wider scope and wider application than he has. At times the converse has been true. And at times he and I have found ourselves in disagreement with our brethren on the Court, so that we were in a dissenting position. But I must say, sir, and gentlemen, that when he and I have disagreed between ourselves, I have never felt or thought that his position on a particular matter has exceeded the area of legitimate and informed debate.

From my association with him, I have a profound respect for his capabilities as a

legal scholar and as an intelligent, capable and informed judge. (Hearings, pp. 236–237).

Judging from all the records, the data, the testimony, and from my observations of the nominee when he appeared before the committee, I am inclined to agree with this estimation.

I believe that Judge Haynsworth is indeed a man who is admirably suited to the high judicial office to which he has been named; that he possesses an outstanding judicial temperament by which he deals with controversial and complex legal problems with absolute intellectual honesty and in a scholarly fashion.

I find the nominee to be a man of high moral character.

Canon 34 provides an exceedingly high standard to be met by our judiciary as follows:

> In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to the law, and deal with his appointments as a public trust; he should not allow other affairs or his private interest to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

In my careful, searching review of the record I have firmly concluded that Judge Clement F. Haynsworth has in every respect lived up to these standards of excellence. In my considered judgment, not a shred of evidence has been advanced to overcome the substantial presumption of Judge Haynsworth's competence, integrity, capability, and fair-mindedness to sit as Associate Judge of the U.S. Supreme Court. I have found that he has met the constitutional standard of fitness. It is my hope that the Senate will vote to confirm his nomination to the Supreme Court of the United States.

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

Mr. FONG. I yield.

Mr. ALLOTT. Mr. President, I compliment the distinguished Senator from Hawaii on his very lucid explanation of these matters, and particularly of the matters that grow out of the so-called labor aspects of the case.

We are all indebted to the distinguished Senator from Hawaii for his explanation of these matters because we all know him to be one of the outstanding lawyers in the Senate, as he has proven during his whole professional career.

I was just reviewing again in the record the Vend-A-Matic situation. The Vend-A-Matic situation begins in the record on page 2 of the hearings.

Mr. FONG. It came up very early in the course of the committee hearings.

Mr. ALLOTT. On page 2 of the hearings, the question of Vend-A-Matic was raised. And it continued through page 34. After that, of course, it came up several other times. And this is not the conventional printing either. Nearly all of this is in the very small type that is reserved for inserts in the record.

I think it is appropriate to call attention to the fact at this time that the whole Vend-A-Matic matter was raised by an alleged anonymous telephone call. I think the Senator would agree with me that from the viewpoint of his practice and his experience in the Senate, about the last thing that deserves creditable consideration is an anonymous phone call. I have never yet found one that bore any credence.

So, after Miss Patricia Eames called this to the attention of Judge Sobeloff—in passing I might comment that I am not sure whether it was her duty to call it to the attention of the judge, rather than that of the federal bar—The whole fabrication of the Vend-A-Matic situation was formed ultimately on the basis of an anonymous telephone call.

Mr. FONG. The Senator is correct. It was on the basis of an anonymous telephone call.

Mr. ALLOTT. And this caused all of the letters to the judge, the investigation and report, the referral to the Attorney General, and the findings of the Attorney General. In his letter of February 28 to Judge Sobeloff the Attorney General said:

> I share your expression of complete confidence in Judge Haynsworth.

Yet, we find this matter raised in such a way through the news media that it becomes an established fact, which has taken weeks now to disabuse, that somehow or other Judge Haynsworth had done something improper.

I think the Senator's statement on this matter has rendered a very valuable service for the Senate. I wish that everyone who is prone to condemn Judge Haynsworth on this one item or on any of the other items would merely take the time and trouble to read the RECORD.

I am reminded in this respect of what has been a stock instruction to the juries in our Colorado courts on the value of evidence, to the effect that, "If you find from the evidence that any witness has deliberately testified falsely to any material fact, you are at liberty to disregard all of his testimony."

It seems to me that a close parallel may be brought here with respect to people who were willing in this case to raise in order to serve their own self-interests a question as to the character and ability of the judge and thus to try to put a black cloud on him, which they were not able to do. They had to admit later that they had tried to do so wrongly.

In calling these things to the attention of the American public to demonstrate the real situation, the Senator has indeed been of very valuable service to the Senate and to the country.

I congratulate him.

Mr. FONG. Mr. President, I thank the distinguished Senator for calling attention to the Darlington case, because that case was really a very far-fetched case relied upon by those opposed to the nomination of Judge Haynsworth. Judge Haynsworth had no direct interest in Darlington.

He owned no Darlington stock. All he had was an interest in a company that did business with Darlington—in other words, a third-party interest which was not involved in the case at all. How, then, can he be accused of a conflict of interest?

Even if this matter had come to the attention of the litigants and of the judges at the time the case was heard, Judge Haynsworth would have been compelled by law and by all the legal precedents to sit in the case. He was compelled to sit, according to law, because he did not have a "substantial interest" in the defendant's case.

Mr. ALLOTT. I think this is entirely true. I congratulate the Senator. His remarks have been very lucid, and I wish everyone in the country could have an opportunity to read them.

Mr. FONG. I thank the distinguished senior Senator.

MESSAGE FROM THE HOUSE

As in legislative session, a message from the House of Representatives by Mr. Bartlett, 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 Senate to the bill (H.R. 11612) making appropriations for the Department of Agriculture and related agencies for the fiscal year ending June 30, 1970, and for other purposes; that the House receded from its disagreement to the amendment of the Senate numbered 12 to the bill and concurred therein, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 11702) to amend the Public Health Service Act to improve and extend the provisions relating to assistance to medical libraries and related instrumentalities, and for other purposes; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. STAGGERS, Mr. JARMAN, Mr. ROGERS of Florida, Mr. SPRINGER, and Mr. CARTER were appointed managers on the part of the House at the conference.

The message further 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 Senate to the bill (H.R. 12829) to provide an extension of the interest equalization tax, and for other purposes.

(By order of the Senate, the following proceedings were held as in legislative session.)

DEPARTMENT OF AGRICULTURE AND RELATED AGENCIES APPROPRIATION BILL, 1970—CONFERENCE REPORT

Mr. HOLLAND. Mr. President, as in legislative session I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 11612) making appropriations for the Department of Agriculture and related agencies for the fiscal year ending

States are well aware that the same kind of action can be taken with regard to reseal loans on corn, thus forcing down the price of that commodity as well. Similar action was taken by the USDA in May of this year for 1967–68 crop reseal corn in commercial storage.

Mr. President, I am deeply disturbed by the lack of concern of this administration toward the already hard-pressed American farmer. I heartily second the action of the senior Senator from Texas in calling on Secretary Hardin to reverse this unfair decision.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

SUPREME COURT OF THE UNITED STATES

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the Supreme Court nomination on the Executive Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the nomination.

The bill clerk read the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

The Senate, in executive session, resumed the consideration of the nomination.

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

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

Mr. McCLELLAN. Mr. President, I support the nomination of Clement F. Haynsworth, Jr., to be Associate Justice of the U.S. Supreme Court. He is well qualified by education, experience, and honesty to fill this high position with credit and distinction.

His colleagues on the bench have expressed their complete and unshaken confidence in both his integrity and ability. It is also significant to note that the American Bar Association committee which interviewed many lawyers and judges associated and acquainted with Judge Haynsworth reports that:

> As far as integrity is concerned, it is the unvarying, unequivocal, and emphatic view of each judge and lawyer interviewed, that Judge Haynsworth is beyond any reservation a man of impeccable integrity.

In addition to this high praise, the nominee brings with him a record of more than 12 years on the Federal bench, a record which is open for all to scrutinize. This nominee, unlike some others who have come before us, has had extensive judicial experience. He has demonstrated a balanced judicial temperament and has written or participated in hundreds of decisions that also reflect a balanced philosophy. So, we are not faced with the task of trying to fathom that philosophy from some intangible source but, rather, we have the opportunity to assess correctly the record before us.

An objective observer has characterized that record as one "of a disciplined attempt to apply the law as he understands it, rather than yield to his own policy preferences." On that premise, I think the President would be hard pressed to find a man who comes better equipped and recommended for the high post of Supreme Court Justice. And, it is sad, very sad indeed, that Judge Haynsworth has been subjected to such severe and unwarranted attack by his opposition.

Judge Haynsworth's critics have combed his personal and judicial record with a tinted magnifying glass and, it would appear, have yet to come up with anything more than the specious charge that he has displayed an "appearance of impropriety." Mr. President, that, in substance, is the only charge his accusers have been able to lodge against him. Now, let us look at the record.

Judge Haynsworth was an honor graduate of Furman University, a school founded by his great-great-grandfather. He received his LL.B. degree from Harvard Law School in 1936, and joined the firm of Haynsworth & Haynsworth which was founded by his grandfather. He served during World War II as a naval intelligence officer. Following the war, Clement Haynsworth returned to the practice of law until 1957, when he was appointed to the U.S. Court of Appeals for the Fourth Circuit. In 1964, he became chief judge of that court and a member of the Judicial Conference of the United States.

During his tenure on the bench, Judge Haynsworth's record reflects a keenly balanced judicial approach, unmarred by either liberal bursts of "activism" or by undue judicial restraint. He has applied the law fairly, equitably, and justly—qualities sorely needed on the U.S. Supreme Court.

The task of passing upon a nominee for the Supreme Court is not one to be lightly taken. Today, more than ever, it is a responsibility of the gravest magnitude. The Court's tendency in recent years to act as an innovator and usurper of legislative powers has contributed markedly to the pervading atmosphere of suspicion and distrust that is present in our country today.

Confusion and frustration prevail as a result of several recent Supreme Court decisions. Vagueness and uncertainty have replaced stability in our laws. As a consequence, confidence in the Supreme Court has been greatly impaired, and respect for that high tribunal has seriously diminished.

Yes, Mr. President, the opponents of Judge Haynsworth are correct when they say that confidence in and respect for the Court are at such a low ebb that they need to be restored. But, Mr. President, what has caused the present lack of confidence in and respect for the Court? The answer is, the Court itself—because of its disregard for and strained interpretations of the Constitution and its usurpation of the legislative functions of Congress.

Certainly, Judge Haynsworth cannot be blamed for the low state of esteem and confidence that the public has for the Supreme Court today. Those who make the charge against him with respect to his philosophy are rather insisting that someone of the philosophy that has prevailed in the Court, and of which the public apparently disapproves, should be appointed, not someone like Judge Haynsworth. In other words, you will not restore confidence in a Court in which confidence has been lost by nominating to that Court others of like philosophy of the present Court, or of some members of the present Court, whose pursuit of such philosophy has brought the Court into its present state of disapproval by the public.

Defeating the confirmation of nominees like Judge Haynsworth certainly is not calculated to restore but rather to destroy further the confidence of the people in this High Tribunal. Respect for the Court will not be enhanced by the rejection of this nomination. On the contrary, refusal to confirm Judge Haynsworth can well increase the acknowledged suspicion and distrust that now exist. I am convinced that his confirmation would help to prevent further deterioration of public esteem and confidence in the Court.

Judge Haynsworth's detractors have listed a number of "charges" which they insist should disqualify him. Boiled down to reality, these "charges" are nothing more than a desperate effort to cast the nominee in the role of one who has shown an "appearance of impropriety." The truth is that the nominee has two disqualifying attributes in the eyes of his principal opposition: One, he is from the South; and two, he is not completely subservient to modern liberalism.

That either of these should be the basis of opposition to a nominee is deplorable; that they should prompt the vilification that this man has suffered is most regrettable. Moreover, it exposes and confirms the striking weakness of the so-called case against Judge Haynsworth.

Since the day he was nominated, Clement Haynsworth has been subjected to intense criticism. No sooner was the name announced than he was being characterized as antilabor, a segregationist, and far too conservative. That, Mr. President, has been claimed by the same people who have heretofore contended that one should not consider the philosophy of a nominee, that the only thing one should consider is whether he is professionally qualified and of good character. Now the situation is reversed and they say, "We have to take into account the philosophy in this instance; it would not do to overlook it."

So we see that it depends on the nominee, and sometimes I think the section of the country from which the nominee comes, as to whether philosophy is important or whether it should be disregarded.

Mr. President, I have the greatest respect and admiration for the role that the Supreme Court, as an institution, is

designed to play under our form of government. To function properly, it should have the confidence and respect of the people. Its members should not only be qualified professionally, but they should also be above reproach in personal reputation. The Senate's role to advise and consent to nominations for the Court is designed to insure, to the greatest extent possible, the integrity of the institution. Therefore, great weight should be given to the President's nominee. Unless there are compelling reasons for rejection, the President's selection should be confirmed.

Judge Haynsworth is charged by his accusers with participating in cases in which he should have disqualified himself. One of these was the *Darlington Manufacturing Co. v. National Labor Relations Board*, 325 F. 2d 682. Deering Milliken Corp. was a party to that action in which the court ruled, by a divided vote, against the contentions of the NLRB and the Textile Workers Union of America. At the time of that ruling, Judge Haynsworth had a one-seventh interest in Carolina Vend-A-Matic which had some vending machines placed in the Deering Milliken plant as a result of competitive bidding, This was not done by favor, not by dispensation, but by competitive enterprise; not as a favor, but after having won the competition.

Mr. President, this dead horse—the Deering Milliken case—should be buried once and for all. This whole matter—this charge—was thoroughly investigated 6 years ago, and the conclusion was reached that not only should Judge Haynsworth have participated in the case, but that it was his duty to do so. That is the position taken and testified to by one of the Nation's experts in this field.

In late 1963, the Textile Workers Union of America, on the basis of an anonymous telephone call—this is how weak it was to begin with—forwarded an allegation to Judge Sobeloff, the chief judge of the fourth circuit, charging improper inducements to Judge Haynsworth by the Deering Milliken Corp., whereupon Judge Haynsworth—himself—asked for a full-scale investigation by both the judges on the circuit court of appeals and by the Department of Justice.

Thereafter, on February 6, 1964, when the investigations had been completed, the union that had made the charge withdrew its complaint and apologized. The court of appeals judges, after their independent investigation, concluded that there was "no warrant whatever" for the charge; and Attorney General Robert F. Kennedy gave further vindication when he expressed his "complete confidence" in Judge Haynsworth.

It is too bad that that has to be resurrected.

That the opposition should now try to resurrect that ghost, Mr. President, clearly confirms the lack of substance to the so-called case against Judge Haynsworth. The attempt to resurrect this false charge in the course of this confirmation consideration smacks of double jeopardy—something that both liberals and conservatives profess to abhor and which is prohibited by the Federal Constitution.

Farrow v. Grace Lines, Inc., 381 F. 2d 380 (1967), is cited as another case in which Judge Haynsworth should not have participated. At the time this case was before the court, he owned 300 shares of stock in W. R. Grace & Co., which in turn owned 53 subsidiaries, one of which was Grace Lines, Inc., one of the litigants in the case. The court of appeals affirmed the jury's verdict in favor of the plaintiff in the amount of $50. The plaintiff had sought to recover $30,000. So minuscule was Judge Haynsworth's holdings in W. R. Grace & Co., that it has been estimated that even had the higher amount—the full $30,000—been awarded it would have reduced the value of his holdings by less than 50 cents.

Mr. President, 50 cents in relation to $30,000, or in relation to the 300 shares of stock held by Judge Haynsworth, hardly can be called substantial. It is ridiculous in the extreme to assert or contend that this amount represents a "substantial interest" by Judge Haynsworth in the litigation or that it presents even the slightest "appearance of impropriety."

Mr. President, it would be plainly disruptive of the judicial process if judges were required to disqualify themselves in instances such as these. Judges do not live in a vacuum; they do not abide apart from the rest of the world; they eat and work like the rest of us; and, if they are economically able, they make investments. Efforts to require disqualification for interest in cases where a judge holds stock, not in a party litigant itself, but in a corporation which has some sort of dealings with the party litigant, have been uniformly rebuffed by the courts. Clearly, Judge Haynsworth had a duty to participate in these cases.

A thorough review of Judge Haynsworth's record leads me to the conclusion that there was only one instance of even the suggestion of indiscretion, and I am convinced that it was not only harmless, but that it was an unwitting action. I refer to the case of *Brunswick Corp. v. Long*, 392 F. 2d 337.

This case involved competing claims to the repossession of used bowling alley equipment. On November 10, 1967, a panel of the fourth circuit consisting of Judges Haynsworth, Winter, and Jones heard oral argument and then voted unanimously to affirm the judgment of the lower court in favor of Brunswick, and the opinion was assigned to Judge Winter for preparation.

Forty days later, on December 20, 1967, Judge Haynsworth's stockbroker, who handled all of his finances, placed for him an order for the purchase of 1,000 shares of stock in Brunswick Corp. at $16 per share. This order was the 45th account for whom the stockbroker had purchased Brunswick stock over a period of 2 years. A week later, the order was executed, and at about the same time, Judge Winter circulated the opinion he had prepared in accordance with the unanimous decision of the panel on November 10, 1967. Judge Haynsworth concurred in the opinion on January 3, 1968, and the decision was released on February 2, 1968, without substantive change. Petitions for rehearing and a petition for certiorari to the Supreme Court of the United States were subsequently denied.

Judge Haynsworth purchased this stock not on his own initiative but at the instance and on the advice of his stockbroker who had recommended similar purchases to 44 other persons before the decision in the Brunswick case was released. The case had actually been decided on November 10, 1967, 40 days before the stock purchase was recommended and probably 47 to 50 days before the transaction was consummated. There obviously was no inside information that prompted the purchase. The Judge's holdings of 1,000 shares out of about 18½ million shares of stock outstanding by the Brunswick Corp. cannot by any legitimate standard be found to be substantial.

Moreover, had the plaintiff in the Brunswick case been awarded priority for the full amount of his claim and had the sale of the security been sufficient to liquidate the claim, he would have received $90,000. It has been estimated that the total pecuniary effect of such a decision—that is, had plaintiff recovered every dollar he had claimed—on Judge Haynsworth's interest in Brunswick would have been less than $5—an amount not substantial or sufficient to influence a most honorable and distinguished judge on the circuit court of appeals.

If a justice of the peace in most any rural section of this State were presented with such an offer or opportunity, I think it would constitute an insult. In fact, this amount is so infinitesimal that it is inadequate to sustain a charge of undue influence, conflict of interest, or impropriety against any magistrate in the land who bears a reputation of honor and integrity compared to that of Judge Haynsworth. And, it seems to me, that only a prejudiced accuser would make such a charge.

I do not believe there is a man in this body, however he may vote when the roll is called, who thinks Judge Haynsworth was influenced in that case by his possible profit of less than $5 or in any other of these instances.

I questioned Judge Haynsworth closely about this matter during the hearings. It was brought out that he relies on the advice and counsel of his longtime friend and stockbroker about investments of this nature. It was also brought out that he had funds to invest only because he had recently sold some stock that were not proving profitable just before the Brunswick stock was recommended to him.

Obviously, Judge Haynsworth did not have the Brunswick stock in mind when the case was decided 40 days before the stock purchase was recommended to him. Not even his opposition makes that claim. The stock was owned by him when the motion for rehearing came up, and I questioned him about this. He testified that certiorari had already been denied by the Supreme Court and that there was no question

in the minds of the other judges as to whether rehearing should be granted. Moreover, Judge Haynsworth stated that if there had been any question he "would have granted a new hearing and brought in three new judges if anyone had the slightest doubt about it." Mr. President, I believe that statement, and I am satisfied that Judge Haynsworth's actions in this matter were both inadvertent and harmless. They cast no reflection whatsoever on his character and integrity.

This is the man, bear in mind, who made the statement that if there had been any question about it, he would have granted a new hearing and brought in three new judges if anyone had the slightest doubt about it.

This is the man the American Bar Association says, after having interviewed many lawyers and justices acquainted with Judge Haynsworth, they found "So far as his integrity is concerned, it is the unvarying, unequivocal, and emphatic view of each judge and lawyer interviewed that Judge Haynsworth is beyond any reservation a man of impeccable integrity."

If they found that to be true among the people who know him, the judges he worked with and the lawyers who practiced before him, why cannot the Senate believe it, too? Why not?

While on the matter of Judge Haynsworth's stock transactions, I think it appropriate to note that following the union charge that he should not have sat on the Darlington case, Judge Haynsworth immediately sold his stock in Carolina Vend-A-Matic so that the same unfounded suspicions would not again arise.

Incidentally, this stock was exchanged for stock in another corporation, and then the latter was sold for $437,000. During the hearings, it was noted that had Judge Haynsworth held that stock, it would now be worth more than $1½ million.

Mr. President, I think it is noteworthy that, notwithstanding the relentless and desperate effort that has been made, only one instance worthy of even a hint of mild criticism has been found in the record of this nominee, and plain candor and simple justice compel the finding that it was inadvertent and harmless. The accusers have tried in vain to find something—anything—to despoil this man's character and reputation. His record has withstood intensive examination and prejudicial scrutiny. His name is now before this body unblemished.

And, finally, Mr. President, some who unsuccessfully supported the confirmation of Abe Fortas are now contending that the Haynsworth controversy closely parallels the case that was made against Fortas. Nothing could be further from fact.

Only in two instances here has it been shown that Judge Haynsworth could possibly have profited. One was for less than 50 cents and the other for less than $5. It is ridiculous to compare the Fortas and Haynsworth cases. Even if we could find there was anything wrong in Judge Haynsworth's actions that brought about such a result, it bears no comparison with the Fortas case.

Fortas, while on the Court, enriched himself as a part-time lecturer at a fee of $15,000 to conduct a seminar of 2 hours a day, 1 day each week for a period of 9 weeks. He also accepted a very substantial lifetime annual retainer of $20,000 from a charitable foundation controlled by the family of an individual who was later convicted of a felony.

Mr. President, I think it is significant to note that not only was it $20,000 for life but the contract also provided for $20,000 a year to his widow during her lifetime.

How can we compare anything in the record of Judge Haynsworth, whatever he may be accused of on the basis of the record? There can be no comparison. I think the American public should know that this is a smear, when we undertake to make such a comparison of a man already sitting on the Supreme Court making a contract with a foundation which is under questionable management, whose principal manager was thereafter convicted of a felony. Taking $20,000 a year as a fee in cash as a retainer and a contract to provide for his lifetime the same amount each year, and then $20,000 to go to his widow in the event of his death, and making a comparison like that is a smear. It is a smear. It cannot be anything less.

Although Abe Fortas finally returned the initial fee of $20,000—but he made the contract after he was on the Supreme Court—after holding it for some 11 months, he did not do so until public exposure had occurred, or was imminent, and until a time subsequent to the individual's conviction.

That is the man who was the trustee of a foundation, whose principal manager was convicted of a felony and after whose conviction Abe Fortas decided, when exposure was imminent, that maybe he had better try to wash his skirts clean, and he returned the money. There is not one opponent of the nomination of Judge Haynsworth in this body who can make any comparison out of that against a man such as Judge Haynsworth, when those who know him—everyone who was interrogated regarding him by the American Bar Association—have said he is of impeccable character.

Are we going to make a comparison here and vote against the nomination merely by trying to relate it to a man who was on the Supreme Court and engaged in the actions I have just related, which have been taken from the record of the hearings in that confirmation proceeding?

Mr. President, there are quite a few supporters of Fortas who are now opposing Judge Haynsworth. All one has to do is take the CONGRESSIONAL RECORD and look at the vote on cloture. A number of those who were defending Fortas, with a record like that, come here and say, "Well, we are going to compare these records. We are going to vote against this man," when there is actually nothing against him.

That the Fortas supporters who are now opposing Judge Haynsworth would undertake to make such a comparison, again clearly demonstrates their desperation and difficulty in finding any sound basis for their charges against Judge Haynsworth.

If they have something against him, talk about it, get the record. Let us see it. But do not snare him by comparing him to Fortas.

Mr. President, those who are seeking to defeat this appointment have had much to say about "appearances." But, any implication, real or imaginary, of impropriety on the part of Judge Haynsworth that can possibly be deduced from "appearance" is completely and irrevocably refuted by the truth and facts recorded in the Senate Judiciary Committee hearings.

Mr. President, this nominee is of the highest integrity and, by every legitimate standard, possesses all the requisite qualifications to serve on the highest Court in our land. He is worthy of confirmation.

Mr. President, I want to reinforce what the American Bar Association report said as to his honor and integrity, and what I said about the lawyers who were interrogated by them, by making note here of the 16 past presidents of the American Bar Association who have endorsed the nomination of this man.

Let me read the names of those 16 past president: Harold J. Gallagher, Cody Fowler, Robert G. Storey, Loyd Wright, E. Smythe Gambrell, David F. Maxwell, Charles S. Rhyne, Ross L. Malone, John D. Randall, Whitney North Seymour, John C. Satterfield, Sylvester C. Smith, Jr., Lewis F. Powell, Jr., Edward W. Kuhn, Orison S. Marden, and Earl F. Morris.

Mr. President, they know what this record contains. Do you think, Mr. President, they would stultify themselves? Do you think, Mr. President, they would cast an aspersion upon a court that they love and to which they are dedicated by recommending that this body confirm the nomination of Judge Haynsworth if they did not believe in his integrity and his capacity to serve honorably? I do not believe they would—not 16 of them.

Mr. President, we could talk about this much longer; but if we are not going to decide it upon the record, upon the facts, upon a correct analysis, upon a weighing of the facts and the truth as the record reflects them, then further discussion would be of no avail.

Mr. President, I ask unanimous consent to insert in the RECORD as a part of my remarks an article that appeared in the Washington Evening Star of October 17, 1969. The title of it is "The Haynsworth Case." It takes up the charges made against Judge Haynsworth and then the replies thereto. I think the writers undertook to do an objective analysis. They undertook to be fair both as to the accuracy of the charge and as to what the facts were. I think one could read the article, if he did not want to review the whole record of the hearings, and a reading of it would be sufficient to convince any fairminded man that the case against Judge Haynsworth is no case at all.

There being no objection, the article

was ordered to be printed in the RECORD, as follows:

[From the Evening Star, Oct. 17, 1969]

THE HAYNSWORTH CASE

U.S. Circuit Judge Clement F. Haynsworth Jr., President Nixon's nominee to be an associate justice of the Supreme Court, came under attack even before his nomination was officially announced more than eight weeks ago.

Charges against him—by some senators, labor and civil rights groups, and some investigative news reporters—have drawn replies from the judge, the White House, the Justice Department, senators who support him, the American Bar Association, or private citizens favoring his nomination.

Here, in comparative form, are the charges that have been made and the replies which have been given—in approximate chronological order of development.

Charge 1: Haynsworth voted with a 3–2 majority of the 4th U.S. Court of Appeals on Nov. 13, 1963, to permit the Deering-Milliken textile chain to close one of its plants to avoid unionization there. At the time, the judge had a one-seventh ownership interest in Carolina Vend-A-Matic Co., which was then doing $100,000 worth of business a year on vending contracts with Deering-Milliken. The judge should have disqualified himself because of this tie.

Reply 1: The judge had no duty—legally or ethically—to disqualify himself from the labor case because (a) Vend-A-Matic was not itself involved in the case, (b) he had a personal interest in only $390 in profits from the firm's Deering-Milliken business, (c) he took no active part in vending contracting, (d) his role in the case had been cleared by his Circuit Court colleagues and by the Justice Department at the time. He had a legal duty to participate in that case.

Charge 2: The judge should have disqualified himself from the case also because he continued, after becoming a federal judge in 1957, to take an active part in Vend-A-Matic affairs—at least nominally holding office as vice president and director until 1963, attending regular weekly board meetings, receiving director fees of as high as $2,600, and having his wife Dorothy serve as secretary for two years.

Reply 2: He resigned orally from the vice presidency in 1957, and by letter as a director in 1963—before the court ruling. He did not participate in any Vend-A-Matic business except arranging financing. His wife was not secretary when the court ruling came down. Her role was limited to "helping out" at the office.

Charge 3: The judge should have disqualified himself from the case because he had committed his personal credit on Vend-A-Matic borrowings in amounts as high as $501,987. Some of this occurred after he became a judge in 1957.

Reply 3: The most indebtedness outstanding at any one time endorsed by him was $55,550, on Feb. 19, 1957—before he went on the bench.

Charge 4: The judge should have disqualified himself from the case because it was crucial to the economic health of the entire Southern textile industry, which he had helped develop and which was the source—in 1963—of three-fourths of Vend-A-Matic's business.

Reply 4: The court ruling was only one of three decisons involving the Deering-Milliken plant's labor situation, and the judge ruled against the company in the last of these. His role in helping develop the textile industry was confined to normal legal advice given as a private attorney. Vend-A-Matic's business had outlets other than textiles, and its overall business reflected a cross-section of area companies.

Charge 5: In the years the judge has been on the bench, Vend-A-Matic's gross sales have risen from $296,413 in 1956 to $3,160,665 in 1963, lending "suspicion" to the charge that his name and judicial position were used to promote business.

Reply 5: Vend-A-Matic's growth pattern was typical for the vending industry in general, and the industry in South Carolina. The firm's leading competitor says he knows that Haynsworth's name was never used to promote Vend-A-Matic.

Charge 6: The judge had a conflict of interest when he participated in a 1959 ruling in a case favorable to Homelite Co., which bought $15,957.22 worth of goods from Vend-A-Matic that year.

Reply 6: Vend-A-Matic was not involved in the court case. The judge voted in favor of Homelite only because the other litigant had committed fraud.

Charge 7: The judge had a conflict of interest when he participated in 1959 and 1961 cases involving Cone Mills Corp. Vend-A-Matic sales to Cone and related firms totaled $97,367 in 1959 and $174,314 in 1961.

Reply 7: Vend-A-Matic was not involved in either court case. The judge voted against Cone in both cases.

Charge 8: The judge had a conflict of interest when he participated in 1962 and 1963 cases involving Deering-Milliken Research Corp. (The 1963 case was different from the labor ruling cited in charge 1 above.) Vend-A-Matic sales to Deering-Milliken totaled $50,000 in 1962 and $100,000 in 1963.

Reply 8: Vend-A-Matic was not involved in either court case. Each case involved only procedural questions, not necessarily favorable or unfavorable to Deering-Milliken Research.

Charge 9: The judge had a conflict of interest when he participated in a 1961 case involving Kent Manufacturing Co. In that year, Vend-A-Matic had sales of $21,323 to a Kent subsidiary named Runnymeade.

Reply 9: The Kent Manufacturing Co. involved in the case is a Maryland fireworks firm. The Kent Manufacturing Co. which has a Runnymeade subsidiary which did business with Vend-A-Matic is a Pennsylvania woolen firm not involved in the case. (This charge was retracted after the reply pointed out the error.)

Charge 10: The judge had a conflict of interest when he bought $16,000 worth of stock in Brunswick Corp. on Dec. 26, 1967, while a lawsuit filed by Brunswick was still pending in his court, more than a month before the decision in the case was made public and many months before the case was finally settled.

Reply 10: The judge admits this was an error, and says that he will take steps to avoid such situations in the future. The White House calls it a "technical mistake" on the ground that the decision had already been made in the case on Nov. 10, 1967, before the stock was bought, even though the opinion was not then written or published.

Charge 11: The judge had a conflict of interest when he participated in two court rulings in 1966 involving Maryland Casualty Co. when he owned stock in American General Insurance, a parent corporation of Maryland Casualty.

Reply 11: The parent company was not directly involved in the lawsuit, and, besides, Haynsworth's financial stake in the outcome of either case was very small.

Charge 12: The judge had a conflict of interest when he participated in a 1967 court ruling involving Grace Lines Inc. at a time when he owned stock in W. R. Grace & Co., parent corporation of Grace Lines.

Reply 12: The parent company was not directly involved in the lawsuit, and, besides, the dollar value of the issue at stake in the case was "insignificant."

Charge 13: The judge may have had a conflict of intsrest in 1962, when he participated in a court case involving Greenville Community Hotel Corp. Some records supplied to the Senate Judiciary Committee were interpreted to mean that the judge owned stock in the corporation at the time of the decision.

Reply 13: The judge had owned one share of stock in the corporation from April 26, 1956, until sometime in 1958 or 1959, at least three years before the court case. The one share had a value of only $21 in 1959. (The charge was retracted after the reply pointed out the error.)

Charge 14: The judge had a conflict of interest in 1958 when he participated in a court case involving Olin Mathieson Chemical Corp., at a time when he owned stock in Monsanto Chemical Co., which was understood by those making the charge to be the parent company of Olin Mathieson.

Reply 14: The company in which the judge owned stock—Monsanto—was totally unrelated to the company in the case—Olin. (The charge was retracted after the reply pointed out the error.)

Charge 15: The judge had testified in a Senate hearing earlier this year that he had retained only one trusteeship position after becoming a judge in 1957, and that was in a small foundation. He had in fact remained a trustee, and serves in that capacity now, of the Furman Charitable Trust.

Reply 15: The initial reply was that "there is no Furman Charitable Trust." That reply was retracted when it was discovered that Haynsworth had served on such a trust beginning in 1947. He remembers orally resigning in 1957.

Charge 16: The judge had testified in the earlier Senate hearing that he had resigned all directorships in businesses when he became a judge in 1957. He had in fact retained a position as director and officer of Main Oak Corp. until 1963, and a director of Vend-A-Matic until 1963.

Reply 16: Since the earlier hearing came well before his nomination and Senate hearings on his business ties, his earlier testimony involving "a confusion of dates" was "certainly understandable."

Charge 17: The judge had written a letter to the Senate Judiciary Committee, after his nomination, saying he had never been involved in securing vending machine locations for Vend-A-Matic. The minutes of the firm's board meeting soon after he became a judge include a resolution saying that the "main sales and promotional work" of the firm had been done by its directors.

Reply 17: The minutes do not contradict the judge's "express and detailed statement" that he played no part in such decisions.

Charge 18: The judge, as a trustee of a Vend-A-Matic employe profit-sharing and retirement plan, qualified as an administrator of that plan. Federal law provides that administrators of pension funds must file reports to the Labor Department. No such reports have been filed.

Reply 18: Federal law provides penalties only for "willful violation," and "inadvertent failure" to file reports is not such a violation. Filing would normally have been done by clerical staff. There is no evidence that the judge violated the law.

Charge 19: The judge was involved, along with others, in a South Carolina cemetery venture (known as Greenville Memorial Gardens) with Robert G. "Bobby" Baker, the former Senate Democratic secretary who resigned under criticism for his business dealings.

Reply 19: There were 25 individuals and business firms involved in the venture, which Haynsworth entered purely on the advice of others. He did not see or communicate with Baker in connection with the investment. He has had only three conversations with Baker, and the last one was in 1958, years before Baker got into trouble with the Senate. None involved business.

Charge 20: The judge has frequently voted, in civil rights cases, against the interests of

Negroes and other minority groups. Such votes have come most frequently in school desegregation cases.

Reply 20: He is not a segregationist, and his record in civil rights cases shows that he has followed directives issued by the Supreme Court. He has shown a capacity for growth and a responsiveness to need.

Charge 21: The judge has an "anti-labor" record in his judicial performance. He has sat on 10 cases which were reviewed by the Supreme Court, and in all 10 his position was reversed by the Supreme Court.

Reply 21: None of the Supreme Court reversals suggested that the decisions being overturned were "anti-labor." Two of the 10 cases were "anti-labor." Haynsworth has written 8 pro-labor opinions and joined in 37 other pro-labor rulings.

Mr. ERVIN. Mr. President, today I rise to urge the Senate not to repeat the tragedy it enacted when the nomination of Judge John J. Parker to be a Justice of the Supreme Court was rejected by this body in 1930. Unfortunately, however, the recent nomination of Judge Clement Haynsworth has become a sad reminder of the events which surrounded the nomination of Judge Parker. Like Haynsworth, Judge Parker was a fine legal scholar from the South who was for many years chief judge of the Fourth Circuit Court of Appeals. Also like Haynsworth, Judge Parker was subjected to vicious attacks by organized labor and civil rights groups after his nomination was announced. Judge Parker's nomination was rejected by two votes, and I think most scholars agree that it was not a very proud day in the history of the Senate. As Judge Harold Medina said about his rejection by the Senate:

> The change of a single vote would have brought about a different result. The heartbreaking part of it was that the opposition was based upon a complete misunderstanding of the facts. One of the two men in the United States best qualified in every way for membership on the Court had been rejected. The other, Learned Hand, never received the appointment.

It was a great tragedy for our country to be deprived of the services of John J. Parker on the Supreme Court of the United States. It will be likewise deplorable if Judge Haynsworth's nomination is rejected.

I do not intend to debate the vague and false charges that Judge Haynsworth is insensitive to judicial ethics. Every charge against Judge Haynsworth was investigated at length by the Judiciary Committee and I fully subscribe to the conclusions the committee issued in its report on the nomination. I think that it is sufficient for me to say that I was present at virtually all of the hearings on the Haynsworth nomination and I assiduously studied the hearing record. After considering all of the insinuations which have been leveled against him, I find no evidence at all to indicate any improper conduct. On the contrary, I find Judge Haynsworth to be an honest and sensitive man of high character and integrity—an opinion shared by the President of the United States, the Attorney General, Judge Simon E. Sobeloff and all of the judges sitting on the Fourth Circuit Court of Appeals, and the American Bar Association.

Why then is there such a furor over this nomination? Candor compels me to state that charges against Judge Haynsworth are based either upon misinformation or little knowledge of the facts by those willing to distort his record because they disagree with his judicial philosophy.

In order to examine further the real reasons Judge Haynsworth is being opposed, the charges of antilabor and anticivil rights have to be considered because the organizations which represent these interest groups have created the false issues which peril this nomination. Witnesses for organized labor at the hearing cited 10 cases dealing with labor problems in which Judge Haynsworth participated which were reversed by the Supreme Court; however, none of the Supreme Court reversals indicated the lower decisions showed an antilabor bias. As a matter of fact, a close reading of the decisions shows that only two of the 10 decisions can be counted as deciding a substantive point against labor. On the other hand, Judge Haynsworth has written eight prolabor opinions and joined in 37 other prolabor rulings. In the area of civil rights, while he may have been understandably reluctant, as are most judges, to establish new precedents before they have been pronounced by the Supreme Court, he faithfully followed every directive issued by the Supreme Court in this field. Yet, the leading witness for civil rights groups called Judge Haynsworth a "hard-core segregationist." In sharp contrast to the views of these organizations, Judge Harrison Winter summed up Judge Haynsworth's legal approach to all areas of the law like this:

> I have never felt or thought that his (Judge Haynsworth's) position on a particular matter has exceeded the area of legitimate and informed debate.

During the debate on this nomination, a great deal has been said about former Justice Abe Fortas. I opposed the elevation of Justice Fortas to the office of Chief Justice of the United States because of his constitutional philosophy. He made a public speech at American University in which he declared that the Constitution of the United States has no fixed and unchanging meaning. On another occasion before the Trial Lawyers' Association of the State of Virginia, he declared that the genius of the Constitution lay in the Supreme Court, because the Supreme Court had the power to change the meaning of the Constitution.

My study of his speeches and my study of his opinions convinced me that he was not qualified to be Chief Justice of the United States, because a man who does not believe the Constitution has any fixed meaning cannot possibly keep an oath to support the Constitution; and a man who thinks that the Constitution permits the Supreme Court to amend the Constitution is not fit to be Chief Justice of the United States.

It was for those reasons that I opposed the elevation of Justice Abe Fortas to the office of Chief Justice of the United States.

Concerning Judge Haynsworth's judicial philosophy, I happen to reside in the Fourth Judicial Circuit. Prior to coming to the Senate, I read all of the decisions handed down by the U.S. Court of Appeals for the Fourth Circuit; and after I came to the Senate, I kept up that practice as far as was humanly possible. Therefore, even though I did not personally know Judge Haynsworth until he appeared before the Senate Committee on the Judiciary, I was well acquainted with the work which he had done as a member of the Fourth Circuit Court of Appeals. I knew that he was one of the finest legal craftsmen in this country. I also knew that, unlike Justice Fortas, he was more devoted to the Constitution of the United States and what it did say than he was to his own opinions of what it should have said. I knew that he would, as a Justice of the Supreme Court, be more interested in interpreting the Constitution and interpreting the laws than he would be in amending them by judicial usurpation.

We certainly need, in this hour, as the distinguished Senator from Arkansas has just stated, a Supreme Court in which the people of this land will have confidence; and the only way we can secure a Supreme Court in which the people of the United States are going to have confidence is to place upon that tribunal men who recognize that it is the function of judges to interpret the Constitution and the laws, and not to make them.

Judge Haynsworth is such a man, and he is attacked here by certain special interests because they recognize that he will be a judge who will be faithful to his oath to interpret the Constitution according to its true meaning, and will not be a judicial handmaiden for those groups who oppose him.

My study of Judge Haynsworth's opinions reveals not only that he is a good legal craftsman, but also that he has the capacity to judge the cases which come before him with what Edmund Burke called "the cold neutrality of the impartial judge." I know of no higher qualification which any man can take to the Supreme Court than that capacity—the capacity to judge his cases with the cold neutrality of an impartial judge, rather than with the capacity of a judicial activist, who wishes to rewrite the Constitution of the United States to suit his own image or the wishes of any special groups of our citizens.

Judge Haynsworth would be a most valuable addition to the Supreme Court, and I feel it would be one of the greatest tragedies of our generation if the American people were to suffer again, as they did in the case of Judge John J. Parker, the denial of a seat upon the Supreme Court to a man of his judicial learning and experience, and his intellectual and personal integrity.

This has been a peculiar fight on the nomination of Judge Haynsworth. We have had National Education Association officials come out and publicly oppose his confirmation. They have done so, I charge, without authority from the members of that organization. I have had numerous communications from people of North Carolina who are members of the NEA, and who have informed me that they were given no voice in the matter, and that the position of the organization

did not represent their position, but was exactly opposite from their position.

The same thing can be said of the American Trial Lawyers Association. I charge that the officers of that organization, without any authority from its members, took a public position on this matter not in harmony with the thinking of many of its members, and not authorized by its members.

I ask unanimous consent to have printed in the RECORD at this point, as a part of my remarks, telegrams and letters which I have received from members of the National Education Association and the American Trial Lawyers Association, which sustain my charge that officials of those organizations who undertook to speak for the organizations were speaking without authority from their members.

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

Raleigh, N.C.

Senator SAM ERVIN,
Senate Administration Building,
Washington, D.C.:

At the regular meeting of the board of directors and presidents of the North Carolina Division of Superintendents on November 11, the following motion was passed unanimously: "That a telegram be sent to the president of the National Education Association, to the North Carolina Senators, and to Sam M. Lambert, executive secretary, National Education Association, objecting to the recent action taken by the NEA president and executive committee in regard to the Haynsworth appointment, this objection being based on the following premises: (1) That the NEA was not authorized to speak for the NEA administrator members in North Carolina on this matter; and (2) that such unwise action during the height of our NEA membership drive is having an adverse effect."

CHARLES H. CHEWNING,
President, North Carolina Division of Superintendents.

THE NORTH CAROLINA ACADEMY OF TRIAL LAWYERS,
Raleigh, N.C., October 14, 1969

LEON L. WOLFSTONE, ESQUIRE,
President, American Trial Lawyers Association, Seattle, Wash.

DEAR LEE: I was most interested in reading the telegram which you made public at a news conference in Seattle yesterday in connection with Judge Haynsworth and the fact that you would like to poll "about 1,000" of the members of our Association for their feelings. This conference was reported today in our local newspaper.

I am sure that you will poll carefully and give great consideration to the opinions of the members of the American Trial Lawyers Association here in the Fourth Circuit, many of whom have argued cases before him and know him best. While he would not have been my first choice, nevertheless, I feel that he is highly qualified and get the distinct impression that pure sectional politics is now playing an unfortunate role with many of the Senate members in this matter.

I send my highest regards.

Sincerely,

CHARLES F. BLANCHARD.

RALEIGH, N.C.,
November 11, 1969.

NATIONAL EDUCATION ASSOCIATION OF THE UNITED STATES,
Washington, D.C.

GENTLEMEN: This fall I, as a veteran teacher of sixteen years service, advised several younger teachers to join NEA because I felt that it was the one national organization which spoke professionally for all the teachers. Now after reading the attached editorial by David Lawrence, I am having second thoughts on what I thought was NEA's policy of speaking *professionally for all teachers.*

A national organization by necessity must represent *all* spectrums of opinion on complex social and political issues; it cannot, in my opinion, hold the loyalty of the diverse membership if it takes blatantly partisan positions. Therefore, I now must confess that I would give serious consideration to supporting an alternative organization to NEA.

I am also obliged, by copy of this letter, to notify the Senators from North Carolina that NEA does not necessarily speak for all educators on this issue. Hopefully they will, in turn, so inform their colleagues.

Yours truly,

(Mrs. G. F.) VALERIE S. COOPER.

ROCKY MOUNT, N.C.,
October 27, 1969.

Hon. LEON L. WOLFSTONE,
President, American Trial Lawyers' Association, Cambridge, Mass.

DEAR MR. WOLFSTONE: I have been a member of ATLA for many years; and have noted with regret the manner in which you and the other officers of our fine organization have entered the dispute over confirmation of Judge Haynsworth.

In the first place, the procedure of having a poll taken of 1,000 members of ATLA is more in the nature of a popularity contest. These lawyers polled have access to no more facts than I have; and all I have is what I have read in the newspapers. Of all groups concerned, ATLA should be most suspicious of trial by news media.

J. P. Morgan is reported to have said that there are always two reasons for a course of action taken, the "good reason" given, and the real reason. I am inclined to suspect that the real reason for your objection to Judge Haynsworth is that he is admittedly a strict constructionist on Constitutional questions, and, therefore, might be expected to give some weight to the doctrine of *stare decisis.* While this doctrine was undoubtedly given undue weight in times past, the pendulum seems to have swung too far in the other direction in the Federal Courts. I think President Nixon is correct that we need to restore some balance to the Supreme Court.

It would appear that the liberals and other opponents of Judge Haynsworth may be operating on the assumption that, if this man's nomination is defeated, President Nixon will then appoint a more liberal man to fill the vacancy. It is entirely possible that, if the President is defeated on this appointment, he may well appoint a man who is much more conservative.

If the ATLA is going to get into the field of passing on judicial appointments as the ABA has done, I have no objection, provided they are given access to the same facts as the ABA committee had. However, I do disapprove of your present procedures. In the action which you have taken, you certainly do not speak for me as a member of ATLA.

Sincerely yours,

DON EVANS.

WILMINGTON, N.C.,
November 11, 1969.

Mr. GEORGE D. FISCHER,
President, National Education Association, Washington, D.C.

DEAR MR. FISCHER: The statement issued by you criticizing President Nixon for proposing the name of Judge Clement Haynsworth to the Supreme Court and requesting him to withdraw the nomination was totally uncalled for. I am a member of the N.E.A. and you certainly do not speak for me and I am sure you do not speak for thousands of other N.E.A. members.

Judge Haynsworth is a very honorable man and would be a most welcomed improvement to the Supreme Court. He certainly has my support as a citizen and as a member of the N.E.A. This announcement was most uncalled for and I believe that the N.E.A. should not approve or disapprove this appointment, but work with whomever is approved.

Again, you did not speak for me in your disapproval of Judge Haynsworth. I am 100% for him.

Sincerely,

WALLACE I. WEST.

NATIONAL EDUCATION ASSOCIATION,
Washington, D.C., November 14, 1969.

The Honorable SAM J. ERVIN, JR.,
Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: Recently you received a communication from Mr. George D. Fischer, President of the National Education Association, opposing the appointment of Judge Clement F. Haynsworth to the United States Supreme Court. As director of the National Education Association from North Carolina, I write to inform you that neither President Fischer nor members of the Executive Committee of NEA conferred with North Carolina teachers before reaching their decision concerning Judge Haynsworth. Following announcement of their position, I have received much adverse criticism from our members. It is my opinion that the majority of our membership would like for you and Senator Jordan to exercise your own wisdom and good judgment in this matter and not be influenced by the NEA leadership. Generally, our teachers seem to deplore the action of our leaders in taking sides on this controversial matter.

Sincerely yours,

BERT ISHEE, *NEA Director.*

RICHMOND, VA.

Senator SAM J. ERVIN, JR.,
Old Senate Office Building,
Washington, D.C.:

The following telegram was sent November 14 to the President, Senator Eastland, Senator Spong, and Senator Byrd: We the undersigned members and former members of the board of governors of the American Trial Lawyers Association for the Fourth Circuit presided over by Judge Haynsworth have had the privilege of arguing cases in his court. We know that he is honest, that his integrity is above reproach, and that he possesses all the qualification necessary for a Supreme Court justice. We urge you to stand firm in support of the nomination. Signed by Max R. Israelson, Baltimore member; Ross G. Anderson, Jr., Anderson, S.C., member; George E. Allen, Jr., Richmond, Va., member; George E. Allen, Sr., Richmond, ex-member; Emanuel Emroch, Richmond, ex-member; Charles F. Blanchard, Raleigh, N.C., ex-member; Eugene H. Phillips, Winston-Salem, N.C., ex-member; Louis B. Fine, Norfolk, Va., ex-member; Warren Stack, Charlotte, N.C., ex-member, secretary to George E. Allen.

Mr. ERVIN. Let us not repeat the tragedy which was enacted in the Senate when Judge John J. Parker was defeated for membership upon the Supreme Court of the United States. Let us give the American people an opportunity to have the services of a sound judge, a great legal craftsman, and a devoted supporter of the Constitution, Judge Clement F. Haynsworth, Jr.

Mr. ALLOTT. 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. ALLOTT. Mr. President, I ask

unanimous consent that the order for the quorum call be rescinded.

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

Mr. ALLOTT. Mr. President, I quote from the hearing record:

I am a practicing attorney confining my practice to representing poor people, laboring class of people. I have never represented a corporation.

I am a union lawyer in the true sense of the word.

I have over the years done a great deal of work for the Textile Workers Union.

I was tainted as a CIO lawyer which to me is an honor.

I am a Democrat.

I was State President of the Young Democrats.

Hubert Humphrey was my candidate for President.

I would not have recommended that they give the job to Judge Haynsworth. I would have recommended that they put Arthur Goldberg back on.

In contrast to the content of a file of letters which I have from executive offices of labor unions, it was somewhat surprising to read the conclusion of this labor attorney I just quoted as to the appointment of Clement F. Haynsworth to be an Associate Justice of the U.S. Supreme Court. He told the Judiciary Committee that it was his belief that President Nixon had a mandate from the American people and that if President Nixon "searched the whole Nation over he could not find a man more suitably qualified for the job than Judge Haynsworth." The witness was John B. Culbertson from Greenville, S.C., within the jurisdiction of the court of which Judge Haynsworth is a member, and who is also president of the county bar association there. The testimony from which I have quoted begins on page 211 of the hearing record and I should also mention that Mr. Culbertson conveyed to the committee a message from the attorney for the National Association for the Advancement of Colored People in Greenville indicating his support for Judge Haynsworth.

I have cited this testimony—although it has been, in part at least, previously referred to here—for the reason that I believe this man touched upon, or, more accurately, demonstrated, an underlying truth involved as the Senate considers the pending nomination. The competent chairman of the Judiciary Committee (Mr. EASTLAND) identified this truth in his statement on November 13. He spoke of that great vast majority of our citizens which, in his words, are "angry and concerned about Supreme Court decisions that have unleashed a wave of rioting and crime in our streets" and "about Supreme Court decisions that mistake license for liberty and tie the hands of local prosecutors in their efforts to stop the flood of obscenity that has inundated our country" and who are "tired of demonstrators waving Vietcong flags, and agitators calling for the overthrow of the Government."

Mr. President, I submit that when President Nixon nominated Judge Haynsworth to a place on the Supreme Court, he did respond to a mandate from this great majority of our citizenry to which Mr. Culbertson gives witness, including the substance of the labor unions of this country; the working rank and file dues paying membership, not the highly paid executive officers of these unions who, from their lofty skyscraper suites, have inundated us with mail and testimony and who have generally, in almost every available way, opposed the nomination of Judge Haynsworth, under the guise that Judge Haynsworth is unethical and anti-civil rights and, finally, anti-labor.

To those of my colleagues who might be influenced by the massive assault which organized labor has unleashed, to those who reason that behind all this smoke there must be a fire of substance justifying it, I suggest that to respond to it will neither be in the best interest of the cause of labor nor desired by the rank and file labor union members.

On November 12, I stated my position that it is not the function of the Senate to consider an interpretation of the nominee's philosophy.

I believe this to be true, but others insist on the opposite view and maintain that an interpretation of the nominee's philosophy constitutes grounds for rejection or approval. Others have seized upon charges of actions contrary to the Canons of Judicial Ethics in opposing the nomination. But when the facts are examined, no violations are found, so we have seen them fall back on claims of "insensitivity" and "appearances of impropriety." As I, and many others, have said, these attempts to rely on unfounded ethics charges must ultimately find their origin in an opposition to the nominee's interpreted philosophy, or the manner in which it is anticipated he "might" rule on a certain kind of case. This is what we have experienced. Thus, I have deemed it of possible value to here direct myself to this matter of the philosophy of the nominee and its acceptability as a criteria. Let me quote, if we are to deal in interpretations of philosophy, from a statement by Judge Walsh, chairman of the American Bar Association committee, Standing Committee on the Judiciary:

Now, I do not mean in any way to suggest that I thought Judge Haynsworth was running against the stream of the law. I think he was punctilious in following that stream as the Supreme Court laid it out and in some fields he has run ahead and broken new grounds. For example, in the expansion of the doctrine of the utility of habeas corpus, he broke away from an old restraint in earlier Supreme Court opinions and was complimented by the present Supreme Court for doing so. He has moved over into, as I recall it, more modern tests on insanity, things like that. So, he is in no sense running against the stream of the law. If I were going to characterize it, I would say where new ground is being broken by the Supreme Court, he believes in moving deliberately rather than rapidly, and particularly where an interpretation of the Constitution which has stood for many years is reversed or turned around he would perhaps give more time than other judges to adjust to the new state of affairs.

It is this interpretation of the nominee's philosophy that I believe is consistent with the philosophy of the Senator from Mississippi (Mr. EASTLAND) described as the majority view of Americans, including then the majority of labor union membership. In fact, if anything, it has been those who are likely to be members of the labor unions who have been quick to speak out against the pace and philosophy of the so-called "Warren court." The executives of these labor unions do not seem to be able to hear their memberships, but it is not their role to confirm, or reject, Judge Haynsworth; and perhaps it is only logical that we, not they, should hear from their members and recognize the signs. For example, the following is a letter recently received by me:

OCTOBER 14, 1969.

Hon. Senator GORDON ALLOTT:

I am writing you in behalf of President Nixon's nominee Clement F. Haynsworth for the Supreme Court of America. I know by the papers you have said you would vote for him. I have lived and voted in (the) county for 48 years and pray to God that you let nothing change your belief in him not even the CIO or any other union. I personally have carried a paid up union card for 55 years. Both vote for him and do all you can in his behalf for the good of Colorado and all of America. . . . (My) county is predominantly democratic but talking to many of my friends I was amazed that most all of them were for Haynsworth as supreme court Judge (sic).

I have examined the cases cited by the labor unions as evidencing an anti-labor philosophy on the part of Judge Haynsworth. The common ingredient is that they are decisions by the Fourth Circuit Court of Appeals where the labor union, or the labor interest, did not win all aspects of the case. I personally am convinced that the members of these labor unions do not want a Justice appointed to the Supreme Court who will always rule in favor of a labor union in all of the cases that come before the Court, regardless of what the case is about and who is right.

George Meany, the president of the AFL–CIO, stated in the hearings—page 168—that he would not approve of any decision that was against labor, but I do not believe the membership believes this. Nor do I believe we should adopt this view by voting against the nomination. Any union member knows that a fair and impartial judge who makes his decision on the basis of the facts and the law is a far better judge than one who is so prejudiced and biased that he can be expected to take a "side" in a case.

Every other American knows this, too; and I think that, if we were to question every American in the United States, 98 percent of them would say that all they wanted was an intelligent and fair and unbiased judge, not a judge who is on their side. If he has that kind of judicial philosophy—that is, that he would take a "side" in a case—he may give a union an undeserved break somewhere along the line at someone else's expense. At the same time, he also may let bias and favoritism sway his decision in a case with an unfavorable result to an individual union member. What is more important it would be contrary to the decision which a fair and unbiased judge would have rendered. For a litigant to win 10 or 20 cases undeservedly will never offset the

hurt of losing one case which would have been decided favorably to a person before the courts but for the lack of a fair judge.

Several of my colleagues have mentioned the duty of Congress to protect the image of the Supreme Court by rejecting this nomination in favor of one about which no one raises questions. I most earnestly assert that to deny Judge Haynsworth this place on the Court will deny the people of this country a judge on the Supreme Court of the judicial temperament they most decidedly believe is needed. I also assert that it would be an injury to the Supreme Court to deny confirmation to a nominee simply because of "appearances" and philosophy. In my opinion, it would also tarnish the reputation of the Senate itself.

Mr. President (Mr. GOLDWATER in the chair), we cannot succumb to this admitted demonstration of what a group claiming to represent one segment of the citizens of this country believes it has the power to cause. Not only would such action result in a weakening of the role of the Senate; it would also demonstrate to the Executive and the judiciary, up and down the line, that here is a power group that can inflict its will upon them through those who make the laws, appropriate the moneys, and confirm nominations. The labor unions will not need to repeat the same activity in regard to the next nominee, if they are successful. In fact, I am sure they would not, for their point will have been made, just as the attorney for the AFL–CIO bragged to the Judiciary Committee what the labor unions had done in 1930 by blocking the nomination of Judge John J. Parker. He said:

> I agree . . . that the attack on Judge Parker on that ground was unjustified. But the federation succeeded in blocking his confirmation to the Supreme Court and, as you say, he served for many years thereafter as a prolabor judge and if we can get both the same two results here we will be happy. Page 173.

It is also interesting to me to observe that Judge Parker was admittedly opposed by the union because—according to them—he allegedly did adhere to an earlier Supreme Court decision. Now they oppose Judge Haynsworth because he allegedly did not adhere to an alleged earlier Supreme Court decision—page 173.

After having read the testimony of the witnesses in the hearings, I am constrained to say there is no doubt in my mind that the charges of improper philosophy against Judge Haynsworth stem from the opposition of the labor union hierarchy. This includes the allegations of improper civil rights philosophy. No real case was attempted by those representing civil rights groups. Hence, it is apparent to me that they were, instead, made the pawns of labor. Labor had the civil rights groups join them in the Judge Parker case, and the same pattern, for the same reason, is apparent here. I am sure that if the labor hierarchy had not decided to oppose Judge Haynsworth, the civil rights groups would not have been heard from; and I was impressed from the hearing record by the minimal degree of importance the civil rights advocates placed in taking part in the hearings. For instance, Roy Wilkins of the Leadership Conference on Civil Rights was supposed to attend but he did not. Instead, Mr. Mitchell appeared in his place—page 288. He had an airplane to catch, so he said he would probably have to leave Mr. Rauh behind to present legal arguments. They did have a statement from Mr. Wilkins but it took less than a page of the hearing record—pages 423 and 424. The worst Mr. Wilkins statement contains is a conclusion that Judge Haynsworth was not "with it" and that a study of Judge Haynsworth's opinions revealed that he has not been for "pressing forward" enough in the civil rights area and is only for "inching along." The appearance of Mr. Mitchell and Mr. Rauh was the extent of appearances before the committee by members of civil rights groups, with the exception of a representative from the Black Americans Law Students Association, an attorney from the Virginia NAACP, and an attorney for the ADA. In addition, however, two or three written statements were filed with the committee. Compared to the prestigious personal appearance of George Meany and all the other labor people that were present, the civil rights groups made only a token appearance which coincides with the conclusion of the Washington Post on Sunday that the philosophical allegations against Judge Haynsworth are that he is anti-labor and only "luke warm on civil rights." I also was interested in reading in the hearing record that while the labor union executives were generally careful to see to it that they also charged Judge Haynsworth as being against the recognition of the civil rights of Negroes, there was no instance where the representatives for civil rights groups said anything about his labor decisions that I saw.

These facts together with the very clear commitment made by the union officials in 1963 in connection with the Darlington case to charge Judge Haynsworth with improper and illegal conduct convince me that, as I said, the labor unions have been the prime movers in carrying out the attack against him.

Mr. President, in rereading portions of the record a few moments ago I think it is significant, when we consider the pattern of what has been accomplished by these groups to blacken and smear the name and professional career of Judge Haynsworth, to note that the nomination of Judge Haynsworth was sent to the Senate on August 18. The hearings in this case opened on September 16, and after less than two pages, the first item in the record is a memorandum of the Senator from Mississippi (Mr. EASTLAND) and the Senator from Nebraska (Mr. HRUSKA), relating to the Department of Justice file on Judge Clement F. Haynsworth, Jr., in response to public charges which had been made. So that between the dates of August 18 and September 16, before this man had ever had an opportunity to appear before the committee, at a time when he could not be making public statements on his own, he was already in the eyes of this country, through the news media—printed, visual and auditory—a defendant, to the extent that literally the first thing concerning his nomination was a long statement explaining matters which had been placed before the people of this country in a false and, in fact, in an untruthful light.

Before leaving the civil rights aspect of Judge Haynsworth's philosophy, however, I do want to mention the statement of the senior Senator from New York (Mr. JAVITS) on Friday in which he announced his opposition to this nomination solely because of the judicial philosophy of Judge Haynsworth in the civil rights field. I noticed an apparent irreconcilable difference between his ideas on the proper method for evaluating the judge's philosophy and those of the AFL–CIO which, as I said, also opposes his philosophy. I refer to the statements of the Senator from New York on page 34275 of the RECORD wherein it is said that a judge's philosophy cannot be gleaned from cases in which he merely votes for a particular result which is then expressed in an opinion written by another judge, but that the opinions he actually writes are the only reliable criteria.

The AFL–CIO attorney, Mr. Harris, whom Mr. Meany brought with him to the hearings, on the other hand, took the position that the cases where Judge Haynsworth actually wrote opinions were of less importance in gaining an insight into his philosophy than are the cases of the court where a subsequent Supreme Court review is had and the cases of the court where there is a division of opinion among the circuit court judges—page 174. On page 181, Mr. Harris stated "we think it does not matter whether he wrote the opinion or not."

So, we have the proponents of the anti-labor-philosophy argument making their judgment by looking at a different type of case than the type of case that the major spokesman, so far, of the anti-civil-rights-philosophy argument examined. Also, the Senator from Montana (Mr. METCALF), in speaking against the nomination, adopted the AFL–CIO method of analysis in his statement on Monday.

On the face of it, I think we might have to conclude that either the anti-labor-philosophy proponents or the anti-civil-rights-philosophy opponents are applying the wrong test and we should disregard the conclusions of one. However, I have reexamined the hearing record and the truth of the matter is that both are wrong.

When Mr. Harris made his statements, he was defending the fact that he had not taken into consideration all of the cases in which Judge Haynsworth participated. On behalf of the AFL–CIO he had only read 10 of about 50 labor cases in which the judge participated. Thus, Mr. Harris did not know in how many labor cases the judge had participated—page 175. Nor did he know with certainty in how many labor cases the judge had actually written the opinion—page 169. Furthermore, he categorically refused to give the committee a list of all of the labor cases in which he believed Judge Haynsworth had participated—page 172.

The statement of my good friend from New York, by the same token, states that not all civil rights cases in which Judge Haynsworth participated had been investigated on page 34275 of the RECORD.

In both instances, I must agree with my colleagues on the Judiciary Committee in that I do not see how we can put much faith in a purported review of the judge's philosophy as reflected by his judicial activities without taking stock of all the pertinent cases in which he served as a judge. Therefore, I agree with the senior Senator from New York the cases in which the judge wrote the opinion should not be overlooked. I also agree with the AFL–CIO attorneys that the cases in which there was a divided court and the cases which went to the Supreme Court are also important in reaching any kind of a comprehensive indication of either the judge's labor philosophy or his civil rights philosophy. No case should be overlooked.

Mr. President, I reiterate my belief that we should not delve into the philosophy of Judge Haynsworth in agreeing to the appointment, but I also point out to those who would take his philosophy into consideration that no comprehensive and complete review of that philosophy has been made by those who have already decided they oppose that philosophy in the two areas of supposed objectionable philosophy mentioned. The statement by Senator KENNEDY when the confirmation of Justice Marshall was before us is appropriate:

> I believe it is recognized by most Senators that we are not charged with the responsibility of approving a man to be Associate Justice of the Supreme Court only if his views always coincide with our own. We are not seeking a nominee for the Supreme Court who will express the majority view of the Senate on every given issue, or on a given issue of fundamental importance. We are interested really in knowing whether the nominee has the background, experience, qualifications, temperament and integrity to handle this most sensitive, important, responsible job.

If most of those opposed to the nomination of Judge Haynsworth were to apply the criteria which Senator KENNEDY laid down in the Thurgood Marshall confirmation case, there would be overwhelming support in the Senate for Judge Haynsworth.

Mr. President, I believe that we will be doing more than just voting to confirm or deny confirmation of a Supreme Court nominee. In a sense we will be deciding the personal fate of an honorable man who, if he is rejected by the Senate, must live with that reality for the rest of his life. More than even that, however, we will be testing the strength of the "iconoclasts" who are able, by making unfounded charges, to create doubt about a man in the minds of nearly everyone.

Judge Haynsworth is the third nominee of President Nixon who has suffered from the "iconoclast" syndrome. The first was Interior Secretary Hickel. The second was Subversive Activities Control Board member, Otto Otepka. And, of course, now Judge Haynsworth.

Regardless of the outcome of the Haynsworth vote, the pattern will be repeated in the future, and I think that thoughtful Americans ought to be aware of the pattern. It goes like this:

Leading newspapers, particularly some on the east coast, start "floating" around questions of a serious nature about the nominee, as I pointed out, even before he had an opportunity to come before the committee. These questions are, in turn, picked up by others then who add a few charges to the questions. The charges, which usually catch the supporters of the nominee by surprise, are serious and almost always involve allegations of "deals" and "conflict of interest" and "unusual or questionable activities."

In this case, there is hardly a man in this Chamber who will vote against the judge who has not declared already that he believes him to be an honorable man, that his integrity is unquestioned, as well as his legal ability.

The charges which are made in the situation I described are baseless, ridiculous, and many times even completely false. Any answers to the charges are then obscured. They can be put in the right place in the newscast or in an obscure place. They can be slanted. They can be put on the back pages of the newspapers. By the time the charges are answered, so much smoke has been created that the nominee is then labeled "controversial" and some legislators, particularly those who have not had time to study the record, come out against the nominee on the grounds that, if he is that controversial, there must be something wrong with him.

I think the "silent majority," however, is beginning to recognize the pattern. I hope so, because we can count on another "spectacular production" against a nominee of the President sometime in the future.

Mr. President, I have discussed the fact today, and on November 12, that, while the matter of ethics, or "appearances" and "sensitivity" in regard to ethics, has been made the fulcrum of the reason for the opposition of many to the appointment by President Nixon of Judge Haynsworth to the Supreme Court, there is nothing to these charges and the only real reason for the opposition can be traced to an "alleged" anti-labor philosophy.

I throw back to these people the words of Senator KENNEDY in the Thurgood Marshall nomination.

But, as I have demonstrated, I firmly believe that when I cast my vote for the confirmation of this appointment of Clement F. Haynsworth as an Associate Justice of the Supreme Court, I will be representing the majority of Americans and, therefore, the majority of the rank and file membership of the labor unions whether their leaders know it or not.

Now, Mr. President, one further matter requires our attention.

Each time I turned to the hearing record in this matter, invariably I seemed to find page 1 before me. On that page appears the date of September 16, 1969. Below it stand the words of the senior Senator from Mississippi (Mr. EASTLAND), the chairman of the Judiciary Committee, giving recognition to our great loss on the first convening of the committee, to which the deceased minority leader, Senator Everett Dirksen, had given so much time before his death on September 7, 1969.

I commend the dedication of the senior Senator from Nebraska (Mr. HRUSKA) in presenting to the Senate the matter of the appointment of Judge Haynsworth in the capable, responsible, and knowledgeable manner that Everett Dirksen would have wanted, had he been here. I know of Senator HRUSKA's extreme desire properly to perform this task. He has met the challenge. I pay my respects to him for the capable way in which he has done it.

Mr. President, I yield the floor.

Mr. STEVENS. Mr. President, first, I wish to commend the senior Senator from Colorado, the ranking member on the Interior Committee, who has just finished his comments, which I have had occasion to read before he presented them to the Senate.

I think his statement is one of the important and serious statements which have been made in this Chamber, and one which analyzes the problem very deeply.

The problem of dealing with the confirmation of the nomination of Judge Haynsworth is not an easy one for any Senator.

I do not know of any matter, other than of the Alaskan native claims problems, which has occupied so much of my time, which has generated so much mail, with so many questions and communications from my State, as has the nomination of Judge Haynsworth to be a Justice of the Supreme Court.

Being involved in controversy over a nominee of the President is not a new thing for those of us from Alaska. As the senior Senator from Colorado has pointed out, the first nominee that received great, nation-wide attention was that of our Governor, Walter J. Hickel, when he was nominated to be Secretary of the Interior.

I think that we have seen some similarities between these nominations, as has been pointed out by the Senator from Colorado.

I remember at one time during the period when we thought Wally Hickel's confirmation was in a little bit of trouble, the senior Senator from South Carolina, Senator STROM THURMOND, asked me pointedly whether I thought Wally Hickel would be a good Secretary of the Interior. Of course, I told him I thought he would be. I believed that very sincerely.

Later, the junior Senator from South Carolina, whom I did not know very well, spent some time with me and talked with me about our then Governor Hickel's qualifications to be Secretary of the Interior. When we concluded the conversation, he ended up with a comment that was very relevant as far as I was concerned. He said, "In a matter of this type, we have to rely upon somebody, and I am going to rely upon you. If you think your Governor would make a good Secretary of the Interior, I am going to vote for him"; and he did.

I have been worried about this nomination because of some of the very pointed comments that have been made by those opposed. I decided to go into the matter, and to go into the matter very deeply. I want to start off by saying that I think the junior Senator from Kentucky (Mr. COOK), as one of the new

Members of the Senate, has done an outstanding job in studying the record, in showing his dedication to the committee he serves on, the Committee on the Judiciary; and I have been particularly persuaded by the matters he has put before the Senate.

I went one step further than he did. I want to insert in the RECORD the record vote upon four of the nominees to the Supreme Court—that of John Marshall Harlan, Potter Stewart, Thurgood Marshall, and Warren Earl Burger.

I ask unanimous consent that that tabulation be printed in the RECORD at this point.

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

[Vol. 101, pp. 30–36, March 1955]

John Marshall Harlan:

For	71
Against	11

[CONGRESSIONAL RECORD, vol. 105, pt. 6, p. 7472]

Potter Stewart:

For	70
Against	17

[CONGRESSIONAL RECORD, vol. 113, pt. 18, p. 24656]

Thurgood Marshall:

For	69
Against	11

[CONGRESSIONAL RECORD, p.15195–15196]

Warren Earl Burger:

For	74
Against	3

Mr. STEVENS. Mr. President, I think these record votes demonstrate what the Senator from Kentucky (Mr. COOK) was trying to say. It is, that, in the past, nominees have been viewed by this body on the basis of their integrity, their ability, and their personal fitness to serve as judicial officers on the Supreme Court. And, as Senator COOK has pointed out, the criticism that has been levied against Judge Haynsworth on the basis of ethical standards has been proved to be completely baseless; and I share his conclusion in that regard, as apparently does the Washington Post and the New York Times, who agree that these ethical questions have not been supported, or that the issues that have been raised have not been supported.

Incidentally, that conclusion is concurred in by Alaskan editorial comment, although a couple of newspapers disagree.

We are then left with the question of whether Judge Haynsworth's philosophy, in and of itself, should disqualify him from serving in this position—if, Mr. President—and I emphasize this, if—his philosophy is, in fact, what his opponents believe it to be.

As I pointed out at the time we were involved in the confirmation of the nomination of Secretary Hickel, many people said at the outset that our Governor did not possess the "right" conservation philosophy. Those of us who knew Wally Hickel and knew what he had done as Governor knew we had a man who had a philosophy, as far as conservation was concerned, that was balanced and one that we could live with; one that could see the Interior Department perform its functions and provide us with the guidance that we should have from the Department of the Interior.

I think anyone who has witnessed what Secretary Hickel has done since his nomination was confirmed by this body, even his opponents, know that those who opposed him were wrong and that, in fact, he has become one of the great Secretaries of the Interior of this country.

I say that if the philosophy of Judge Haynsworth is what those who oppose him say it is, I still do not believe that that is a condition that should be reviewed by any Member of this body as being one that prevents Judge Haynsworth from becoming a Justice of the Supreme Court.

Again, I refer back to the votes I placed in the RECORD. I am certain that the 11 Senators who voted against Thurgood Marshall did so for good reason; but had philosophy, in and of itself, been a part of the qualifications to be a Supreme Court Justice, there probably would have been more votes against Thurgood Marshall on the basis of his philosophy.

I do not happen to concur in some of the things which people say are the philosophy of Judge Haynsworth. I have not had the opportunity to read all of the cases which have been brought before the committee to set forth the conclusions that people reach as to what his philosophy is. But I believe that Judge Haynsworth has demonstrated that he has a balanced judicial mind; that he approaches each case on the basis of that case; and that anyone who attempts to draw a personal philosophy from a judge's judicial opinions is off on a rabbit chase.

It is my opinion that Judge Haynsworth is qualified to be a member of the Supreme Court, and I want to say that in reaching this conclusion I have examined a great many things.

As a matter of fact, since I do not know Judge Haynsworth personally, and since I was not a member of the committee, and have only the testimony and the written report to rely upon, I think it is necessary to go beyond that and to answer the question for myself. Upon whom am I going to rely in making a decision in this matter?

Parenthetically, I might say that, along with the junior Senator from Kentucky, I too thought some of the procedures we use in this body to review nominees should be changed.

Coming back to Secretary Hickel's nomination problems, when someone voiced a question about him, we saw to it that our Governor had an appointment with that Member who had a question, and visited with him personally. I think that many of the questions that were originally raised were dispelled by the fact that Secretary Hickel visited, even with those who spoke against him, and discussed it man to man.

The real problem in this matter is that Judge Haynsworth, following a line of tradition, apparently, that a sitting judge is not subject to meet with Members of the Senate on a personal basis in order to support his own nomination to a higher bench, has not sought out those who oppose him.

I personally believe that no nominee for a high position in our Government, such as the Supreme Court of the United States, should have his nomination voted upon until he has been personally presented to each Member of the Senate. I think that might take some time, but it would be little enough time to give each Member an opportunity to make up his own mind about a man who was about ready to take a lifetime position on the highest court of the land.

I might say that I passed on this comment to those who have the duty of passing on future nominees. I hope the bar itself will examine the concept that a sitting judge should not personally lobby for his own consideration. I do not, personally, think it is personal lobbying to meet with a Senator on a personal basis and answer personal questions concerning his fitness or qualifications to sit as a judge.

But in determining whether to support this nomination—and I have determined to support it, as I announced yesterday—I want the RECORD to show that, beyond my own review, I am relying upon the recommendation of the ranking member on the Republican side of the Judiciary Committee, whom I respect very greatly, my good friend the senior Senator from Nebraska (Mr. HRUSKA).

I think he has demonstrated that he has examined into Judge Haynsworth's qualifications, and he has found the judge to be eminently qualified to be a member of the Supreme Court.

Second, as I have already stated, I have relied on the advice and guidance of the junior Senator from Kentucky, whose ability and dedication to his task as the newest member of the Judiciary Committee have amply been demonstrated by his noteworthy support of this nomination.

Third, I rely especially upon statements made to me personally by the Senators from South Carolina, who relied upon me when they voted for my good friend and Alaska's former Governor, Mr. Hickel, to be Secretary of the Interior.

Fourth, I have relied upon the fact that I know that Assistant Attorney General William F. Rehnquist of the Office of Legal Counsel of the Department of Justice thoroughly reviewed this nomination and the qualifications of Judge Haynsworth. It may seem strange to announce this, and it may be immaterial to some people, but it is important to me because back in the days when we were both fresh out of law school Bill Rehnquist was the law clerk to Justice Jackson of the U.S Supreme Court, and I know of no member of the bar who values the traditions of our Supreme Court more than Assistant Attorney General Rehnquist. He is a man of extreme brilliance, and knows the values of a Supreme Court Justice and what it takes to make one. The fact that Bill Rehnquist personally reviewed this nomination before it was sent to us means a great deal to me, as does the fact that his superior, the Deputy Attorney General, Richard G. Kleindienst, who was

my classmate in law school, has also personally endorsed this man.

Moreover, I would be remiss if I did not point out that it means a great deal to me to know that Dwight David Eisenhower also endorsed Judge Haynsworth, when he nominated him to be a member of the circuit court of appeals. He felt Judge Haynsworth had the qualifications to serve upon the second highest level of the courts of this land, and this body gave its advice and consent to that nomination.

But, lastly, and most importantly, I rely upon the judgment of President Richard M. Nixon. I have personally discussed this matter with the President, and I was present when the President outlined the extent to which he had personally reviewed the confirmation hearings record. As a matter of fact, I was astounded that the President, with the amount of work he has to do and the problems that he faces, had the time to become so intimately aware of the allegations made and had taken the time personally to satisfy himself that the allegations were without merit.

I may not agree with Judge Haynsworth's judicial decisions—I already know that I do not agree with some of the decisions he has rendered in the past—but I am assured in my own mind that he has the qualifications to be a good Supreme Court Justice. I doubt seriously that he will agree with everything that President Nixon or his administration will do—in fact, it is very clear from the recent decisions of the Supreme Court that the present Court, including its recently confirmed Chief Justice, maintains vigorously its right to be free of any influence, including past political allegiance or gratitude.

For these reasons I join with what I hope will be the majority of this body, in its vote on Friday at 1 p.m., in supporting the nomination of Clement F. Haynsworth, and I say to my colleagues from South Carolina that I hope his performance as a Supreme Court Justice will do as much credit to their State and our Nation as I believe the performance of our Secretary of the Interior has done and will do for my State and our Nation.

ORDER FOR ADJOURNMENT FROM FRIDAY, NOVEMBER 21, TO 11 A.M. MONDAY, NOVEMBER 24, 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until 11 o'clock on Monday morning next.

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

ORDER FOR RECOGNITION OF SENATOR SYMINGTON ON MONDAY NEXT

Mr. MANSFIELD. I ask unanimous consent that at the conclusion of morning business on Monday, the distinguished Senator from Missouri (Mr. SYMINGTON) be recognized for not to exceed 1 hour.

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

SUPREME COURT OF THE UNITED STATES

The Senate, in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. CASE. Mr. President, I join my colleagues who have expressed appreciation particularly to the members of the Committee on the Judiciary for the hard work that they have done, both those who happen to take the same position that I expect to take on this matter and those who take the opposite view. The Senate has benefited greatly from their labors, and the decision that is rendered will be much better because of it. As a matter of fact, in a matter of this kind, particularly, without the earnest, hard work of members of the Committee on the Judiciary, the Senate could not begin to do its job properly.

Mr. President, a long time ago the late Senator George Norris said, when the question of confirming an associate justice was before the Senate, "We ought to know how he approaches these great questions of human liberty."

Valid then, his statement applies with even greater force today. Our society is struggling to realize equal justice under law for all our citizens at a time when it is beset by internal strains and tensions and when millions are looking to the courts for vindication of rights long denied.

The administration has increased the need for confidence in the Supreme Court by its announced policy of putting greater reliance on enforcement through the courts of such statutory protections as title VI of the 1964 Civil Rights Act. This is the title which forbids discrimination in federally assisted programs of all kinds, including education.

It has been argued that philosophic considerations are beyond the responsibility of the Senate: that the Senate should confine itself to examination of the character, technical qualifications, and standards of conduct of the nominees selected by the President for our highest court. But the words of the Constitution provide no support for this view. And history is against it.

And I suggest, Mr. President, that a very wholesome trend in the attitude of the Senate of the United States in regard to its responsibilities vis-a-vis the Executive is against it also.

The first rejection of a nominee for the Supreme Court, in this case for Chief Justice, occurred in 1795. In the 19th century, 72 men were nominated to the Supreme Court bench and 18, a full quarter of them, were not confirmed.

However narrowly, the Senate should regard its role in regard to appointments within the executive branch, I suggest that the situation with regard to the judiciary presents very different considerations. Unlike Cabinet appointments, for example, involving service at the pleasure of the President and removal at his pleasure, Federal judicial appointees, once appointed and confirmed, cannot be removed except by the long, cumbersome, and in most cases inappropriate process of trial in this body upon impeachment by the House of Representatives. In other words, they hold their appointments, in effect, for life. And a Supreme Court Justice serves on the highest level of the third independent branch of our Government.

So it seems to me very clear that in exercising our responsibility of advising and consenting, to use the words of the Constitution, to nominations for the Supreme Court of the United States, we have a role of equal responsibility, though somewhat different in character, to that of the President himself; and I do not in any fashion regard our consideration—practically de novo—of these appointments as being a usurpation of any function that is not rightfully ours, and our duty to perform.

"How he approaches these great questions of human liberty"—this, for me, is the essence of the issue in the pending nomination of Judge Haynsworth.

The word "insensitivity" has been applied by many to Judge Haynsworth's financial transactions while sitting as a Federal judge. Others have rejected it. But to me, the insensitivity he has shown in his holdings and opinions on matters involving equal protection under the 14th amendment is undeniable and incontrovertible.

The senior Senator from New York has already put in the RECORD an analysis of all cases involving segregation in which Judge Haynsworth wrote an opinion. It should be emphasized that all these opinions were written 8 or more years after the landmark case of Brown against Board of Education in 1954. That is from 1962 on, these opinions, all that Judge Haynsworth has said in his own words on segregation cases, were written. I have also reviewed the analyses prepared by other Members and discussed at some length in the RECORD.

The conclusion is inescapable, I believe, that Judge Haynsworth has shown a persistent reluctance to accept, and considerable legal ingenuity to avoid, the Supreme Court's unanimous holdings in the Brown case and in subsequent decisions barring discrimination in areas other than the field of education. Moreover, in those few cases where Judge Haynsworth has ruled against a discriminatory practice, no other choice was possible. I suggest that no other choice was possible for him or any other judge, that the precedents were controlling and the facts and circumstances in cases obviously required the decision in which he joined. As late as 1968, Judge Haynsworth was continuing to voice his preference for "freedom of choice" plans in the desegregation of schools, even while he reluctantly implemented prior decisions by the Supreme Court. Only last year he was still insisting that the burden of expensive litigation to secure constitutional rights be borne by those seeking relief, even when those people had been upheld in their contentions by his own court.

The debate on this floor is replete with discussion of the dozen or so cases involving segregation in which Judge Haynworth wrote an opinion. But one in particular deserves special mention be-

cause it is so revealing of Judge Haynsworth's approach and philosophy. This is the case involving the closing of public schools in Prince Edward County in Virginia.

This case began in 1951 and was one of four resulting in the historic Brown decision of 1954. Prince Edward County was, however, determined to resist. In 1959, with the abandonment of "massive resistance" by the State of Virginia, Prince Edward County refused to levy any school taxes and the public schools did not reopen that fall. Private schooling for white children was arranged, but schooling for Negro children ceased.

In 1961, 10 years after the original complaint was filed and 7 years after the Supreme Court had spoken in the Brown case, the district court forbade the county to pay tuition grants and allow tax credits which in fact went wholly for the education of white children in the private schools. Shortly thereafter the district court ruled that Prince Edward schools could not be closed while public schools were open in all other counties. Local officials challenged the rulings of the district court and the schools remained closed, pending a decision by the fourth circuit court.

The circuit court decision written by Judge Haynsworth did not come until 1963, 9 years after the Brown case and 11 years since the Prince Edward case was filed. The court overruled the district court action in forbidding grants and tax credits. On the question of closing the schools, the court abstained from deciding and ordered the district court to abstain until the Virginia State courts had acted on what the U.S. Supreme Court later termed "issues that imperatively call for decision now." The Supreme Court felt so strongly that it expedited its review in this case.

Reversing the circuit court decision in 1964, the Supreme Court noted "this is not a case for abstention" and went on to point out:

> The record in the present case could not be clearer that Prince Edward's public schools and private schools operated in their place with state and county assistance, have one reason and one reason only: to ensure through measures taken by the county and the state that white and colored children in Prince Edward County would not, under any circumstances, go to the same school. (337 US 229 (1964).)

Thirteen years after the case arose, 9 years after Brown and after 5 years of no public schooling, Negro children of Prince Edward County finally were assured of public education by the Supreme Court.

Contrast the Supreme Court's sense of urgency with the attitude expressed by Judge Haynsworth in his opinion for the court of appeals:

> The impact of abandonment of a system of public schools falls more heavily upon the poor than upon the rich. Even with the assistance of tuition grants, private education of children requires expenditures of some money and effort by their parents. One may suggest repetition of the often repeated statement of Anatole France, "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."

We come back now to Judge Haynsworth's ruling:

> That the poor are more likely to steal bread than the rich or the banker more likely to embezzle than the poor man, who is not entrusted with the safekeeping of the moneys of others, does not mean that the laws proscribing thefts and embezzlements are in conflict with the equal protection provision of the Fourteenth Amendment. Similarly, when there is a total cessation of operation of an independent school system, there is no denial of equal protection of the laws, though the resort of the poor man to an adequate substitute may be more difficult and though the result may be the absence of integrated classrooms in the locality. (322 F. 2d 336.)

At best his statement indicates a degree of insensitivity to human rights unfitting the tribunal to which the American people look as the ultimate protector of constitutional guarantees.

Sensitivity and dedication to the solution of the very real problems that confront the Nation today are the critical need. What might have been reasonable or tolerable at an earlier time is no longer so.

I believe there can be no doubt that Judge Haynsworth's confirmation by the Senate would be taken by great numbers of our people as the elevation of a symbol of resistance to the historic movement toward equal justice for every American citizen. This appointment, at this time, would drive more deeply the wedge between the black community and the other minorities on the one hand and, on the other, the rest of American society.

I shall vote against confirmation.

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

Mr. CASE. I yield.

Mr. BAYH. Mr. President, from the beginning, my distinguished friend, the Senator from New Jersey, has been one of the loud voices in the Senate speaking out in support of the efforts made by the judicial, the executive, and the legislative branches of our Government to remove the vestiges of second-class citizenship from the shoulders of minority groups.

I feel that his analysis of the judicial record of the nominee bears more weight, perhaps, than the analysis of the average Senator.

There have been a great many questions and discussions by Senators relative to the Presidential prerogative. I notice with some interest that the Senator from New Jersey discussed the distinction between nominations to the Supreme Court and nominations to the executive branch. Is it fair to suggest that one could honestly and sincerely believe that the President of the United States—whether he be Lyndon Johnson, John Kennedy, Richard Nixon, or some future President—should be given maximum leeway in choosing his own teammates, so to speak, to help run his administration, but that he should not be given this leeway in choosing a judge who, once appointed, is indeed a part of no administration but rather is a man appointed for life?

Mr. CASE. I think the Senator has emphasized a point which I believe is important here, and which I attempted to make in my own remarks. I do not know how far a Senator ought to go in dealing with appointments that are, in effect, appointments of the President's own right-hand men in the executive branch. Surely, much more leeway should be allowed the President to make his own mistakes, in a sense, especially when, as in the case of appointments which are at his pleasure, he can eliminate these men at will.

There is a great difference between that situation, as I attempted to point out and as the Senator has suggested, and that of appointments which are for life and which are to the third and independent branch of the Government of the United States—the judiciary.

Mr. BAYH. Will the Senator yield? I would like to expand one other thought that I think he made in his statement.

Mr. CASE. I am happy to yield.

Mr. BAYH. I sense that it is possible for a person to distinguish between degrees of judicial philosophy. As I recall—and I hope I quote him accurately—the Senator from New York discussed a type of philosophical bent that ran through the cases that might indeed turn the clock of history back.

Is it fair to suggest that in some philosophical matters, one might waive his objections, but if the philosophical difference is so great, and the nominee's philosophy runs counter to the needs of the country, then one should say, "Wait, I am not going to go that far?"

Mr. CASE. The Senator is quite correct. These are questions which cannot be answered absolutely and as to which no absolute rule can be set as to what the Senate's duty is, the degree to which it should or should not take into account considerations of the sort with which the Senator has been dealing.

As the Senator knows—and as I said explicitly in my remarks—whatever might be tolerable at another time in regard to a person of the bent of mind of Judge Haynsworth, to me it is so unfortunate at the present time and in the present circumstances that I am impelled to vote against confirmation.

Mr. BAYH. I appreciate very much having the Senator's thoughts.

Mr. CASE. I should like to say this to those who make a plea to us, "Do not destroy this man." This is not destroying a man, so far as I am concerned. I base my judgment and decision entirely upon an attitude which for people in his area and his territory, his time of life, is an honorable position. It would not be for me. It is for him; and in the circles in which he has moved all his life, there is nothing wrong with this. This involves no blight upon him. Nevertheless, it is to me disabling so far as appointment at this time to the Supreme Court of the United States is concerned.

Mr. BAYH. I appreciate very much that the Senator is taking the time and trouble to let us have the benefit of his study. It was prepared with a great deal of expertise. I said earlier, on the floor of the Senate, that I have struggled with the matter of how great a weight—if indeed any—philosophy should bear in our determination. I think the Senator makes a distinction between different weights, different burdens of responsibility, as the Senator from New York did.

The Senator from Indiana has been more concerned about another aspect, as the Senator from New Jersey knows. I suppose because of this I might be subject to a greater degree to the criticism of destroying an individual.

Mr. CASE. I appreciate that.

Mr. BAYH. I certainly did not intimate that the Senator suggests this. But I think there are others in this august body who have, and I am not unmindful of the personal impact that my opinions and my statements and my feelings have had or may have on the nominee. For this reason, only with the greatest reluctance have I become involved in this particular type of examination.

I hope and pray that regardless of the outcome of this vote, it will not destroy this man personally. I do not believe in destroying any man personally. But if we feel there is substance to the constitutional authority to advise and consent, we have to do what we think is right. As the young people say today, over and over again, we have to tell it as it is. When one gets involved in this type of controversy, he, himself, by bringing accusations toward others, is the brunt of accusations from others. This is not pleasant. But, in the final analysis, I think the issue to be determined here is not the personal future of the nominee, not the personal future of the junior Senator from Indiana, nor, indeed, the personal future or prestige of the President of the United States. We have the sober responsibility of seeing that whoever is nominated and confirmed as an Associate Justice of the Supreme Court meets the standards which the people of this country have every right to demand.

I certainly appreciate the Senator from New Jersey taking the time to let us have his thoughts on this matter.

Mr. CASE. The Senator has been most generous. No one, it seems to me, could have stated with greater sensitivity the feelings we all have when we come to deal with a matter of this kind.

Perhaps the fault is in the machinery set up by the Constitution, by which the President sends to the Senate a nomination and asks our advice and consent. In effect, we are then passing judgment on the President, as well as upon the nominee, and that is a troublesome factor. But, as I emphasized in my remarks in chief, I regard this responsibility, in effect, as de novo when it comes to appointments at least to the Supreme Court of the United States.

I hope that in this case and in all cases I exercise this responsibility with due appreciation of all the factors that ought to be considered, including human factors. Nevertheless, it is a responsibility that I cannot duck, and I think the Senator from Indiana has stated with sensitivity and delicacy and propriety exactly the same position that I feel I am in.

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

Mr. CASE. I yield.

Mr. COOK. I am interested in some of the questions that the Senator from Indiana asked the Senator from New Jersey, under the theory that a President is entitled to his team, as he put it—those people he wants. I was pleased that the Senator from New Jersey, in a way, corrected this theory; because, in essence, the Senator from New Jersey would not agree that, under the treatise he just read, Judge Haynsworth would be acceptable to him if it were just a 4-year appointment would he?

Mr. CASE. I do not think I have to pass—and I do not think it is fair to the judge to ask me to pass—on him for some hypothetical appointment. I do not believe I will do that. The Senator understands fully how I feel about the judge in regard to the nomination that has been presented to the Senate. I am sorry.

Mr. COOK. That is perfectly all right.

The point I am trying to make, both in the question that was asked by the Senator from Indiana and the answer that was given by the distinguished Senator from New Jersey, is that, somehow, or other, those who are wanted by the President as a part of his team are acceptable, without analogy or without in-depth research, and yet, let us take, for instance, a position as sensitive as the Secretary of State. Would the Senator say this would be subject to a great deal of analogy by the Senate, who was approved without a record vote, to approve the Secretary of State who, conceivably, could foul up the foreign policy of this Nation?

Mr. CASE. I think the Senator knows how I feel about that. As a member of the Committee on Foreign Relations I think we have a very high responsibility to examine qualifications in depth in matters of appointment of that sort.

Mr. COOK. Does the Senator feel this should be as deep an analysis of all Members who have a responsible position in Government, regardless of whether it is for the Supreme Court, or any particular department of Government?

Mr. CASE. Maybe I can bridge whatever difference there may seem to be among the three of us by saying the whole thing depends on many factors: The general importance and nature of the job—those factors relating to the job applying at all times, in all places. But even more important, and this is the point I wish to emphasize, are the time and circumstances in which we are asked to consider the appointment for that particular job, specifically the Department of State. If it were at a time when the world was peaceful and we, for instance, were secure behind our oceans, particularly protected by the British Navy, and it did not matter very much what our relations were with the rest of the world, then, it would be not as important as now when we have a position of world leadership thrust upon us.

I think it is much more important now that we have a first-class man as Postmaster General, than when the Department was running smoothly, in order to get mail to my State rapidly instead of taking 3 or 4 days.

It depends on the nature of the circumstances obtaining at the time, the importance at the time, and the significance at the time of the appointment.

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

Mr. CASE. I yield.

Mr. BAYH. I wish to say to my distinguished friend from Kentucky that if, indeed, the message he is conveying, and I think he is—I do not want to put words in his mouth—is that there should not be unlimited carte blanche power for the President to nominate whoever he wants to his administrative team, I concur. In fact, I think it is most significant. I undertook a most distasteful matter that I was involved in before this body prior to this matter. There was one case when I undertook to try to suggest to the former President that a man he was appointing to our foreign aid program, because of the misadministration of the program under his leadership in Southeast Asia, did not recommend the man for appointment.

I do not believe that even in an administrative capacity the President has unlimited authority, but I think what the Senator from New Jersey has rather specifically dealt with, and accurately dealt with, is that you have a whole new ball game when they talk about putting a person on that Court for life without being subject to removal except for impeachment, and particularly in these times.

I do not want to put words in my friend's mouth. If that is what he is driving at, I concur.

Mr. COOK. I have no objection to the Senator putting words in my mouth so long as they are carried in the RECORD as his words. However, I suggest to the Senator that the President has an entire Cabinet. They are extremely powerful positions in this country. No one asked for a rollcall vote in relation to those gentlemen. As a matter of fact, we saw to it by voice vote at the time the President was sworn in, so all of them could be in office.

I am not saying Senators should act here without speed. I think we should get ourselves down to the point. This represents an occasion, as there have been occasions in the past history, where the distinction of ideological and philosophical wrath, so to speak, has been rained down on the nominee for the Supreme Court, much more than has been true with offices such as the Secretary of State.

I wish to read something to the Senator from New Jersey and ask him to comment on it in regard to his speech.

The author of the original HEW school desegregation guidelines, Prof. G. W. Foster, Jr., of the University of Wisconsin Law School, a man who has long been active in solving the problems of school desegregation, a man who has followed closely the work of the Federal courts in the South, has said this about Judge Haynsworth:

> It is both wrong and unfair to charge that he [Judge Haynsworth] is a racial segregationist or that his judicial record shows him to be out of step with the Warren Court on racial matters. . . . His decisions, including those in the racial area, have been consistent with those of other sensitive and thoughtful judges who faced the same problems at the same time. I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent, open-minded man with a practical knack for seeking workable answers to hard questions. . . . In my

judgment he ranks along with the best of the open-minded, pragmatic judges in the federal system, neither dogmatic nor doctrinaire.

Does the Senator agree with that?

Mr. CASE. Of course, no. I do not. My disagreement with his characterization is quite complete.

I want to say again that, listening to that quotation in its entirety, I get the impression that what the scholar was talking about was a whole range of cases in which the judge took part, segregation cases. I have dealt only, and my review dealt only, with the cases in which the judge expressed himself in written opinions. As to that, it seems to me there is no disagreement possible with the conclusion of the senior Senator from New York that the judge has a philosophy which is inappropriate to an appointee to the Supreme Court at this time.

Mr. COOK. I have one more question if the Senator does not mind. Under that theory, and only on this point, I would like to ask the Senator if in his mind this would also rule out, on that ideological basis, his consideration of those judges on the circuit court who concurred with Judge Haynsworth or with whom Judge Haynsworth concurred in that series of cases that the Senator from New Jersey quoted in regard to the philosophical and ideological approach of Judge Haynsworth in regard to Brown against Board of Education.

Mr. CASE. I do not think I would draw this matter too finely, but I do want to point out that one cannot put too much stock in the fact that a member of the court concurred in the decision of the court in which he did not write the opinion. He may have done this for many reasons. I am talking about, considering, and basing my chief reliance on the judge's own words in cases where he wrote the opinion in most cases for the court, and, in some cases, as dissenting opinions. I do not think I can go along, therefore, with the Senator in his suggestion that my view of Judge Haynsworth necessarily would be the same for all people who may have arrived at the same conclusion; that is to say, who may have voted the same way Judge Haynsworth voted without expressing their own views in cases.

Mr. COOK. I am delighted to hear the Senator say that. I got the feeling in his last few remarks that he was kind of excluding it. As I read an editorial from the Louisville Courier Journal the other day, it said that Judge Haynsworth was the right man but in the wrong century. The indication in the editorial was that, really and truly, no one from the parochial, sedate South was entitled in this modern age to be considered for appointment on the Court.

I am glad that the Senator from New Jersey gave the explanation he did.

Mr. CASE. The Senator is most generous in allowing me to have the right attitude. I do have it. I am glad that he gave me the opportunity to make the distinction.

Mr. ALLOTT. Mr. President, will the Senator from New Jersey yield to me for one or two questions?

Mr. CASE. I yield.

Mr. ALLOTT. Several things have just occurred in the previous colloquy that have bothered me. One of them is the apparent approval of the complete position taken by the Senator from New York (Mr. JAVITS) in his remarks last week, who pointed out that he thought the only reliable criteria of the judge's record in any given area—and I do not concede, in asking this question, that the philosophical point of view has anything to do with this whole question—were the opinions of the judge significant, and not the whole range of cases upon which he is acting?

The Senator from New Jersey, I am sure, does not believe that, does he?

Mr. CASE. I do not mean that anything is exclusively important and that the way a judge has decided cases has no importance; but I think, as the Senator from New York has pointed out, and as I just did earlier in my discussion with the Senator from Kentucky (Mr. COOK), that there are many reasons why a judge may vote mostly with the majority and sometimes with the minority on the court, and when he does not write an opinion, we cannot say why he necessarily voted in conformity with the majority or the minority, as the case may be.

Mr. ALLOTT. The Senator would have to admit, whether he wrote the opinion or not, whether he voted with the majority or whether with the minority, that in voting, the judge does reflect the position of the majority opinion or against it—one of the two; is that not correct?

Mr. CASE. It is difficult to generalize about that. It seems to me, therefore, that——

Mr. ALLOTT. I do not really know what other conclusion we can come to——

Mr. CASE. There are many reasons why a judge will vote a certain way in a case. He may feel, regardless of how his own views may be on it, that he is bound by the decisions in his circuit, in the case of the court of appeals, or the decisions of the Supreme Court. He may have other grounds for voting as he does in a particular case, and if he does not express them, then we are entitled, indeed to draw what conclusions we wish, or feel that we can, or should, from the facts of his vote. But, to me, it is not nearly so persuasive as the judge's own words and opinions as expressed in the opinions which he himself wrote. That is the whole point of it.

Mr. ALLOTT. I would say the Senator probably has a deeper reaction to his philosophy, but, on the other hand, I am sure the Senator is not so naive as to believe that, when a circuit court of appeals, for example, meets, the opinion which the judge to whom that case was assigned writes it, it is not modified, and sometimes in material respects, by one or more of the judges sitting on that court of appeals.

Mr. CASE. In different circuits, I think different practices apply; but, generally, certainly there is discussion of the decision, and probably of the general nature of the opinion, although I think the chief judge is the only one who really looks over the opinion before it goes out.

Mr. ALLOTT. One other thing, if the Senator from Arizona will allow, because this is a very important point. In a colloquy with the Senator from Indiana, he indicated he thought the Supreme Court was in a different category. The Senator and I both have been here awhile, and I am sure he remembers a particular time when a man was nominated for a certain very high and technical office, for which it was obvious he was completely unqualified from both a technical and a professional standpoint. I am sure the Senator remembers about whom I am talking.

Mr. CASE. Will the Senator whisper the name to me?

Mr. ALLOTT. I call the Senator's attention to the fact that the Constitution, in article II, makes absolutely no distinction in the advise and consent of the Senate as between ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law. I have read from article II of the Constitution. Therefore, I think we have a very dangerous situation here.

I agree that this is certainly one of the most important votes. From the protocol standpoint, this body is probably the most important one in the United States. But I think we are going down the wrong road if we try to apply one standard of advise and consent for a Cabinet member, another one for an ambassador, another one for a Supreme Court Justice, another one for a circuit court judge, and another one for a district court judge. True, we all agree it is important. The fact is that the differentiation which I understood the Senator to make does not apply, depending on the importance of the position. There is no justification for it in the Constitution and, thus, no authority for it.

Mr. CASE. I am very happy to have the Senator's views. Many things have happened in the long years since he and I came to this body on the same day.

Now that the Senator has whispered to me, I understand the particular case he was talking about. We just disagree about this.

Mr. ALLOTT. I was hoping my friend would see the light, that is all.

Mr. CASE. The Senator is so generous. He is always willing to instruct me and is generous in sharing with me his insight in these matters. I sit at his feet most of the time, except when he is wrong. He is wrong this time. What can one say? I respect him in his right to be wrong. I will defend him as long as I have breath to do it.

Mr. ALLOTT. I hope to spend many years with the Senator in the Senate, and I know I will hear him say some day that a man's philosophy should not be taken into consideration in considering his nomination.

Mr. CASE. I do not think that day will ever come.

Mr. JAVITS. Mr. President, I am very gratified that the Senator from New Jersey (Mr. CASE) saw fit to take his position on the nomination of Judge Haynsworth upon the issue of what the judge would bring to the Court. I think this is a key question. I deeply believe that it has been rather under- than over-discussed in the course of the debate.

I have caused the cases to be analyzed again in the light of the position taken by the Senator from Tennessee (Mr. BAKER), and he and I have introduced into the RECORD our concepts of these cases. But I believe that a very important consideration which Senators must evaluate in these last hours before the vote is taken is whether they have a right to determine their votes on the basis of what Judge Haynsworth would represent to this Court. I think they do. I think that that is the long and constant history in respect of the Court and the way in which the Senate has passed on it. Often, that has been unexpressed, but often, that has been expressed as well.

I should like to point out that, interestingly, those who have expressed it—that is, as a proper guideline for the Senate—are today generally found in the ranks of those who support Judge Haynsworth.

Mr. President, we have been asked, in fixing and zeroing in on the whole question of breaches of ethics or other standards of propriety by Judge Haynsworth, to take the ground which I think is very difficult for Senators, and where the questions of fact become very sharply in issue. But that assumes—and I think there has been an unwitting but nonetheless a very real effort to channel us into that course—that we only have the right to ask of the President what is equivalent in military parlance to name, rank, and serial number. I do not believe that this is the criterion of judgment to which the Senate of the United States is limited. I believe that if I am asked to vote to confirm the nomination of a Justice, I have a right to determine in my own conscience what that Judge is going to represent to the Supreme Court of the United States. I have a right to cast my vote that way.

I wish to draw very sharply again the distinction between a Cabinet officer, who goes in and out with the President, who is subject to the legislative oversight of Congress, and over whom we have all kinds of controls, including appropriations and authorizing legislation, and a Justice appointed to the Court for life, where his philosophy can influence the world in which my children and their children after them can live, and I can do nothing about it except this one time. In my judgment, that demands that I appraise not only that Judge's honesty and ethics and the fact that he holds a lawyer's certificate but also what he will do when he gets on the Court.

It is my deep conviction—and this is a tribute to, not a denigration of, Judge Haynsworth's sincerity—that he deeply and sincerely feels, especially in the key and extremely sensitive issue of civil rights, that we were right before 1954 and that we are wrong now.

I do not agree with that. I think we were wrong before 1954 and that we are right now.

I do not believe that I have any right to vote to put a man on the bench who will seek to bring the Court back—that will be his duty, and he will work there to persuade others—to a time which I think has been completely passed by in history and to a social order which is archaic and cannot persist—the so-called separate but equal social order which for so long, in my judgment, held back a critically important area of our country.

This, Mr. President, is an issue which has not been discussed too much here, but I feel very strongly about it. I think it is borne out as we look at the opinions of Judge Haynsworth—and that is the only basis on which we can judge him—what he said in explaining his own concept of the law and his own philosophy. As we look at these opinions of Judge Haynsworth, we see how he lagged behind the times by years—not months, not days, but years.

He was dissenting in cases in 1962 like the *Dillard* case, 308 F. 2d 920 (4th Cir. 1962), cert. denied, 374 U.S. 827 (1963), for example, which I analyzed before, many arguments in dissent which the Supreme Court has heard, rejected, and already passed by in terms of history in 1954. But there was Judge Haynsworth, still clinging to these archaic and completely outworn concepts.

He dissented in the *Bell* case in 1963, 321 F. 2d 494 (4th Cir. 1963), 9 years after the Supreme Court had already outlawed segregation.

He dissented in the *Cone Hospital* case in 1963, 323 F. 2d 959 (4th Cir. 1963), cert. denied, 376 U.S. 938 (1964), which was at the very minimum 2 years after the Supreme Court had gone the other way in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961).

He decided the *Griffin* case in 1963, 322 F. 2d 332 (4th Cir. 1963), fully 9 years after segregation had already been outlawed in respect of public schools by the Supreme Court, and the Supreme Court in Griffin reversed him unanimously, 377 U.S. 218 (1964). He decided the *Pettaway* case, 332 F. 2d 457 (4th Cir. 1964) in 1964, 10 years after the original Brown decision.

He decided a whole series of cases—*Bradley, Gilliam, Nesbit* and *Bowditch*, 345 F. 2d 310, 325, 329, 333 (4th Cir. 1965) in 1965—11 years after the 1954 decisions—and was again reversed by the Supreme Court, 377 U.S. 218 (1964).

Even in 1968, 14 years after the Supreme Court decision, he dissented again from a desegregation order in the *Brewer* case, 397 F. 2d 37 (4th Cir. 1968).

Mr. President, I beg Senators to think of this very seriously. I think this has been a very much underestimated argument in respect of this whole situation. I am the first to agree that I should not vote against a judge merely because he is conservative in his views on social questions or on the timing with respect to which people should be required to conform to the constitutional law as found by the Supreme court. We may differ. I differed, for example, with Judge Burger in many decisions in respect of civil liberties and other propositions which he decided as a circuit court judge.

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

Mr. JAVITS. I should like to complete my remarks.

That did not mean that I voted against the judge. I voted for him. But I do distinguish the "conservative" or "liberal" cast of a judge, on the one hand, from a judge who persists in error—persists, after years and years and years, in the view that the old was right and the new is wrong, particularly on this critical civil rights question. I do not feel that within my conscience I can, by my vote, send to the Court that judge, with that kind of philosophy. He is sincere—I do not denigrate or in any way deprecate the judge—but precisely because his philosophy is sincere, and I believe it is, I have to vote "no" on his confirmation.

I yield to the Senator from Wyoming.

Mr. McGEE. I thank my colleague the Senator from New York for yielding me just a brief moment.

I have listened to a portion of his very thoughtful revelations of his own philosophy and his own reasoning processes in regard to arriving at his own conclusion in the case of this particular nomination.

I could not pretend to match the knowledge of the law and some of the other delicate principles involved that my colleagues in this body have generously shared with the rest of us who are not lawyers. There are not many of us who are not of the legal profession, one way or another. However, that does not release us from responsibility of trying to arrive at the best and balanced judgment we can by all our lights, whatever those may be.

I have read with deep interest the committee report and the individual views with respect to the judge. Allowing for all, as I understand it, I would be moved to say, as others have already noted, that at almost any other time Judge Haynsworth would be approved almost routinely; that what really catches us in our present mind is this particular time, right now.

And I have been deeply concerned about the argument of those who ask what will happen to Judge Haynsworth if there is an adverse vote by this body. I think we have to go very slow in making a judgment that might have a serious and adverse effect on a man's integrity or personality, on his professional career, or the bench on which he now sits.

Yet, as this Senator sees his responsibility in connection with the vote on the confirmation of Judge Clement Haynsworth, he must decide more than just the fitness of the man for the job. If that were the only question involved, the decision would be easier, for Judge Haynsworth has acquitted himself well before the Judiciary Committee and the record supports the conclusion that he is what we call an honorable man. If it were not for the times, Judge Haynsworth's name probably would not have become controversial. Through most of our history, a Judge Haynsworth likely would have been approved without incident.

But what about the times in which we live, these times—in fact, this moment in time. Are we to verify only the fitness of the man, or is our responsibility also to assess the consequences of an appointment—any appointment—on the future of the Supreme Court and to measure our judgment in the context of our times? The responsibility of a Senator in resolving that issue becomes the

heart of my conclusions in regard to the judge.

We cannot shrug off the times, nor the events which have preceded this day. Judge Haynsworth, as I see it, has already become their victim. Had there been no Fortas affair, with all its attendant publicity and even breast beating, a man of Judge Haynsworth's attainments, with experience as an appeals judge, undoubtedly would have been confirmed. But, Mr. President, there was a Fortas affair. There has been much breast beating. There has been a demand that our Presidents abandon all former criteria for the selection of judges—especially members of the Supreme Court—and submit to the Senate as nominees only those found to have the highest level of personal and professional integrity.

The issue, therefore, becomes so much bigger than the man being considered for the post or the consequences of adverse Senate action in regard to an honorable judge. The issue becomes, rather, that of restoring the prestige of the Supreme Court of the United States to its constitutional position of balance in our separation of powers system.

It is understandable to most of us that a President of the United States has to weigh whatever decision he makes in terms of political realities, in terms of loyalties, and in terms of the personal integrity of the nominee. But even more than these criteria, there ought to be the President's concern about our constitutional functions and—in this instance—the role of the Supreme Court. The shadows already cast over the Court by recent events have caused it to slip in public esteem, and thus its function is threatened with erosion.

It is imperative, in my judgment, that one consideration emerge above all others in the decision that we reach here today; and that is that the President and this body do everything in their power to measure the future role of the Court ahead of the immediate exigencies of a Court appointment. In my view the primary responsibility in meeting this one issue is the President's. The prestigious role of the Supreme Court itself should take precedence over the more personal or political factors. I respect, however, the decision of a President who arrives at an opposite position.

It had been my hope all along, therefore, that the President of the United States would arrange for the withdrawal of the name of his nominee and then submit a new name—a new candidate. Since through his best judgments he could not do this, it becomes the responsibility of the Senate of the United States to take the appropriate action.

It is for this reason only—namely, restoring the Court to its proper place among our historic institutions—that I intend to vote "no" on the question of confirmation of Judge Haynsworth.

I thank the Senator from New York for yielding.

Mr. JAVITS. Mr. President, I thank the Senator for his helpful intercession. I shall conclude momentarily.

Mr. President, as bearing upon the point which has decided me in this matter, I wish to call attention to a very interesting bit of testimony which appeared in the hearings on the nomination. I juxtapose the testimony of assistant professor of politics and public affairs at Princeton University, Gary Orfield, with the testimony referred to in a very eloquent speech by the Senator from South Carolina (Mr. HOLLINGS), given by Professor Foster of the University of Wisconsin Law School.

Professor Orfield concludes his analysis of Judge Haynsworth's decisions in the cases in the following way, which I find to be very supportive of my position:

A variety of new and difficult civil rights issues will continue to come before the Supreme Court. The Court's essential role is to decide new issues not yet clear in the law and to resolve disputes that have divided the lower courts. As new devices to subvert school desegregation and prevent implementation of other civil rights laws are invented, the Supreme Court will be called on for critically important decisions.

There is exceedingly little in Judge Haynsworth's record to produce confidence in the minds of civil rights litigants. At a time when issues basic to the future of American society will come before the Court, I believe the Senate will fail in its duty if it confirms a judge who has been so tardy in protecting children asking for an elemental constitutional right.

Mr. President, I think that word "tardy" is the key word in the conclusion of the professor, who analyzed the cases.

I ask unanimous consent to have printed in the RECORD the testimony of Professor Orfield.

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

TESTIMONY OF GARY ORFIELD, ASSISTANT PROFESSOR OF POLITICS AND PUBLIC AFFAIRS, PRINCETON UNIVERSITY

Mr. ORFIELD. My name is Gary Orfield, I am assistant professor of politics and public affairs at Princeton University.

Senator ERVIN. You may proceed in your own way, either by reading your statement or orally.

Mr. ORFIELD. Senator Ervin and members of this committee, I asked the opportunity to testify before the committee because my own research over the past several years in southern school segregation policy has made me feel deeply concerned about the impact of the appointment of Judge Haynsworth to the Supreme Court.

Because of my concern, I went back and read his decisions over the last 6 or 7 years, and tried to determine what his outlook was on the critical problems of school desegregation in the South during this decisive period. I was very deeply concerned and disturbed by what I saw.

One of the most remarkable things about this year, to a student of school desegregation, is the ease with which actions unthinkable a year ago become commonplace. Each week seems to bring a further retreat by the executive branch in civil rights enforcement.

The Justice Department, so long in the forefront of the battle to enforce constitutional guarantees, has succeeded in postponing desegregation in Mississippi schools. The House has passed, with administration support, an amendment that would destroy what remains of HEW's school desegregation program. Now the newspapers report that few Senators are worried about putting on the Supreme Court a backward-looking judge from a circuit court with a very poor record in protecting civil rights.

After 15 years of effort, we are very near a decision about the future of southern race relations. Some obvious forms of discrimination have been very largely eliminated from southern life. A great deal can be done to remedy others, such as school and voting discrimination, through firm executive and judicial action.

Obviously, the courts and especially the Supreme Court will have a great deal of influence in determining the national choice between equal rights and an increasingly segregated society. The role of the courts is made all the more central by the decision of the Nixon administration to rely primarily on litigation rather than administrative action in enforcing civil rights laws.

At this decisive juncture, the appointment of Judge Haynsworth would symbolize a willingness to see our highest court turn away from the cause of equal rights. The appointment would deepen the worries of an already demoralized black community and rather embolden the forces of reaction, which once again sense the possibility that desegregation may be delayed or defeated. Approval of the Haynsworth nomination would be one more sign that Congress lacks the will to face the Kerner Commission's grim warning that we may soon be "two societies, black and white, separate and unequal."

Commentary in the press has given the impression that Judge Haynsworth is a moderate on civil rights, tinged with a touch of conservation. When I read his school desegregation decisions and evaluated them in terms of what I learned during my study of the southern school issue, I found that his position was actually that of a very conservative member of a very conservative court.

He has been willing to permit interminable delays by local segregationists, he has shown little understanding of the nature of discrimination, and he has demonstrated neither skill nor a sense of urgency necessary in forging remedies for proven local abuses.

This record, demonstrating a basic lack of sympathy for some of the basic developments in American constitutional law of the past 15 years, should disqualify Judge Haynsworth for appointment to the Supreme Court. Indeed, it is my belief that if it were not for this very conservative record on civil rights matters, it is very unlikely that senior members of this committee would still continue to support this nomination after the serious ethical problems that have been raised in earlier testimony.

This statement has two basic purposes. First, I will examine a number of school desegregation cases decided by Judge Haynsworth compared his conclusions with those of his own court and with the opinions of the Supreme Court.

Second, I will discuss the Senate's responsibility for reviewing Supreme Court nominations and the very ample historical precedents for rejecting Presidential choices on grounds far less serious than those present in this case.

Judge Haynsworth's school desegregation record is particularly important and revealing because of the great importance the Supreme Court gave to the circuit courts of appeal in supervising implementation of its 1954 decision.

Since the Supreme Court seldom intervened in school matters, the circuit courts, particularly the fifth circuit for the Deep South and the Fourth Circuit for Virginia and the Carolinas, played absolutely central roles in the development of the legal principles necessary to carry out the 1954 decision.

Unlike the fifth circuit, which often broke new legal ground in coping with the more difficult problems of Alabama, Mississippi, and Louisiana, the fourth circuit interpreted the Supreme Court mandate narrowly, even in situations where the local resistance was

far less serious. The court allowed stalling and token compliance. Several times Haynsworth cast the deciding vote against prompt desegregation.

In three very important cases the Supreme Court found it necessary to reverse school rulings authored by Judge Haynsworth. In a number of less famous cases he ruled in favor of local resisters. If allowed to stand, Judge Hayneworth's rulings would have threatened the entire desegregation process. None of the cases I will present came early in Judge Haynsworth's career on the fourth circuit bench. The earliest is in 1962 and most came after passage of the 1964 Civil Rights Act. Indeed the one most important case came after the Supreme Court decision in the *Green* case in 1968.

As desegregation finally began to gain momentum in Virginia in the early 1960's, school questions were heavily litigated in the State. I will use two school districts within 3 hours drive of this hearing room, Charlottesville and Powhatan County, to illustrate Judge Haynsworth's approval of procedural delays and local tactics of evasion.

When his court refused to approve a Charlottesville plan that would perpetuate segregation by letting the white minority but not the black majority transfer out of the school in the city's ghetto, Haynsworth dissented. He claimed that the plan local authorities put forward was nondiscriminatory and he added gratuitously in his opinion the common segregationist argument that many black students would "likely have senses of inferiority greatly intensified" by integration.

Even in this case involving a moderate university town with relatively simple problems, Haynsworth took an extremely narrow view of the local school board's responsibilities. He argued that the Constitution required nothing more than token desegregation of one of the city's six schools. *Dillard v. School Board of City of Charlottesville, Va.*, 308 F. 2d 920 (4th Cir. 1962), cert. denied, 374 U.S. 827 (1963).

I might point out, having recently lived in Charlottesville, the city now has totally desegregated schools, but it has followed for the last couple of years voluntary busing plans to maintain racial balance in its schools and it has dealt with its problems without incident.

Similar attitudes were evident in his 1963 ruling on the *Powhatan County* case. He cast the decisive vote postponing admission of the first three black students to the county's schools. Judge Bell of his court dissented, saying that both the facts and the law of the case were clear and there was no excuse for further delay on this first step, the first step coming some 9 years after the 1954 decision.

Later in the same case, Haynsworth dissented from his court's decision to force the local authorities to pay the legal fees of black children. The court's intention was to discourage school systems from engaging in years of unjustified courtroom maneuvers which put an overwhelming burden on those claiming their rights. "To put it plainly," the majority said of the county's dilatory tactics, "such tactics would in any other context be instantly recognized as discreditable." Judge Haynsworth failed to see what was plain to the other judges, 8 Race Rel. L. Rep. 1037 (1963).

I think that this is an important theme that I get from reading Judge Haynsworth's opinions, that it is exceedingly difficult for him to see the problem of discrimination from any perspective other than that of local white leadership, and I think not even local white Southern leadership, the local white leadership over the Southern black in the Deep South.

The following year, 1964, Judge Haynsworth was reversed by the Supreme Court in the extremely important case of Prince Edward County, Va. The county, one of the original four school systems involved in the Supreme Court's 1954 decision, had become the symbol of white resistance across the South when it shut down its public schools to avoid token desegregation. After 11 years of litigation, blacks in the county appealed to the Federal courts to force reopening of the schools. A Virginia Federal district judge responded by ruling that the county could not close its schools simply to avoid compliance with the Supreme Court decision while local taxpayers continued to pay State taxes used for public schools in the rest of the State.

Judge Haynsworth, however, cast the deciding vote on the appeals court reversing the district court judgment and returning the case for yet another round of litigation in the Virginia State courts.

In his opinion, Judge Haynsworth reached the incredible conclusion that Prince Edward County "abandoned discriminatory admission practices when they closed all schools as fully as if they had continued to operate schools, but without discrimination.

Such a doctrine would have confronted black citizens in many Southern towns with the horrible choice between "voluntarily" remaining in inferior segregated schools and having no schools at all.

I talked with the superintendent in the county adjoining Prince Edward. He told me that there was a period of several years when these matters were being litigated in the Federal courts when there was a strong movement in his county to close public schools as well, and the people who favored continuing public education had to meet secretly with drawn shades to speak to each other, in the hope that they could get enough local support to retain public schools.

Judge Haynsworth saw no greater legal barrier to closing down the schools, a public service essential to individual opportunity, than to local action giving up a rather minor Federal-aid program.

He refused to strike down a local ordinance subsidizing the private segregationists schools by allowing people to subtract from the tax bills substantial contributions to the white schools. *Griffin v. Board of Supervisors*, 322 F. 2d 332 (4th Cir. 1963).

Judge Haynsworth has recently said that it is unfair to judge him by his past decisions. "They are condemning opinions written when none of us was writing as we are now," he commented in response to civil rights groups' criticism. The *Prince Edward County* case, however, demonstrates the inadequacy of his explanation

This case, like a number of others found other members of the Fourth Circuit bench far in front of Judge Haynsworth but unable to persuade him to join in their efforts to protect constitutional rights. Judge Bell, for example described his *Prince Edward* opinion as "a humble acquiescence in outrageously dilatory tactics." Local officials, Judge Bell wrote, had openly announced that they "closed the schools solely in order to frustrate the orders of the Federal courts that the schools be desegregated."

I had a graduate student at the University of Virginia 2 years ago who went down to Prince Edward County to talk to the local white leadership there and there had been no change whatever in their interpretation of why the schools had closed. There had never been anything that had been exceedingly hard to understand. It has been openly proclaimed very shortly after the 1954 decision.

Bell saw the Haynsworth decision as an "abnegation of our plain duty." Bell wrote:

"It is tragic that since 1959 the children of Prince Edward County have gone without formal education. Here is a truly shocking example of the law's delay."

While hundreds of children were being educationally crippled by a fourth year without schools, Judge Haynsworth deferred to the local request for still another delay.

The Supreme Court rejected Judge Haynsworth's reasoning. Writing for the Court, Mr. Justice Black described what was then a 13-year delay since the filing of the initial suit. The record clearly showed, Justice Black wrote, that "Prince Edward's public schools were closed and private schools operated in their place with State and county assistance, for one reason only: to insure, through measures taken by the county and the State, that white and colored children in Prince Edward County would not, under any circumstances, go to the same school."

The aged Alabama Justice seemed able to easily grasp facts that eluded a circuit judge far less aware of the nature of discrimination and far more sympathetic to the sensibilities of local white leadership. *Griffin v. County School Board of Prince Edward County*, 84 S. Ct. 1226 (1964).

Two years later, in a less important case, Judge Haynsworth again ruled in favor of Prince Edward County. While the constitutionality of tuition grant payments was being litigated before the Fourth Circuit, the county board ignored an assurance that no action would be taken and suddenly distributed and cashed $180,000 in aid for children attending the segregated white private schools.

The clear intent was to get the money spent before the Federal courts could issue a final order against it.

The majority on the Fourth Circuit saw this as "willful removal beyond reach of the court of the subject matter of the litigation." Haynsworth dissented, relying on a technical issue and downplaying the significance of the local defiance *Griffin v. County School Board of Prince Edward County*, 363 F. 2d 206 (1966).

Two more Haynsworth decisions, involving the important question of faculty desegregation, were reversed by the Supreme Court in a 1965 case. In ruling on the desegregation plans of Richmond and Hopewell, Va., Judge Haynsworth refused to require faculty desegregation, in spite of growing recognition in Southern Federal courts that this was an essential part of the desegregation process. He cast the deciding vote in the Richmond case, where the dissenters argued that "as long as there is a strict separation of the races in faculties, schools will remain 'white' and 'Negro,' making student desegregation more difficult . . ." *Bradley v. School Board*, 345 F. 2d 312 (4th Cir. 1965), and *Gilliam v. School Board*, 345 F. 2d 325 (4th Cir. 1965).

The Supreme Court rejected this reasoning, indicating its judgment that faculty integration was related to student integration. Had Judge Haynsworth's position prevailed, the difficulties in implementing successful desegregation would have increased and it would have been easier for school boards to fire black teachers as schools were desegregated.

Once again in 1968, the Supreme Court found it necessary to reverse an important Haynsworth school decision. When the Supreme Court handed down its historic *Green* decision against "freedom of choice," it rejected a leading device for delay repeatedly defended by Judge Haynsworth. "Freedom of choice" is the phrase used by the South to describe an approach to desegregation based on the assumption that local officials have no legal responsibility to end racially separate schools. All they have to do is offer each student a choice of which school he wants to attend once each year.

In practice, because of local pressures, the system generally permits localities to maintain separate schools indefinitely. The constitutional right to an equal education is available only to those families willing to take the risks involved in openly challenging local racial practices. In a study conducted shortly before Haynsworth's free choice de-

cisions, the U.S. Civil Rights Commission found widespread evidence of economic, social, and even physical intimidation of black families exercising their "freedom of choice."

I should say that earlier this month the Civil Rights Commission reaffirmed that finding and stated that the free choice system has encouraged "intimidation and economic retaliation" against families who allow their children to transfer to the white schools.

Although freedom of choice had left the pervasive segregation of the two Virginia counties concerned virtually untouched, Haynsworth clung to a distinction between "desegregation" and "integration" that had been abandoned in the other circuit court.

The level of difficulty in implementing freedom of choice plans is extreme in many areas of the South. Perhaps the great bulk of those that remain still retain segregated schools. There was a hearing held just over a year ago in a Virginia county not far from where Judge Haynsworth's fourth circuit sits. The parents came up and testified that their houses had been shot into, that crosses had been burned in front of their homes, that they had been fired from jobs, denied credit, and so forth.

In casting the decisive vote on two Virginia free choice cases, one of which became the basis for the subsequent Supreme Court decision, Judge Haynsworth spurned the proposal of two members of the five-judge panel that the court find out whether free choice plans actually worked and set firm deadlines for faculty desegregation.

Thus, as recently as two years ago, Haynsworth identified himself as hostile to the claims of black students on the two most important issues then under examination in the development of school desegregation law.

The facts in these two counties were particularly outrageous. Neither county had much residential segregation, but each maintained costly duplicate sets of schools and buses which traveled the same roads to separately pick up white and black students. Neither county had the minimum number of students in either the black or the white high school needed to permit efficient operation and an adequate curriculum. Only a handful of black children had "chosen" to enroll in the white schools.

"The situation presented in the records before us," wrote two of the court's judges, "is so patently wrong that it cries for immediate remedial action, not an inquest to discover what is obvious and undisputed." Judge Haynsworth favored procedural delays. *Bowman v. County School Board,* 382 F. 2d 326 (4th Cir. 1967), and *Green* v. *County School Board of New Kent County, Va.,* 382 F. 2d 338 (4th Cir. 1967).

The Supreme Court again found fault with Haynsworth's conclusions. The Court held that State and local governments, responsible for creating and perpetuating separate school systems, were now responsible for dismantling them. "In the context of the State-imposed segregated pattern of long standing, the fact that . . . the Board opened the doors of the former 'white' school to Negro children . . . merely begins, not ends, our inquiry whether the Board has taken steps adequate to abolish its dual, segregated system . . ." Local authorities were ordered by the Supreme Court to take the fastest available route to a unitary system "in which racial discrimination would be eliminated root and branch." 391 U.S. 430 (1968).

Four days after the *Green* decision Judge Haynsworth ruled in the case of *Brewer* v. *The School Board of the City of Norfolk,* even after the Supreme Court had ruled against freedom of choice except in exceptional circumstances, Judge Haynsworth stated his approval of the free choice plan.

"I think freedom of choice," he said, "is highly desirable."

It would be unfair to argue that Judge Haynsworth has been uniformly hostile to the legal rights of black children. He has participated in a number of opinions, mostly unsigned, in which his court upheld settled desegregation law or granted some of the claims of the litigants. In each of the cases that I have criticized there are procedural and technical issues that can be argued. What is striking, however, is the fact that in his few signed opinions and dissents he speaks for those who wish wide latitude for local evasion and narrow construction of the rights of black children.

The technical issues are decided in a way that limits civil rights enforcement. Thus, while he generally favored broad discretion for district judges allowing procedural delays, he overruled a district judge forging new remedies to deal with the extreme local resistance in Prince Edward County. It is remarkable that among his few opinions in this area, three were reversed by the Supreme Court.

Judge Haynsworth's 12 years of service on the fourth circuit have produced a weak civil rights record. This record cannot be explained by local political necessity, like that which generated black criticism of the nominations of Justice Black and Judge Parker. Judge Haynsworth was not running for office, but was expressing his beliefs as a secure and independent judge with lifetime tenure on a high Federal court.

I believe, therefore, that the argument that is often made that because Justice Black's record was different from that which some predicted, because Justice Parker was not as ineffective in implementing the rights of black litigants as most expected, that therefore you can make a generalization from those cases as to Haynsworth's circumstances. I think that there was a very critical difference in the circumstances in which the statements that lead to grave doubts about their ability on a Federal judgeship were made.

A variety of new and difficult civil rights issues will continue to come before the Supreme Court. The Court's essential role is to decide new issues not yet clear in the law and to resolve disputes that have divided the lower courts. As new devices to subvert school desegregation and prevent implementation of other civil rights laws are invented, the Supreme Court will be called on for critically important decisions.

There is exceedingly little in Judge Haynsworth's record to produce confidence in the minds of civil rights litigants. At a time when issues basic to the future of American society will come before the Court, I believe the Senate will fail in its duty if it confirms a judge who has been so tardy in protecting children asking for an elemental constitutional right.

Mr. MURPHY. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. MURPHY. Do I correctly understand that Professor Orfield is a professor of politics at Princeton University?

Mr. JAVITS. Yes. That is correct.

Mr. MURPHY. I thank the Senator very much.

Mr. METCALF. Mr. President, again I wish to compliment the Senator from New York (Mr. JAVITS) for his analysis of the civil rights cases and for his repetition of some of the statements which he has made. I have read his speech on the civil rights cases and I listened to a part of it. I do not pretend to be an expert in that area. I have served on labor committees in both the Senate and House. I have represented labor unions in the courts. I have also opposed labor unions in the courts. I know a little bit about labor law, and thus, tried to read the cases Judge Haynsworth decided insofar as labor was concerned.

I came to the conclusion that he was behind the times in his decisions regarding various labor questions. I feel that he is even further behind the times—and the Senator from New York has suggested it also—in civil rights cases.

Some of his decisions were made before the Norris-LaGuardia Act. I feel that he has failed to leave behind his representation of textile employers and other employers and has decided cases not in the main line of decisions in labor law.

I tried to outline that proposition. But, that is not the only reason I am against him.

I concur with the Senator from New York and other Senators about his decisions in civil rights cases, although I defer to their judgment on that.

I wish to comment on the ethical situation because it was a matter in controversy today.

One of the canons of judicial ethics provide that a judge's official conduct should be free from impropriety and the appearance of impropriety, that he should avoid infractions of the law in his personal behavior not only upon the bench and in his performance of judicial duties but also in his everyday life he should be beyond reproach.

Now the Senator from Kentucky read the statute and the statute provides that he shall do certain things, and that is in the canon of judicial ethics, that he should avoid infractions of law. But the canons also provide additional things, that he should avoid impropriety. I feel that Judge Haynsworth has failed to avoid impropriety.

I can understand that. I can remember when cases were assigned, such as the Brunswick case, which I have read, and I would have decided it the same way as did Judge Haynsworth, that when it was handed down and decided, perhaps he did not even know that his broker had purchased Brunswick stock for him. But after a lot of labor cases where someone says, "Well, look, I lost that case up there and Judge Haynsworth wrote the opinion and he has stock in the company," that is the kind of avoidance of impropriety that we want to obtain.

Mr. President, I was at the luncheon today for Prime Minister Sato of Japan. In speaking to us, he used an example from the sports world. He said that Japan was like a marathon runner. He had finally pulled into second place, but he was still way behind, back in the pack, and the United States was in first place.

If Senators will pardon me, I should like to use an example from the sports world, too. We all know about Joe Namath, that he had an interest in a night-club called Bachelors III, and Pete Rozelle, Commissioner of Football, said to him, "Look, Joe, you have got to get rid of that club. We do not think that you have committed any crime or that you have committed any violations of ethics, but you must avoid even the appearance of a violation of ethics."

We all know how easy it is to assume that if one of Joe's passes were intercepted, and later that night Joe were seen talking to one of the Mafia, rumors would be circulated about that football game.

We all remember Paul Hornung when he was suspended for a year——

Mr. MURPHY. Mr. President, will the Senator from Montana yield right there?

Mr. METCALF. May I finish what I was going to say about Paul Hornung first, and then I shall be delighted to yield to the Senator from California.

Mr. MURPHY. I wanted to get one point straight. Did not Joe just open up a new place?

Mr. METCALF. About what?

Mr. MURPHY. Joe Namath—did he not just open up a new place?

Mr. METCALF. Did what?

Mr. MURPHY. I am not trying to give Joe a commercial. I am just asking for information as to whether Joe did not just open up a new place in Boston.

Mr. METCALF. Pete Rozelle said to Joe, "Look, Joe, you have got to get out of that business." Joe did.

What I am trying to develop—and I am not criticizing Joe because I do not think he ever "threw" a pass for anyone. I do not believe that he went into any game except with the complete will to win it.

The same thing with Paul Hornung, if the Senator will allow me another sport analogy. He bet on his own team, but they suspended him for a year.

Professional football could go the way of professional wrestling, and it would not make much difference as far as the people of America are concerned, except for those of us who love the game. But if there is doubt about the integrity of a Supreme Court Justice, it strikes at the very heart of America. That is the ethical question that has come up and has been discussed by the Senator from Maryland and other Senators.

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

Mr. METCALF. I am delighted to yield.

Mr. MURPHY. I did not know that there was any allegation that Judge Haynsworth had been guilty of anything such as the things that Pete Rozelle talked about in these matters. If the Senator will forgive me, I think he is stretching the point a little. I think there has been great confusion in this.

I had something to do with the inception of the Fortas matter a year ago. I had a great deal to do with it. If the Senator will recall, it started with a group of 17 Senators who decided they were not going to vote for the confirmation of the nomination; that the people had had a chance to elect a new executive officer—and they had. We thought at that point it was proper and right that the new Executive should have the right to appoint some judges, because, over the years, the confidence of some people in the court had slipped somewhat.

Many of my constituents thought the Supreme Court had gotten into the area of writing law rather than interpreting law. This feeling was quite widespread.

That was the whole basis of the Fortas matter at that time. Later on, all sorts of things developed.

But I have not heard anything developed in the Haynsworth case that even begins to bear the slightest possibility of comparison. I just wondered if perhaps making a comparison of that case with Pete Rozelle is a little different. I am a lover of football, just as my distinguished colleague is.

Mr. METCALF. I know the Senator is.

Mr. MURPHY. I think I was there when it started. I sat in Walter Camp's lap a few times, and my father was the first professional coach and trainer in America, so I know something about this. I wondered if, in our enthusiasm, one side or the other, pro and against, we were getting a little afield in likening these cases.

It was not anything Joe Namath did; it was because of some of the people who were known to be habitues of that place that might cause some people to wonder about it. It is not the first time it has happened in professional sports.

I have not read all the record. There are 700 pages of it. That is a little too much for me at the end of a day. But I have not found anything in the Haynsworth case that would lead me to believe that there was a parallel to be drawn here.

My distinguished colleague who a few minutes ago quoted a series of cases has, unfortunately, left the Chamber. I am not a lawyer. I have not read all those cases. I do not know all the details of those cases. I doubt if anyone in this Chamber or in the membership of this body has read all those cases.

Mr. METCALF. No; but if the Senator from California will let me have the floor back for a minute——

Mr. MURPHY. I am delighted.

Mr. METCALF. I will tell him that I have read over 100 of Judge Haynsworth's cases.

Mr. MURPHY. I congratulate the Senator.

Mr. METCALF. I did not read the civil rights cases, but I sent over to the Library of Congress, and the Library sent me a list of the citations of labor cases, and I read every one. My office is full of volumes of the Federal Reporter.

Mr. MURPHY. Did the Senator read the full record of the case?

Mr. METCALF. I read the cases, and that is what we decide on, just as Judge Haynsworth decides in labor cases.

Mr. MURPHY. I have had some experience in labor law, too, and I have read some cases. I find that sometimes one has to take the trouble to read all of the details in order to get a full understanding. I know many citations go a certain way. I know the presentations of the lawyers may incline a person one way. But without a full understanding and the effort to digest the entire record, one is apt to make a mistake.

As I read the record, Judge Haynsworth has not been too consistent one way or the other. I had the impression that he found in favor of labor in some cases and opposed to labor in other cases. I may be wrong. I am not a lawyer. That has been the result of my reading.

I have taken too much time of the Senator. I thank him for yielding.

Mr. METCALF. I am delighted. I examined the hearings, and I read a lot of cases. I do not pretend that I read all the cases that the 4th Circuit decided during the 12 years Judge Haynsworth was on the court. I have already acknowledged that I am not an expert in civil rights matters. I read some of the cases on taxation. I do not agree with Judge Haynsworth on them.

I learned, when I was on a court, that two honorable men of integrity and honesty can take a whole list of cases, the same cases and the same precedents, and arrive at different decisions.

Mr. MURPHY. Mr. President, if the Senator will permit me another observation, many years ago I had a dual job. I was concerned with community relations and with public relations. I have had some experience in that field with the Metro-Goldwyn-Mayer studios in Hollywood. I went one day, at the invitation of my friend, former Associate Justice Frank Murphy——

Mr. METCALF. A great judge.

Mr. MURPHY. And I listened to the pleadings before the court. At the end of 2 hours I called a page. Being a kind of movie actor at that time, the page did not know what to do. He did not know whether to come to me or not. But because moving picture actors are kinds of freaks, he did come, and I asked him for a pad of paper. I wrote on one of the sheets, "After listening to all this, I am convinced that 90 percent of the problems of this world are caused by lawyers and public relations men."

We sit here and try to write the law as exactly as we can. We hear Members of the Senate say, "Let us make the language exact. Let us make certain that two honest men will not read the same law, or the same sentence, and completely disagree."

That is one of the problems. It is one of the problems that face us in the particular case that comes before us at this time. We find one colleague saying he wishes the President had withdrawn the nomination. That would have been simple. It would have been easy. It would have been convenient. It would have been comfortable. But it might also have been dishonest. I think the President did the proper thing in not withdrawing the nomination. The President of the United States went over this matter very cautiously and carefully.

I am pleased that the latest polls taken show that the President in office at the present time enjoys possibly the highest popularity and confidence of the people than any President I can recall in late years from either party.

I think the President went over the question carefully and made the selection with all sincerity and honestly thought the nominee was a fair man, a capable man, and a distinguished man. We never heard anything against him until he was nominated, and suddenly all sorts of things come up which seem to hinge more on appearance than substance.

I do not think it is right for us to sit in judgment of the President as to whether he did the right thing or not. Here we have a case which is certainly open to view. Here is the volume. Much has been said on the floor of the Chamber.

The distinguished Senator from New York (Mr. JAVITS) said that he certainly has a right to make up his own mind. So do I. So does the distinguished Senator from Montana. I think we will. But

there is so much that must be exposed in order that we may make a just judgment. Certainly bias, one way or the other, should not be the turning point of the decision. I would hope that we will find a Justice to sit on the Court who is as able as is humanly possible to interpret the law as written, and to do so fairly and considerately for all concerned, and to the highest degree possible, without bias.

I thank the distinguished Senator from Montana.

Mr. METCALF. I thank the distinguished Senator from California. I may say to him that I have voted against the confirmation of nominations of persons of my own party. It is not a challenge of the integrity or the popularity of the President. I vote the conscience of the junior Senator from Montana. I am merely trying to explain to the Senator from California why I shall do so.

Initially, I would have voted to confirm the nomination of Judge Haynsworth, until I read the hearings and read the cases. We do not have a Pete Rozelle on the Supreme Court. We do not have someone to judge the ethics of judges. I really do not wish to impugn the integrity of Judge Haynsworth as a circuit court judge. I have tried repeatedly to say that I understand, or I think I understand, some of the things that motivated his conduct. He has let a broker handle some of his affairs. One having this kind of careless disregard or appearance of impropriety should not be elevated to the Supreme Court of the United States. That is all I am trying to say.

I do not agree with my good friend from Colorado that we are destroying the life of this man. I would not want to do that. But he is nominated for the highest Court—a job that requires excellence above and beyond that of the ordinary circuit judge and the ordinary lawyer; and that is the standard that we must require that he meet. That is the standard I am trying to ask him to meet.

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

Mr. METCALF. I yield to one of the most able and respected lawyers who has ever served in this body, the Senator from Nebraska.

Mr. HRUSKA. I return the compliment. I suggest that the Senator from Montana is an authority in many fields, but there is one in which he is reputed to be particularly well qualified—the field of labor law. He come by that reputation honestly.

It was with some interest that I heard he had sent to the Library of Congress for 100 cases, or thereabouts, and read most of them.

Mr. METCALF. That is correct.

Mr. HRUSKA. I wonder if the Senator recollects, having considered this record well, that when Mr. George Meany was on the stand, he took great exception to the 10 cases which Judge Haynsworth had decided adversely to labor, and he seemed to become obsessed with the idea that Judge Haynsworth was antilabor.

Mr. METCALF. I believe I remember the incident of which the Senator is speaking.

Mr. HRUSKA. I wonder if, in the hundred cases or so the Senator has read in the field of labor decisions, the Senator from Montana was not impressed with the fact and does not consider it noteworthy that, as against the 10 cases referred to by George Meany as having been rendered by Judge Haynsworth against the position of labor unions, there were at least 37 cases in which he sustained the position of the unions.

Mr. METCALF. I read those.

Mr. HRUSKA. As a matter of fact, it would not have been necessary to send over to the Library of Congress for that list of cases; it is on pages 195 and 196 of the hearings record. During a colloquy that was conducted by the Senator from Kentucky (Mr. COOK) there were listed the names and citations of those 37 cases—3.7 times more than the decisions against the unions—decided by Judge Haynsworth in favor of the unions.

Mr. METCALF. Mr. President, let me say to the Senator from Nebraska that most of those cases are cases that every lawyer in this body would have agreed with Judge Haynsworth on. They are the sort that are appealed perfunctorily. The critical cases are the cases where the Supreme Court grants certiorari, and they are argued in the circuit court and taken up to the higher court on appeal.

I am sure the Senator will agree that many of the cases that all of us argue, many of the cases decided in the circuit courts, are cases you do not take any farther, that every one agrees on. I submit these 37 cases were of that type. But I did not rely on Mr. Meany's list of cases, nor did I rely on the Cook-Hruska letter. I asked for all the cases.

Mr. HRUSKA. This list of 37 cases was not given us by Mr. Meany in the testimony. In fact, he denied any knowledge of them, and also said, "They are of no consequence, they were decided in our favor," and in fact he took it for granted they were of no importance as an argument in this case.

Mr. METCALF. And they were not appealed further.

Mr. HRUSKA. They were in a list furnished by the Senator from North Carolina (Mr. ERVIN). He read the list of cases, and in response to a question as to whether or not a case that is not appealed is therefore not important, Mr. Meany said, "Oh, no, that is not right. Even those cases are important."

So I say it is noteworthy——

Mr. METCALF. I do not have to agree with George Meany.

Mr. HRUSKA. It is important to me that there were almost four times as many cases decided in favor of the unions by Judge Haynsworth as were decided against them.

Mr. METCALF. I thank the Senator from Nebraska. As I say, he is one of the ablest lawyers with whom I have been associated in this body, and I regret that I have to disagree with him on this very vital, sensitive, and important matter.

Mr. President, I yield the floor.

SENATOR RANDOLPH SUPPORTS JUDGE HAYNSWORTH NOMINATION

Mr. RANDOLPH. Mr. President, I support the nomination of Judge Clement F. Haynsworth, Jr.

The Judiciary Committee testimony has been given my careful review. And I have studied the debate in the Senate. After doing this over a period of several days, it is my judgment that Judge Haynsworth should be confirmed for Associate Justice of the Supreme Court. My decision results from an earnest consideration of the issues brought into focus during the hearings and further discussed in this Chamber.

Mr. President, I have also weighed the varying opinions of friends and associates who have given me their counsel. The constituents I directly represent as a Senator from West Virginia have provided their points of view. And in a matter of this magnitude I must also rely in great degree on my personal assessment of the pending problem. The decision has been a difficult one and I have tried not to polarize my thinking.

Mr. President, I have asked myself three questions as to the career, the qualifications, and the conscience of Judge Haynsworth. In aswering, I have concluded that the nominee has integrity, he has competence, and he has the objectivity to decide each case on its merits.

It has not been easy for me fully to understand the financial transactions of Judge Haynsworth. I have determined, however, that the material produced against him is not persuasive proof of dishonesty.

There has been understandable concern as to the judicial philosophy of the nominee and of his approach to the vital legal cases which have been brought before him in the fourth judicial circuit, which includes West Virginia. I am very candid in stating that I have not agreed in some of Judge Haynsworth's findings in labor and human rights cases. Nevertheless, I believe that he will, if confirmed by the Senate, be a member of the Supreme Court who will contribute well-reasoned evaluation to all cases coming before him.

Mr. President, in my 11 years in the Senate, I have participated with my voice and my vote in advising and consenting to the nomination of six men who were confirmed for membership on the Supreme Court. In each case I have voted to confirm the nominee. These men are Potter Stewart, Byron White, Arthur Goldberg, Abe Fortas, Thurgood Marshall, and Warren Burger. Each man represented a different personal and judicial philosophy—at times more conservative than mine—at times more liberal than mine.

It is my belief that diversity of opinion and differing viewpoints are wholesome and vital to the life of the Court, as they are to the life of our country.

Mr. President, I am convinced that Judge Haynsworth, if he is confirmed by a majority of Senators on Friday afternoon, will serve as a Supreme Court Justice with fidelity, high purpose, and compassion.

I believe, in approving the choice of the President of the United States, that I am pursuing a course which is right.

Mr. FANNIN. Mr. President, while speaking on the Senate floor last Tuesday, in support of Justice Haynsworth, I did not get a chance to complete the

comparison I had begun because of the lateness of the hour and the fact that several other Senators wished to make short insertions in the RECORD.

I had concluded a recitation of the actions of Judge Haynsworth in relation to his investments in the J. P. Stevens Co., Inc. Judge Haynsworth, while in the private practice of law, had represented the Stevens Co. He also had concluded that he would never be able to properly sit on a case involving Stevens and so had not divested himself of holdings in that company and had excused himself in any cases involving Stevens coming before his court.

That is certainly a proper action to take. I think it indicates the meticulous attention to fairness which he has given to these matters over the years. It should be pointed out that Judge Haynsworth has gone far beyond the standards which Supreme Court Justices have set for themselves in these cases. I refer specifically to former Justice Arthur Goldberg. First I would like to note there is "as much obligation upon a judge not to recuse himself when there is no occasion as there is for him to do so when there is." In reference to Union Corp., 292 F. 2d 381, 391 (1st cir. 1961), certiorari denied, 368 U.S. 927 (1961).

Justice Goldberg's record in the Supreme Court itself illustrates that judges have an obligation to decide cases, even though those cases sometimes involve interests with which the judge has been associated.

Justice Goldberg, who took his seat on October 1, 1962, and resigned on July 26, 1965, came to the Supreme Court as a partisan of labor. He had served as legal counsel to various unions, particularly the AFL–CIO. Immediately prior to his appointment to the Supreme Court he had been Secretary of Labor.

During his tenure on the Court Justice Goldberg sat in 29 of the 44 labor cases decided. This does not include those labor cases where petitions for certiorari were denied by the court. He sat in seven cases in which AFL–CIO unions were parties. He also sat in nine cases in which the AFL–CIO had an indirect, but significant, interest in the outcome.

He sat on four cases where the AFL–CIO had filed an amicus curiae brief.

Justice Goldberg wrote the opinion in the landmark case of *NLRB* v. *Metropolitan Life Ins. Co.* (1965) 380 US 438. This case involved the Insurance Workers International Union, an AFL–CIO affiliate union. This decision was adverse to Metropolitan Life Insurance Co.

This is not to suggest impropriety on the part of Justice Goldberg. It merely illustrates that judges do not live in a vacuum, and cannot disqualify themselves every time a case comes before them which involves, however, indirectly, an interest with which they may be identified.

Mr. President, I ask unanimous consent to insert in the RECORD information pertaining to Mr. Goldberg and his association with organized labor cases.

I also ask unanimous consent to have printed in the RECORD a statement entitled "Participation of Justice Marshall in Racial Discrimination Cases."

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

ARTHUR GOLDBERG

General Counsel, CIO 1948–1955. United Steelworkers of America, 1948–1961. General Counsel, Industrial Unions Department, AFL–CIO 1955–1961.

PARTICIPATION IN LABOR CASES WHILE ASSOCIATE JUSTICE, U.S. SUPREME COURT

Justice Goldberg sat in 29 labor cases in which opinions were handed down.

Justice Goldberg sat in 7 labor cases in which AFL–CIO union was a party.

Local Union No. 189, Amalgamated Meat Cutters, AFL–CIO v. Jewel Tea Company, 381 U.S. 676.

Local Union No. 721, United Packinghouse Food & Allied Workers, AFL–CIO v. Needham 376 U.S. 247.

Radio & Television Broadcast Technicians Union 1264, International Brotherhood of Electrical Workers, AFL–CIO V. Broadcast Service of Mobile, Inc. 380 U.S. 253.

Calhoun, President or Peters, Secretary-Treasurer of District No. 1, National Marine Engineers' Beneficial Association, AFL–CIO v. Harvey 379 U.S. 134.

Local No. 438, Construction & General Laborers' Union, AFL–CIO v. Curry & Co. 371 U.S. 542.

International Association of Machinists, AFL–CIO v. Central Airlines 372 U.S. 682.

NLRB v. Eire Resistor Corp, and international Union of Electrical, Radio, & Machine Workers, Local 613, AFL–CIO 373 U.S. 221.

Justice Goldberg sat in 5 labor cases in which an AFL–CIO union was an interested party, although not a party to the action.

NLRB v. Metropolitan Insurance Co. [Insurance Workers International Union, AFL–CIO] 380 U.S. 438 (Mr. Justice Goldberg wrote the opinion).

Boire v. Greyhound Corp. [Street, Electric Railway and Motor Coach Employees, AFL–CIO] 376 U.S. 473.

Liner v. Jafco Co. Inc. [Chattanooga Building Trades Council, AFL (two member unions are parties] 375 U.S. 301.

NLRB v. Exchange Parts [International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers, AFL–CIO] 375 U.S. 405.

NLRB v. Reliance Fuel Oil Corp. [Local 355, Retail, Wholesale and Department store unions, AFL–CIO] 371 U.S. 224.

Justice Goldberg sat in 4 cases in which the AFL–CIO filed briefs as amicus curiae.

American Ship Building v. NLRB 380 U.S. 300.

Republic Steel v. Maddox 379 U.S. 650.

NLRB v. Fruit Packers 377 U.S. 58.

Division 1287, Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America v. Missouri 374 U.S. 74.

Justice Goldberg sat in 13 other labor law cases.

Ex Parte George 371 U.S. 72.

Los Angeles Meat & Provision Drivers Union v. United States 371 U.S. 94.

Burlington Truck Lines, Inc. v. United States 371 U.S. 156.

Smith v. Evening News Association 371 U.S. 195.

General Drivers, Warehousemen & Helpers, Local No. 89. v. Riss & Co., Inc. 372 U.S. 517.

Brotherhood of Locomotive Engineers v. Louisville & Nashville Railroad Co. 373 U.S. 33.

NLRB v. Servette 377 U.S. 46.

Hattiesburg Building and Trade Council v. Broome 377 U.S. 126.

Local 20, Teamsters, Chauffeurs and Helpers Union v. Morton 377 U.S. 252.

NLRB v. Burnup & Sims 379 U.S. 21.

NLRB v. Brown 380 U.S. 278.

Minnesota Mining v. New Jersey Wood Finishing Co. 381 U.S. 311.

United Mine Workers v. Pennington 381 U.S. 657.

Following is an expansion of the issues involved and notation of the opinion writers in some of the previously listed cases:

NLRB v. Brown, 380 US 278—affirmed 319 F. 2d 7; Brennan wrote opinion; Goldberg & Warren concur; White dissent. Lockout of employees did not violate 8(a)(3) since no hostile motive.

American Ship Building v. NLRB, 380 US 300—reversed 331 F. 2d 839: Stewart wrote opinion; White concur; Goldberg (Warren joins) concur. After impasse in negotiations, employer may shut down his plant for purpose of applying economic pressure.

Radio & Television Broadcast Local Union, International Brotherhood of Electrical Workers v. Broadcast Service of Mobile, Inc., 380 US 255—reversed 159 So. 2d 452. Per curiam.

Russ v. Southern Railway Co., 380 US 938—(cert. denied): Goldberg of opinion that cert. should have been granted.

Republic Steel v. Maddox, 379 US 650—reversed 158 So. 2d 492: Harlan wrote opinion; Black dissented. Required exhaustion of administrative remedies.

Calhoun v Harvey, National Marine Engineers' Beneficial Assn., AFL–CIO v. Harvey, 379 US 134—reversed 324 F. 2d 486: Black wrote opinion; Stewart & Harlan concur. Requirements for nomination for union office governed by 401(e) of Act.

Amer. Federation of Musicians v. Wittstein, 379 US 171—reversed 326 F. 2d 26: White wrote opinion; Goldberg & Warren took no part. Weighted voting system permitted by 101(a)(3)(B) of Act.

Liner v. Jafco, Inc., 375 US 301: Brennan wrote opinion; Chattanooga Building Trades Council (AFL). State had no jurisdiction to enjoin labor dispute.

Humphrey v. Moore, 375 US 335—reversed 356 SW 2d 241: White wrote opinion; Goldberg (joined by Douglas and Brennan) concur; Harlan concurs and dissents in part. General Drivers, Warehousemen, & Helpers Union. Decision of Committee under collective bargaining agreement determining employers' seniority right is binding on the parties.

Carey, International Union of Electrical, Radio & Machine Workers, AFL–CIO, v. Westinghouse, 375 US 267—reversed 184 NE 2d 298: Douglas wrote opinion; Harlan concurs; Black and Clark dissent; Goldberg took no part in decision. Where labor dispute which involved work assignments is not considered exclusively within the jurisdiction of the Board, and arbitrational procedure set forth in the colective bargaining agreement in not barred.

Retail Clerks, AFL–CIO v. Schermerhorn, 375 US 96—aff 141 So. 2d: Douglas wrote opinion; Goldberg took no part in decision. A state court has jurisdiction to enforce the state's prohibition of an "agency shop" clause in an executed collective bargaining agreement.

NLRB v. Exchange Parts, 375 U.S. 405—reversed 304 F. 2d 368: Harlan wrote opinion. Employer's conferral of economic benefits on employees to induce vote against union violated NLRA.

PARTICIPATION OF JUSTICE GOLDBERG IN LABOR CASES

United Mine Workers v. Pennington, 381 US 657-reversed 325 F. 2d 804: White wrote opinion; Douglas, Black, Clark concur; Goldberg dissent (see Meat Cutters).

An agreement between union and large operators to secure uniform labor standards throughout the industry would not be exempt from the antitrust laws.

Local Union. No. 189, Amalgamated Meat Cutters (AFL–CIO) v. Jewel Tea Co., 381 US 676-reversed 331 F. 2d 547: White (Warren & Brennan join) wrote opinion; Goldberg (joined by Harlan & Stewart) dissenting from opinion but concurs in result. Whether a proposed bargaining subject is a term or con-

dition of employment is not within the exclusive primary jurisdiction of NLRB.

Minnesota Mining v. New Jersey Wood Finishing Co., 381 US 311– aff. 332 F. 2d 346: Clark wrote opinion; Black dissent; Goldberg dissent; Harlan & Stewart did not participate. Section 5 (a) & (b) of Clayton Act.

NLRB v. Metropolitan Ins. Co. (Insurance International Union), 380 US 438—vacated 327 F. 2d 906: Goldberg wrote opinion; Douglas dissent. Extent of union organization is not controlling factor in determining the appropriate bargaining unit.

Textile Workers v. Darlington, 380 US 263: Goldberg & Stewart took no part in decision.

NLRB v. Fruit Packers, 377 US 58—vacated 308 F. 2d 311: Brennan wrote opinion; Black concur; Harlan (joined by Stewart) dissenting; Douglas took no part in decision. Peaceful secondary boycott not barred.

NLRB v. Servette, 377 US 46—reversed 310 F. 2d 659: Brennan wrote opinion. Wholesale Delivery and Salesman Union involved. Union's distribution of handbills to advise the public that an employer is handling products of a struck distributor is not prohibited by the Act.

Boire v. Greyhound Corp., 376 US 473—reversed 309 F. 2d 397: Stewart wrote opinion; Douglas dissenting. Street, Electric Railway and Motor Coach Employees (AFL–CIO) involved Order of Board in certification proceedings under § 9(c) for election by employees of joint employers is not a final order and thus not reviewable.

John Wiley & Sons v. Livingston, 376 US 543—aff 313 F. 2d 52: Harlan wrote opinion; Goldberg took no part in decision. Wholesale and Department Store Union (AFL–CIO). Merger does not automatically destroy rights of employee under collective bargaining agreement.

Packinghouse Workers v. Needham, 376 US 247—reversed 119 NW 2d 141: Harlan wrote. Food and Allied Workers (AFL–CIO). Union's breach of no-strike clause in agreement did not relieve employer of duty to arbitrate.

Steelworkers v. NLRB, 376 US 492—reversed 311 F. 2d 135: White wrote opinion; Douglas concur; Goldberg took no part in decision. Primary picketing includes right to picket entrance gate.

Fibreboard Paper Products v. NLRB, 379 US 203 -aff 322 F. 2d 411: Warren wrote opinion; Stewart (joined by Douglas & Harlan); Goldberg took no part. Union involved was United Steel Workers. Contracting out to an independent contractor of maintenance work which replace employees in bargaining unit is a statutory subject of collective bargaining under 8(d) of Act.

NLRB v. Burnup & Sims, 379 US 21—reversed 322 F. 2d 57: Douglas wrote opinion; Harlan concurs & dissents in part. Discharge of employees in good faith for alleged misconduct while soliciting for union is unfair labor practice.

Railway Labor Executives' Assn. v. U.S., 379 US 199: Per curiam.

Arrow Co. v. Cincinnati Railway et al, 379 US 642: Per curiam.

Parden v. Terminal R. Co., 377 US 184—reversed 311 F. 2d 727; Brennan wrote opinion; White Joined by Douglas, Harlan, Stewart). Operation of state-owned railroad in interstate commerce constituted a waiver of state's sovereign immunity and consent to suit under FELA.

Hattiesburg Trades v. Broome, 377 US 26: Per curiam.

Teamsters Union v. Morton, 377 US 252—vacated 320 F. 2d 505: Stewart wrote opinion; Goldberg concurred. Secondary boycott unlawful.

PARTICIPATION OF JUSTICE GOLDBERG IN LABOR CASES

Ex parte George 371 U.S. 72: Per Curiam; Unions involved: National Maritime Union; Gil, Chemical and Atomic Workers International Union. Decision favored NMU. NMU official's picketing was arguable protected by § 7 of NLRA and state court was without jurisdiction to enjoin.

Los Angeles Meat & Provision Drivers Union v. United States 371 U.S. 9: Opinion by Stewart; *Goldberg* with Brennan concurring; Douglas dissent Decision against LAMPDU. Union ordered to stop violations of § 1 of Sherman act and to expel from membership all self-employed contractors who had joined union with purpose to eliminate competition. (Goldberg: agree because no countervailing union interest in retaining self-employed in union.)

Burlington Truck Lines, Inc. v. United States 371 U.S. 156: Opinion by White; Black concurring and dissenting in part; Clark concurring; *Goldberg* with Warren, Douglas, Brennan, concurring. ICC erred in granting interstate license to local truckers where needs of commerce were not being met solely because of temporary interruptions caused by labor dispute. (Goldberg: Cease-and-desist order would be appropriate remedy to avoid encroaching NLRB jurisdiction or rights and duties of parties). Union: Teamsters

Smith v. Evening News Association 371 U.S. 195: Opinion by White; Black dissenting. State court has jurisdiction of action by employee against employer seeking damages for breach of collective bargaining agreement between employer and employee's union, even though the employer's conduct was also unfair labor practice. Union involved: Newspaper guild of Detroit.

NLRB v. Reliance Fuel Oil Corp. 371 U.S. 224: Per Curiam; Black concurs in result. Reliance a local distributor of fuel oil purchased a substantial amount of fuel oil and related products from a supplier who had imported them from outside the state and who was concededly engaged in interstate commerce. Therefore Reliance's activities "affected commerce" and it was within the jurisdiction of the NLRB which had found various unfair labor practices.

Local No. 438, Construction & General Laborers' Union, AFL–CIO v. Curr 371 U.S. 54: Opinion by White; Harlan concurring in result. State Court was without jurisdiction to issue temporary injunction against picketing of unions where facts show that there was at least an arguable violation of § 8(a) of NLRA so as to vest exclusive jurisdiction in NLRB.

Incres Steamship Co. Ltd. v. International Maritime Workers Union 372 U.S. 24: Justice Goldberg did not participate.

Gallick v. Baltimore & Ohio R.R. Co. 372 U.S. 108: Opinion by White; Harlan dissents; Stewart and Goldberg dissent. FELA case. Held: State appellate court invaded province of jury, judgment for employee should be affirmed. (Goldberg: Because of inconsistencies in the verdict, a new trial should be given).

Harrison v. Missouri Pacific Railroad Co. 372 U.S. 248: Per Curiam: There was evidence to support the jury's verdict for the employee in the FELA case and judge's entering of judgment notwithstanding the verdict was improper.

Brotherhood of Locomotive Engineers v. Baltimore & Ohio Railroad Co. 372 U.S. 284: Justice Goldberg did not participate. Unions involved were Bro. of Locomotive engineers, Bro. of Locomotive Firemen and engineers, Order of Railway Conductors and Brakemen, Bro. of Railroad trainmen, and Switchmen's Union of North America.

General Drivers, Warehousemen & Helpers, Local No. 89 v. Riss & Co., Inc. 372 U.S. 517: Per Curiam. A decision as to whether a ruling made by the Joint Area Cartage Committee was "final and binding" under the collective bargaining agreement so as to vest jurisdiction in the Federal District Court under § 301 of the LMRA should not have been made on the pleadings alone. Therefore trial court erred in dismissing for lack of jurisdiction.

International Association of Machinists, AFL–CIO v. Central Airlines 372 U.S. 682: Opinion by White. A suit to enforce an award of an airline system board of adjustment (in favor of the union) is a suit arising under the laws of the United States under 28 U.S.C. § 1331 or a suit arising under a law regulating commerce under 28 U.S.C. § 1337.

Basham v. Pennsylvania Railroad Co. 372 U.S. 699: Per Curiam. There was evidence to support the jury's verdict for the employee in this case under FELA. (Harlan dissenting).

Brotherhood of Locomotive Engineers v. *Louisville & Nashville RR Co.* 373 U.S. 33: Opinion by Stewart, Black Dissented, *Goldberg*, with Douglas dissenting. Held: Under the Railway Labor Act, the union could not legally strike for the purpose of enforcing its interpetation of the National Railroad Adjustment Board's money award; the union must utilize the judicial enforcement procedure provided by the act; and therefore the District Court properly enjoined the threatened strike. (Goldberg: I cannot believe that Congress intended that the statute operate in a way which creates such an unfair imbalance, if not outright clear advantage in favor of the carrier and against the employee and his union. The Court's result here means that on all coney claims, the award of the Board is final and binding and not subject to further review or challenge if the claimant loses, but it is subject to de novo review and trial at the sole behest of the employer, if the employer loses.)

NLRB v. Eire Resistor Corp. 373 U.S. 221: Opinion by White, Harlan concurring. Even in absence of a finding of specific illegal intent and notwithstanding the employers' claim that his action was necessary to continue his operations during a strike, the NRLB was justified in finding that it was a violation of § 8(a) of the NLRA for the employer to discriminate between employees who struck and employees who worked during a strike by awarding an additional senority credit to replacement of strikers and to those who returned to work before end of strike.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees v. Allen 373 U.S. 113: Justice Goldberg did not participate. AFL–CIO as amicus curiae.

Reed v. The Yaka 373 U.S. 410: Opinion by Black; Harlan, with Stewart Dissenting. Employee was not barred by the Harbor Workers' Compensation Act from relying on the corporation's liability as a shipowner pro hac vice for the ship's unseaworthiness in order to support his libel in rem against the ship.

Local 100, United Association of Journeymen & Apprentices v. Borden 373 U.S. 690: Justice Goldberg did not participate. AFL–CIO as amicus curiae.

Local No. 207, International Association of Bridge, Structural and Ornamental Iron Workers Union, v. Perko 373 U.S. 701: Justice Goldberg did not participate. AFL–CIO as amicus curiae.

NLRB v. General Motors Corp. 373 U.S. 734; Justice Goldberg did not participate. AFL–CIO as amicus curiae.

Retail Clerks International Association, Local 1625, AFL–CIO v. Shermerhorn 373 U.S. 746; Justice Goldberg did not participate. AFL–CIO as amicus curiae.

Division 1287, Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America v. Missouri 374 U.S. 74: Opinion by Stewart. AFL–CIO as amicus curiae. Proceeding under a Missouri statute, the Governor of Missouri proclaimed that the public interest, health, and welfare were jeopardized by a threatened strike against a public transit company and issued executive orders taking possession of the company and

directing that it continue operations. The state court enjoined the strike. Held; the state's involvement in the company fell far short of creating a state owned and operated utility whose labor relations are excluded from the coverage of the NLRA. The state statute is in conflict with the NLRA and cannot stand under the Supremacy clause.

PARTICIPATION OF JUSTICE MARSHALL IN RACIAL DISCRIMINATION CASES

Coleman v. Alabama [exclusion of Negroes from jury] 389 U.S. 22.

Jones v. Georgia [exclusion of Negroes from jury] 389 U.S. 24.

Sims v. Georgia [exclusion of Negroes from jury] 389 U.S. 404.

Lee v. Washington [racial discrimination in prisons] 390 U.S. 333.

Green v. County School Board of New Kent County [school desegregation] 391 U.S. 430.

Raney v. Board of Education of the Gould School District [school desegregation] 391 U.S. 443.

Monroe v. Board of Commissioners of the City of Jackson [school desegregation] 391 U.S. 450.

Jones v. Mayer Co. [racial discrimination in housing] 392 U.S. 409.

Hunter v. Erickson [fair housing ordinance] 393 U.S. 385.

Gregory v. Chicago [civil rights demonstration] 394 U.S. 111.

Daniel v. Paul [racial discrimination in private clubs] 395 U.S. 298.

Mr. FANNIN. Mr. President, today the Indianapolis Star printed a most cogent editorial which pertains to the matter before the Senate.

This editorial analyzes the problem and gives recognition to the contribution many of my colleagues have made to this debate.

The writer of this editorial makes the same point, in regard to the testimony of Union Attorney John Bolt Culbertson, which I made on Tuesday. His integrity is above the question of an admitted adversary.

I ask unanimous consent that the editorial to which I have referred from this great Indiana newspaper be printed in the RECORD.

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

ABSOLUTELY HONEST

Earlier this week, Senator William B. Spong, Jr. (D-Va.), announced his intention to vote for confirmation of President Nixon's nomination of Judge Clement F. Haynsworth, Jr. to the Supreme Court.

Senator Spong, previously undecided on the issue, told the Senate questions concerning Haynsworth's ethics because of his sitting on cases involving companies in which he had a financial interest had not been substantiated.

At the same time, Representative David W. Dennis (R-Ind.) released a statement citing testimony before the Senate Judiciary Committee by John Bolt Culbertson, a South Carolina lawyer and long-time member of Americans for Democratic Action who has been acquainted with Haynsworth for 30 years. According to Dennis' statement, Culbertson testified concerning Haynsworth: "He is absolutely honest. He has impeccable integrity. He is a man whose word I would believe about anything."

In his statement, Representative Dennis says: "In contrast to such positive endorsements, Judge Haynsworth's detractors never venture to say that he is dishonest. They speak vaguely and slurringly about 'suspicion' or 'appearance' of impropriety. This is a typical tactic of those who have no convincing facts."

During the current Senate debate on Haynsworth's nomination, another previously undecided senator, Senator Winston L. Prouty (R-Vt.) said: "The blizzard of accusations against Judge Haynsworth melts quickly under close scrutiny." He termed the opposition to Haynsworth, "more on political grounds than ethical grounds and more emotional than reasoned."

True. It should be understood, however, that those pitted against Haynsworth's confirmation, motivated by dogmatic persuasions and ideologies of the most compelling kind, have been engaged in a tireless propaganda campaign that they are determined to put across by any means whatever.

By constant repetition of sly aspersions and innuendo, they have successfully contrived a thesis, imaginary as it is, that "public confidence in the Supreme Court would be adversely affected" by seating Haynsworth. And, though totally lacking in substance, this fabrication has so insinuated itself into the minds of a member of senators and has made such inroads on the public thought that the nation stands a fair chance of being denied the services of a thoroughly reputable, eminently qualified jurist simply because he is a good man.

That is exactly Haynsworth's trouble. He is a good man. He is a hard worker. He has paid attention to business and become an expert in his field. He has been thrifty and invested his savings wisely. His judicial decisions reflect a devotion to the law, never to preconceived notions. His avocations are simple and harmless. He is a thoroughly decent, respectable person. He represents those virtues that are properly thought to be typically American.

But that is precisely the kind of person his detractors shudder to think of on the high court where his voice may be counted on to be heard on the side of justice, fair dealing, common sense and a treatment of issues based on a well-defined system of ethics.

Over the last 30 years, various liberal and leftwing groups markedly a minority of the American people but closely united and able to lobby in commanding, articulate terms, have been outstandingly successful in securing a majority of justices on the Supreme Court on which they could depend to dispense justice to a very large extent as they thought right and proper. To these groups Haynsworth represents a threat of the first water, one to be eliminated by any means at their disposal.

Mr. FANNIN. Mr. President, I again express my support of Judge Haynsworth's nomination.

HAYNSWORTH'S CRIMINAL DECISIONS

Mr. DOLE. Mr. President, I have previously announced my position with reference to Judge Haynsworth, and that I intend to vote for his confirmation. I have felt for some time that perhaps those of us who support Judge Haynsworth have perhaps been too long on the defensive and not enough on the offensive; and I wish to point out very briefly some of the areas where I believe Judge Haynsworth has been a trailblazer and a pacesetter.

First of all, I think one illustration of Judge Haynsworth's evenhanded, constructive and unbiased approach to the law is his treatment of the law of criminal procedure. I point out, for anyone who may be interested, that most of this material is set forth with great detail in the statement by Prof. Charles Wright, who for 20 years has been a scholar with reference to Federal cases, who has followed the career of Judge Haynsworth very carefully—he is now a law professor at the University of Texas—and whose testimony is set forth in great detail starting on page 591 of the record of the hearings. That is where most of my material was garnered.

He states:

Judge Haynsworth has been in the vanguard, often ahead of the Supreme Court, in protecting persons accused of a crime against any tilting of the scales of justice that might lead to the conviction of an innocent man. At the same time he has been reluctant to set free a person who is undoubtedly guilty because of some minor imperfection....

Let me give illustrations of several cases that support this conclusion.

Judge Haynsworth has done much to make the writ of habeas corpus freely available to those who claim they have been denied their constitutional rights. Professor Wright cites specifically the case of *Rowe* v. *Peyton*, 383 F. 2d 709 (4th Cir. 1967), aff'd 391 U.S. 54 (1968) the fourth circuit was asked to consider the vitality of the 1934 Supreme Court decision, McNally against Hill, which precluded a habeas corpus action against a consecutive sentence to be served in the future.

In other words, under that decision, a prisoner had to wait until he had served one sentence, and then served another sentence and perhaps a third, before they would hear a petition for a writ of habeas corpus. In a scholarly opinion, Judge Haynsworth correctly anticipated that the Supreme Court would no longer follow its earlier precedent. In addition to displaying the judge's scholarship, the opinion exemplifies Judge Haynsworth's ability to predict changes in doctrine and to create just solutions to problems in an area of traditional judicial cognizance. Judge Haynsworth emphasized that it was to the advantage of both the defendant and the State to have a present remedy to test the validity of future sentences.

I read the following quotation from the opinion written by Judge Haynsworth to illustrate that he is a forward-looking man, that he is admirably fitted for the job, and that he is a scholar.

He stated:

The problem we face simply did not exist in the Seventeenth Century. Now that recently it has arisen, if there is a substantive right crying for a remedy, it seems most inappropriate to approach a solution in terms of a Seventeenth Century technical conception which had no relation to the context in which today's problem arises. (at 713)

He also states, in the same opinion:

It is to the great interest of the Commonwealth and to the prisoner to have these matters determined as soon as possible when there is the greatest liklihood the truth of the matter may be established. Justice delayed for want of a procedural, remedial device over a period of years is, indeed, justice denied to the prisoner and, in an even larger degree, to Virginia. (at 715)

The law today abhors a right without a remedy just as the common law did. The genius of the common law was the improvisation of remedies to obtain adjudication of substantive rights. * * * Our recitation of its history discloses that the writ of habeas corpus has not been a static thing. There is nothing in that history to suggest that it should be restricted to the need of a much earlier time. (at 716–17)

In *United States* v. *Chandler*, 393 F. 2d 920 (1968), the fourth circuit sat en banc

to consider the appropriate test to govern the defense of insanity, and thus to determine criminal responsibility. After surveying the growth of the insanity doctrine in England and the United States, Judge Haynsworth concluded that the recent standards formulated by the American Law Institute constituted the best expression of such a test, stating:

Endorsement of the American Law Institute formula solves some problems. It is an advance toward the avoidance of retributive incarceration of those not morally responsible for their conduct and toward assuring for them institutional care with psychiatric and related services. (at 928)

With appropriate balance between cognition and volition, it demands an unrestricted inquiry into the whole personality of a defendant who surmounts the threshold question of his responsibility. (at 926)

The opinion written by Judge Haynsworth declined, however, to "fall into the egregious error of the last century" by mandating that a trial judge instruct the jury on the issue of mental responsibility in any set or specific terms. The opinion expressly permits judges to depart from the ALI formula in particular cases deemed appropriate and thus leaves room for constructive innovation and improvement, stating:

For the present, however, we move within the existing framework of the law with awareness that no judicial response to the problem today is perfect and need not endure beyond the availability of more acceptable solutions. (at 928)

We should not prescribe for invariable use a form of words which may be less appropriate than another in the light of the testimony in a particular case and which might tend to live on long after more rational solutions have been uncovered. (at 927)

Observing that Federal statutes provide for civil commitment in the case of a defendant acquitted because of insanity only in the District of Columbia, Judge Haynsworth urged Congress to enact legislation providing for a similar system for the Federal courts generally. Judge Haynsworth's opinion clearly represents a valuable contribution to the law in this field, and puts to rest any doubts as to the judge's capacity for creative legal thinking, combined with a high degree of scholarship.

In *Hayden* v. *Warden*, 363 F. 2d 647, 657 (4th Cir. 1966), reversed, 387 U.S. 294 (1967), the majority held that the defendant's State court conviction for robbery with a deadly weapon had to be reversed because the prosecution had introduced into evidence articles of clothing worn by the defendant during the crime. The court relied upon early Supreme Court decisions holding that items of evidential value only, as opposed to the instrumentalities of a crime, could not be the subject of a valid search and seizure under the fourth amendment.

On petition for rehearing en banc Judge Haynsworth, who did not sit on the original panel which decided this case, wrote a separate opinion joining the other members of the court in denying the petition. There Judge Haynsworth indicated his disagreement with the majority of the court in its adherence to the old rule that "mere evidence" may not be the object of a lawful search, and the Supreme Court, in reversing the decision, agreed with him.

Judge Haynsworth reasoned that practical considerations of law enforcement dictated a "stretching" of the term "instrumentalities" to include articles of clothing seized in the course of a reasonable search. As a practical matter, the "mere evidence" rule was a needless hobble on the police while at the same time it gave no substantial protection to the right of the people to be secure from unreasonable searches. Judge Haynsworth stated:

With the amendment's proscription of unreasonable searches and unreasonable seizures in mind, I can find nothing in what the Supreme Court has done and said that requires the rejection from evidence of these articles of clothing reasonably seized in the course of a search, which, concededly, was reasonable and lawful. We are not instructed to apply the underlying rule of reasonableness in an unreasonable manner. (658)

Again, in my opinion, and in the opinion, I might add, of Professor Wright, this case illustrates Judge Haynsworth's ability to recognize, based upon the application of reason and society's experience, rules of law which no longer serve a justifiable function today. Judge Haynsworth's practical approach also reveals his recognition of the importance of law enforcement to all parts of society. As Professor Wright stated:

It is not a game in which the police are to be called "out" for failure to touch every base.

This aspect of Judge Haynsworth's judicial philosophy is illustrated by his deference to the factual conclusions of a jury or trial judge, who have heard the actual testimony and weighted the credibility of witnesses. While demonstrating a sensitivity to the need for fundamental fairness in criminal procedure, Judge Haynsworth is not one who favors release of the guilty on technical and insubstantial grounds. In *Outing* v. *North Carolina*, 383 F. 2d 892 (4th Cir. 1967) Judge Haynsworth stated:

The ultimate inference was initially for the District Judge to draw. His ultimate finding is not clearly erroneous as an inference of fact, and it was uninfluenced by any erroneous view of the law. It, as well as the subsidiary findings of fact, was made by the District Judge after observing the witnesses. Since that ultimate inference of voluntariness was a permissible inference, we accept it. (at 896).

Then there is another field I think holds some promise and some hope, and should demonstrate to those who have not made up their minds that we have here a forward-looking nominee for this office. These two final opinions of Judge Haynsworth are noteworthy principally because of the insight which they give into the Judge's substantive views. The Supreme Court has been criticized for failure to state and apply a definition of obscenity which would, in practice, give society some measure of protection against patently offensive publications. Judge Haynsworth has not felt himself so hobbled. In *United States* v. *392 Copies of Magazine Entitled "Exclusive,"* 373 F. 2d 633 (4th Cir. 1967) Judge Haynsworth wrote the opinion holding a variety of magazines to be obscene and thus properly seized by customs officials, stating:

Exclusive is a collection of photographs of young women. In most of them, long stockings and garter belts are employed to frame the pubic area and to focus attention upon it. A suggestion of masochism is sought by the use in many of the pictures of chains binding the model's wrists and ankles. Some of the seated models, squarely facing the camera, have their knees and legs widespread in order to reveal the genital area in its entirety. * * * We agree with the District Court that these apparently unretouched pictures of young women, posed as they are, are patently offensive and that the Magazine *Exclusive* is obscene. (at 634)

Similarly in *United States* v. *56 Cartons Containing 19,500 Copies of "Hellenic Sun"*, 373 F. 2d 635 (4th Cir. 1967) Judge Haynsworth's opinion found that the procedures set forth in the Federal customs laws for reviewing potentially obscene materials were not constitutionally deficient as a prior restraint on expression, since the statutory scheme called for a prompt administrative resolution of the obscenity question. Dealing with the specific material at hand, the opinion found that the magazines were devoted to pictures of male nudes, with the camera's interest languished on the genitals, and had a prurient appeal to male homosexuals. Judge Haynsworth deemed the magazines obscene under the Supreme Court's prevailing standards, notwithstanding the presence of innocuous articles in the magazines concerning various aspects of nudism, which articles the judge termed merely "fillers." The opinion stated:

In the composition of the photographs, the genitals of the models are the focal points of the pictures. * * * Raw in the extreme, and with no redeeming attribute, the normal male, if Dr. Kinsey will permit us to retain a belief there is such a thing, can view them only with revulsion. * * * Other evidence was introduced which indicated that the importer intended to distribute the magazine among male homosexuals. * * * On this showing and for the reasons carefully discussed by the District Court, we hesitatingly affirm its conclusion that these magazines are obscene. (at 640)

The Supreme Court reversed Judge Haynsworth's decisions in both "Exclusive" and "Hellenic Sun", 389 U.S. 47, 389 U.S. 50, in *per curiam* decisions citing *Redrup* v. *State of New York*, 386 U.S. 767 (1967). In Redrup the Supreme Court, with Justices Harlan and Clark dissenting, the majority acknowledged that the Supreme Court was completely fragmented and divided on the issue of obscenity, stating:

Two members of the Court have consistently adhered to the view that a State is utterly without power to suppress, control, or punish the distribution of any writings or pictures upon the ground of their "obscenity." A third has held to the opinion that a State's power in this area is narrowly limited to a distinct and clearly identifiable class of material. Others have subscribed to a not dissimilar standard, holding that a State may not constitutionally inhibit the distribution of literary material as obscene unless "(a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters;

and (c) the material is utterly without redeeming social value." * * * Another Justice has not viewed the "social value" element as an independent factor in the judgment of obscenity. (386 U.S. at 770–71)

I am certain that there are many who feel, as I do, that Judge Haynsworth's scholarly, perceptive decisions, attuned as they are to the present needs of society, clearly indicate the valuable contribution which Judge Haynsworth would make as a Justice of the Supreme Court.

Mr. MATHIAS. Mr. President, one can envy Saul as he traveled the road to Damascus for many reasons, but at this moment I am particularly jealous of the way in which his "decision" was made—in a single, brilliant flash of light. Ever since the President sent to the Senate the nomination of Clement F. Haynsworth, Jr., to be a Justice of the Supreme Court, I have been hoping to find the road to Damascus. Since the way is not in sight, all of us have had to rely instead on a grinding, detailed, intensive personal study of the extensive background and the unfolding developments. It has been one of the most difficult decisions I have been called upon to make during 9 years of service in the Congress.

It is of some value to examine the history of the Senate with regard to such nominations. There has been a suggestion from time to time that active debate over a Supreme Court nomination in some way violates the unwritten law and is unpatriotic if not downright disloyal. History rebuts this charge.

There have been some 133 nominations to the Supreme Court since the adoption of the Constitution. Of these, about 31 have been rejected, withdrawn, or expired. Many of the others were confirmed by rollcall votes in which the Senate divided after discussion and controversy on and off the record. Only a minority of nominations have received unanimous consent without the formality of a rollcall. It is interesting and significant that the latter category includes Justice Abe Fortas whose confirmation was not debated and was agreed to without dissent. Had this not been so, much grief and damage might have been avoided.

The lesson of history is clear. The Senate may and ought to examine every facet of this nomination. We should exhibit great respect for the nominating authority and due regard for the solemnity of the decision. But we should have no hesitation or inhibition in grappling with the facts and in developing conclusions. To avoid this duty on the basis of partisan loyalty or professional etiquette would be to leave a blank page in the history of our time.

There is a further general consideration that applies to most of the incidents that comprise the Haynsworth record. That is the determination of the kind of standard to be applied. Was judicial conduct regulated by one set of principles in 1957 and by another in 1969? This question must be settled to refute the charge that the issues of judicial ethics raised in this instance are an attempt to enforce a rule ex post facto.

In view of the facts, however, it is surprising that this argument has been so seriously considered. The key enactment in Judge Haynsworth's case—the Federal disqualification statute—has been on the books since 1911 and was last amended in 1948. The canons of ethics were first promulgated in 1908. Any Federal judge in doubt on such an ethical question, moreover, could have had recourse to the even earlier examples set by Charles Evans Hughes and Oliver Wendell Holmes, Jr. Both were acutely aware of the necessity to avoid any appearance of impropriety, and although each solved the problem in his own manner, the attitudes of both pointed the way for the modern bench. Chief Justice Hughes conveyed his property to a blind trust and Justice Holmes resorted to disclosure whenever appropriate.

The force of these examples, when fresh and strong, undoubtedly helped to protect the image of the Federal bench. As the years have passed, the need to strengthen existing rules has become more compelling, but the Judicial Conference has backed and filled with a disappointing lack of dedication. Although the principles I am applying in Judge Haynsworth's case have been elaborately established in both canon and statute, I personally favor even more stringent requirements in this area. I have for some time supported legislation requiring disclosure of all outside financial interests by all governmental officials. But until such measure is enacted by the Congress or until the Judicial Conference sets its own house in order, the decision of the Senate in this matter will be influential.

Nonetheless, on the fourth circuit today, it appears that the basic principles are already understood. Judge Harrison L. Winter, of Baltimore, is a colleague of Judge Haynsworth on that court. He appeared before the Senate Judiciary Committee as a proponent of the nomination. His testimony was expert, comprehensive, and obviously intended to be helpful to Judge Haynsworth. The real crunch came when he was asked whether, notwithstanding his admiration and respect for Judge Haynsworth, he would have done those things that Judge Haynsworth had done. He answered:

I would have avoided buying the stock until after the opinion had been filed and the matter had been disposed of. (Hearing Tr. at 241).

In defense of Judge Haynsworth, Judge Winter went on to say that he did not think he would have been legally required to avoid purchase, "since a decision had been reached in the case in my mind." Hearing transcript at 241.

But Judge Winter's personal standard speaks louder than his words in behalf of a colleague. In fact, asked about the problem in abstract terms, he affirmed "the rule of thumb" that a judge "ought not to sit in the case unless there is some exceptional circumstance, and the parties or the counsel for the parties agree that he should sit." Hearing transcript at 260.

It is apparent that the current standard of judicial conduct is appreciated and applies by other Federal judges, including the Fourth Circuit.

II. BRUNSWICK CORP. V. LONG (AND SIMILAR CASES)

Considerable attention was devoted in committee hearings to the case of *Brunswick Corp.* v. *Long*, 392 F. 2d 337 (1967). There are three other instances which are basically similar. For these reasons, I have considered the Brunswick situation very carefully and feel compelled to discuss it in some detail.

A. BRUNSWICK CORP. V. LONG

1. THE SEQUENCE OF EVENTS

Brunswick was docketed in the Fourth Circuit Court of Appeals in May 1967. In October of that year, the case was assigned to a three-judge panel—Circuit Judges Haynsworth and Winter; District Judge Jones, W.D.N.C.

The panel heard oral argument on November 10, 1967, and immediately went into conference to decide the case. The case was not regarded as difficult by the judges, who voted unanimously to affirm the judgment in favor of Brunswick below. Preparation of the opinion was assigned to Judge Winter.

On or at least by Friday, December 15, 1967, Judge Haynsworth had approved a suggestion of his broker to purchase 1,000 shares of Brunswick stock. An appropriate order was entered by the broker on Monday, December 18, 1967, and executed—at $16 per share—December 26, 1967. Parenthetically, the broker had recommended Brunswick purchases to numerous other customers because he felt it was a good investment.

On December 27, 1967, 12 days after Judge Haynsworth approved the purchase of Brunswick stock, Judge Winter circulated the opinion he had prepared. Judge Jones concurred in the draft opinion by letter of December 29, 1967. On or about January 9, 1968, Judge Haynsworth concurred in the circulated draft and submitted a technical memorandum prepared by one of his law clerks. The memorandum dealt with the South Carolina action of "claim and delivery." Judge Winter made minor changes in two pages of the original opinion based on the memorandum; Judge Jones agreed to the revisions by letter of January 26. By letter of January 24, Judge Haynsworth expressed his thanks to Judge Winter for making the revisions.

The clerk of the court of appeals released the written opinion on February 2, 1968.

On March 12, 1968, a petition to extend the time to file a petition for rehearing was filed. The petition was based on the alleged fact that counsel did not receive a copy of the opinion until February 27. Judge Haynsworth forwarded an order of denial of the extension to the clerk on March 26, 1968.

A petition and supplemental petition to reconsider the petition for an extension of time were filed on April 3 and 4, 1968. These papers apparently were misplaced until August 1968, and an order denying them was signed by all three judges and released August 26.

2. THE FEDERAL DISQUALIFICATION STATUTE

The Federal disqualification statute, last amended in 1948, provides as follows:

Any justice or judge of the United States *shall disqualify himself in any case in which he has a substantial interest,* has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, *or other proceeding therein.* (28 U.S.C. Sec. 455 (1964); emphasis added)

There are, in my view, two major issues involved in evaluating Judge Haynsworth's participation in Brunswick in light of the statute: First, did his 1,000 shares, purchased for $16,000, constitute a statutory "substantial interest?" And second, if so, did the November 10 conference decision to affirm the district court—before the purchase—make the statute inapplicable?

First. Did the 1,000 shares constitute a statutory "substantial interest?"

There can be little doubt that Judge Haynsworth's holdings in Brunswick constituted a "substantial interest." It is necessary only to consider the views of Assistant Attorney General William H. Rehnquist and legal ethics expert John P. Frank, proponents of the nomination, as well as those of the nominee himself, to reach this conclusion.

In a September 5, 1969, letter to Senator HRUSKA, defending Judge Haynsworth's participation in *Darlington Manufacturing Co. v. NLRB,* 325 F. 2d 682 (1963), Mr. Rehnquist made this statement:

The "substantial interest" referred to in the statute . . . is a pecuniary material interest in the outcome of the litigation. The clearest case is one in which the judge is a party to the lawsuit; obviously he may not sit in such a case. *Little different is the case in which the judge owns a significant amount of stock in a corporation which is a party* to a lawsuit before him; he, too, must recuse himself. Parties to lawsuits either win or lose them, in whole or in part, and *it is difficult to conceive of a lawsuit in which* a party, or the *stockholder of a corporate party, does not have a material, pecuniary interest* in the way in which the lawsuit is decided. (Hearing Tr. at 22; emphasis added)

John P. Frank, a prominent attorney acknowledged by proponents and opponents of the nomination as a preeminent expert in legal ethics, testified that "the heavy weight of opinion in America is that if the judge has 'any' interest in a corporation which is a party, he may not sit."—Hearing transcript at 113; single quotation added.

His written statement to the Judiciary Committee noted:

If a judge holds shares in a corporation which is in fact a party before him, *he should disqualify as much as if he himself were a party.*" (Hearing Tr. at 119; emphasis added)

The full context of these quotations is set out in appendix A to my comments.

At this time I ask unanimous consent that appendix A be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. MATHIAS. In questioning by Senator BAYH, Mr. Frank reiterated his position. Further, in response to a hypothetical question regarding Brunswick, Mr. Frank stated that the stock involved constituted a holding of a magnitude requiring disqualification. This testimony is set out in full in appendix B.

I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. MATHIAS. I have examined the one case cited by Mr. Frank which differs from the prevailing precedent on disqualification for stock ownership, *Lampert v. Hollis Music, Inc.,* 105 F. Supp. 3 (E.D.N.Y. 1952). In that copyright infringement case, plaintiff filed a motion for appointment of a receiver pendente lite. District Judge Byers in his opinion explains the sequence of events:

After the motion papers and briefs were filed, I discovered for the first time that the Radio Corporation of America is one of the defendants. For some years I have owned twenty shares of the common stock of that corporation, which posed the question of my possible duty to impose disqualification to deal with this motion, in view of Title 28 U.S.C.A. § 455 . . . (105 F. Supp. at 5)

Although Judge Byers then ascertained that he held but 20 of 13,881,016 shares, a quantitatively small proportion of those outstanding, "to guard against error in holding this view"—

I notified both attorneys in writing of the stockholding in question, and have been assured by a letter from the plaintiff's attorney that he and his adversary have agreed to request that I decide the motion, and this has been construed as a waiver of any possible statutory objection (105 F Supp. at 5–6; emphasis added).

Although Hollis is cited as the main support for a position stated by Mr. Frank to be in contravention of "the heavy weight of opinion in America," it seems to be of extremely dubious relevance to the Brunswick case. For at no time during the litigation did Judge Haynsworth disclose his much larger holding of 1,000 shares in Brunswick. Had such disclosure been made, we would not have had to engage in such careful scrutiny of Judge Haynsworth's decision to continue in that case.

I have also read Mr. Frank's classic article, "Disqualification of Judges," at 56 Yale L.J. 605, 1947. I find it highly instructive that he states, writing 10 years before Judge Haynsworth's accession to the bench and 20 years before Brunswick, that—

It is now almost universal practice for judges not to sit in cases involving corporations in which they own stock. (56 Yale L.J. at 613).

In addition to the authority of the Assistant Attorney General, Office of Legal Counsel, and Mr. Frank, termed by the President as "the leading authority on conflict-of-interest," the hearing record includes the following colloquy:

Senator MATHIAS. It is a hypothetical question, to which of course there can only be a hypothetical answer, but had you been a stockholder of Brunswick at the beginning of that hearing——

Judge HAYNSWORTH. I would not have sat on it.

Senator MATHIAS. You would not have sat on it at all?

Judge HAYNSWORTH. I would not have sat on it.

Senator MATHIAS. *You consider that your interest was substantial, then?*

Judge HAYNSWORTH. *Yes, I do,* without question, though it was not in the outcome in terms of that, but much more substantial than I think a judge should run the risk of being criticized. (Hearing Tr. at 305; emphasis added)

It thus appears clear that the 1,000 shares of Brunswick constituted a statutory "substantial interest."

We then come to the second part of the question: "If Judge Haynsworth held a statutory 'substantial interest,' did the November 10 conference decision to affirm the district court make the statute inapplicable?"

There is a very ancient law which helps to clarify this case, as ancient as Dr. Bonham's case decided in 1608, in which Lord Coke held that "no man shall be a judge in his own case." This principle has been respected in Anglo-American jurisprudence ever since. See, for example, in re Murchison, 349 U.S. 133, 136 (1955). Disqualification for "interest," defined by Mr. Frank as "a personal involvement in the result, as if the judge had an interest in a property being foreclosed—hearing transcript at 118; written statement—is the basis of 28 U.S.C. 455 (1964). The statute is designed to preserve the integrity of the judicial decisionmaking process.

It has accordingly been suggested that the November 10 conference decision to affirm the district court marked the end of the decisional process, thereby making the statute inapplicable to Judge Haynsworth's December 15 decision to purchase Brunswick stock.

I cannot agree with this viewpoint.

Judge Harrison L. Winter, author of the Brunswick opinion, testified in behalf of Judge Haynsworth. His account of the chronology of the case is included as appendix C.

I ask unanimous consent to have it printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. MATHIAS. Commonsense dictates that the judicial decisionmaking process continues for disqualification purposes at least until a decision is written and made public. It is undisputed that the Brunswick decision was not in any sense public before February 2, 1968, over 1 month after Judge Haynsworth's purchase:

Senator BURDICK. Mr. Chairman, Judge Winter, you gave us a chronology of what happened in this case from November 10, when they had the oral argument until February 2 when the clerk announced the decision to the public. During this period of time no one but the judges knew what the decision was, what the outcome of the case would be?

Judge WINTER. That is correct, sir. The judges and I presume some of the members of their staffs who had been working on this and could not help but know.

Senator BURDICK. But it is a matter of policy that it is not revealed to the public until the decision is announced?

Judge WINTER. It is not revealed to the public until the clerk announces the judgment and the opinion, and this was done on February 2, sir. (Hearing Tr. at 250)

I have no doubt that the time-honored principle that no man shall be a judge in his own case requires that a judge not make a case "his own" at least until a decision has been made and its rationale written and published. The reasoned exposition of a decision is the very essence of the judicial process in this country.

The lack of finality of a decision until it is written and announced is underscored by three possibilities, one of which actually occurred in Brunswick. The record discloses that certain technical changes in the opinion suggested by one of Judge Haynsworth's law clerks were in fact made after Judge Haynsworth's purchase—hearing transcript at 238.

It is also clear that important substantive changes in language could have been made after the purchase. And finally, the possibility of the panel's completely reversing its earlier decision was pointed up by Judge Winter in an exchange with Senator TYDINGS:

How often since you have been on the fourth circuit has a panel to your knowledge changed its mind after an original opinion was agreed upon?

Judge WINTER. Senator Tydings, it would be hard for me to put an exact figure on it. At the moment I think I could recall about a half-dozen instances in all of the 3 years that I have been there. There may have been more. A half-dozen may be a little too generous. There are enough that I am aware that this is a possibility, and freely admit and recognize that it is a possibility, but it does not happen too often. (Hearing Tr. at 250)

The possibility that the panel would subsequently decide completely to reverse its earlier decision was indeed slight. But the argument that Judge Haynsworth was therefore free to purchase the stock at that juncture is no more persuasive to me than an argument that a judge can hold stock in a litigant even during oral argument so long as the likelihood it is very slight that the litigant will win. In both situations, the judicial process is still pending, whatever the probabilities may be.

Judge Haynsworth also participated, after the stock purchase, in formulating and signing an order denying a petition to extend the time for filing a request for rehearing. The denial was mailed to the clerk on March 26, 1968.

On April 3 and 4, 1968, a petition and supplemental petition to reconsider the March 26 action were filed. After apparently being misplaced, those petitions were denied under signature of all three members of the panel in August 1968.

Remarking that the possibilities in Brunswick were "more theoretical than real," Judge Winter nevertheless testified:

It may be fairly stated that a case is never decided finally or never put to rest *until an opinion has been filed, all postopinion motions denied, and the Supreme Court* of the United States *has denied certiorari* . . . (Hearing Tr. at 243; emphasis added).

Whether the Federal statute ceases to apply at publication of the opinion or at the later date of denial of certiorari, it is clear that the prepurchase conference decision of November 10 did not interdict its application to Judge Haynsworth in Brunswick.

In view of this evident inference, Judge Winter, appearing in support of the nominee, had no choice but to concede that the November 10 decision was not final:

Senator BAYH. I do not want to put words in your mouth, but as I recall, you said you thought the court could write a decision which better defined the judicial principles involved than that which had been handed down by the lower court?

Judge WINTER. We were of that view.

Senator BAYH. I think you clarified this by suggesting that there had been a sequence of events in which the various judges had a chance to review the opinion, and *thus it was not finalized on that November 10 date?*

Judge WINTER. *No, it was not, sir.* (Hearing Tr. at 242; emphasis added).

3. CANON 29

In addition to the question of a statutory violation in the Brunswick case, there is also the probability that Judge Haynsworth violated at least one of the canons of judicial ethics. Canon 29 provides in relevant part that a judge "should abstain from performing or taking part in any judicial act in which his personal interests are involved." The American Bar Association Committee on Professional Ethics has ruled under canon 29 that a "judge should not perform a judicial act, involving the exercise of judicial discretion, in a cause in which one of the parties is a corporation in which the judge is a stockholder." In spite of these official promulgations by his professional colleagues, Judge Haynsworth elected to participate in the Brunswick decision in the manner I have described.

B. OTHER CASES

1. MARYLAND CASUALTY CO. CASES

On June 3, 1964, Judge Haynsworth purchased 200 shares of Maryland Casualty Co. stock at $63 per share. On August 17 of that year, the shares were exchanged for 200 shares of convertible preferred and 66⅔ shares of common stock of American General Insurance Co., which had acquired control of Maryland Casualty. Notwithstanding his holdings, Judge Haynsworth sat in *Maryland Casualty Co.* v. *Baldwin*, 357 F. 2d 338 (1966), and *Donohue* v. *Maryland Casualty Co.*, 363 F. 2d 442 (1966).

2. THE GRACE CASE

Similarly, Judge Haynsworth acquired stock in W. R. Grace & Co., in two blocs in 1961 and 1964. While holding this stock, he sat in the case of *Farrow* v. *Grace Lines, Inc.*, 381 F. 2d 380 (1967).

In view of these facts, I am at a loss to understand why Judge Haynsworth wrote the following to Chairman Eastland of the Judiciary Committee:

I have disqualified myself in all cases . . . in which I had a stock interest in a party or in one which would be directly affected by the outcome of the litigation. (Even here, we, on the Fourth Circuit, regard a proportionately insignificant stock interest in a party as not disqualifying if, after being informed of it, the lawyers do not request the substitution of another judge . . .) (Letter to Senator Eastland, September 6, 1969; Hearing Tr. at 28).

III. CANON 26

Canon 26 provides as follows:

A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and after his succession to the Bench, he should not retain such investments previously made longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relationship may warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin. (Emphasis added.)

Although the canon mandates avoidance of investment in enterprises "apt to be involved in litigation," the mere fact that a judge buys stock in a corporation which later is a litigant in his court does not mean that he has committed a breach of ethics. He is required to refrain from purchase only where the corporation is "apt"—where the probability is relatively great—to be a litigant.

Even recognizing this reasonable limitation on canon 26, it is difficult to understand Judge Haynsworth's purchase and retention of stock in a casualty company—Maryland Casualty Co.—after his accession to the bench. I think it may be fairly stated that litigation is inherent in the casualty business and that a judge would and should be aware of that fact. Indeed, Judge Winter sold his stock in casualty insurers on his appointment as a district judge:

Judge WINTER. I mean a typical example of this, at least in my estimation, is if you are a district judge, you do what I did, and that is sell stock in casualty insurers, because you cannot tell who is defending, who is the insurer behind the defender or who is not, and you refrain from going out and buying any other stock in casualty insurers.

Senator ERVIN. Now, I would say not only a judge should abstain from buying interest in a business that is likely to be involved in litigation, but I would say just as a layman he would be a plumb fool if he would buy stock in an organization that is going to be involved in litigation.

Judge WINTER. Except with casualty companies, litigation is a part of their business. (Hearing Tr. at 255.)

By contrast, it is apparent that Mr. Arthur C. McCall, Judge Haynsworth's intimate friend and stockbroker, did not even consider the judge's delicate position as a member of the bench in making stock purchase recommendations:

Senator MATHIAS. Had you ever, as his financial adviser—and let me say, sir, you seem to have been very successful—in the course of this relationship had you ever become aware in any way of the somewhat delicate situation in which a member of the Federal bench is poised, and did this fact enter into your calculations when you made a recommendation to Judge Haynsworth?

Mr. MCCALL. No, sir; I do not think it entered my consideration at all. (Hearing Tr at 269).

IV. TESTIMONY BEFORE THE SUBCOMMITTEE ON IMPROVEMENTS IN JUDICIAL MACHINERY

On June 2, 1969, Judge Haynsworth appeared before the Subcommittee on Improvements in Judicial Machinery in the course of hearings on S. 1506, the

Judicial Reform Act. He made this statement to the subcommittee:

Of course, when I went on the bench, I resigned from all such business associations I had, directorships and things of that sort. The only one I retained is the trusteeship of this small foundation which I mentioned in my main statement, and I think that perhaps the best rule for a judge to go by now is to stop doing even that much. (Quoted in Hearing Tr. at 66).

Judge Haynsworth was appointed to the court of appeals in 1957. Yet the minutes of Carolina Vend-A-Matic for its 1963 organizational meeting indicates that Judge Haynsworth was present, that a unanimous ballot was cast for a slate of officers including Judge Haynsworth as vice president, and that Mrs. Haynsworth was elected secretary. As secretary, of course, Mrs. Haynsworth signed the minutes. There is no dispute that Judge Haynsworth was at least a director of Vend-A-Matic for some 6 years after his accession to the bench.

Faced with this apparent contradiction at the Judiciary hearings and asked whether the June 2, 1969, testimony was a mistake, Judge Haynsworth responded thusly:

Judge HAYNSWORTH. Well, yes; to the extent that I said that I resigned from them all when I first went on the bench it was. It was correct at the time I appeared. At the time I appeared I had no directorships whatever. (Hearing Tr. at 94).

V. THE "APPEARANCE OF IMPROPRIETY"

Much has been said in the course of this controversy about the "appearance of impropriety." One presumes that this phrase comes from canon 4 of judicial ethics, the so-called Caesar's wife doctrine:

A judge's official conduct should be free from impropriety and *the appearance of impropriety;* he should avoid infractions of law; and *his personal behavior,* not only upon the bench and in his performance of judicial duties, but also in his everyday life, *should be beyond reproach* (emphasis added).

As former Solicitor General Simon E. Sobeloff, now a distinguished fourth circuit colleague of Judge Haynsworth, has observed:

It is a familiar axiom, but worth repeating, that it is not enough for a judge to be impartial; he must also avoid the appearance of partiality. (*Striving for Impartiality in the Federal Courts* 24 Fed. Bar J. 286 (1964)).

The judiciary, unlike the legislative and executive branches of Government, commands neither money nor manpower. It is, therefore, crucial that it maintain public respect for its integrity. Absent such respect, the judiciary amounts to nothing. Further, judges are the only Federal officers who serve for life and are protected from pay reduction by constitutional command. The special character and role of the judiciary are major reasons for the extraordinary requirement of the appearance of impartiality as well as impartiality in fact.

Equally compelling, of course, is the proposition that our article II responsibility requires us to demand more of opponents of a Supreme Court candidate than innuendo, inaccuracy, and partisan disagreement. "The appearance of impropriety" cannot come to mean the mere presence of derogatory allegations. Nonetheless, a judge undoubtedly can violate this proscription without actually succumbing to the influence of his holdings in a litigant. I assume, in fact, that Judge Haynsworth was not so influenced. Nor is there any persuasive evidence that he was.

Our article II responsibility of advise and consent, however, requires the Senate, like the statute and canons, to demand more of a Supreme Court candidate than mere impartiality in fact. As my distinguished colleague from Delaware (Mr. WILLIAMS) stated yesterday:

The restoraton of the confidence of the American people in the integrity and fairness of our courts is of paramount importance. This objective can be achieved only by promoting to the high court men whose past records demonstrate that they recognize the importance of avoiding the appearance of improprieties as well as refraining from the improprieties themselves.

* * * * *

Perhaps no single decision or action of Judge Haynsworth to which the committee report alludes is of such a grave nature as to require a vote against his confirmation, but when all the pertinent matters are viewed collectively, one can discern a pattern which indicates that Judge Haynsworth is insensitive to the expected requirements of judicial ethics, especially the rule that requires Judges to separate from active business connections and to avoid even the appearance of impropriety.

VI. RESOLUTION OF DOUBT

During the committee hearings on the nomination, Judge Haynsworth made the following declaration, which is illuminative both of his character as a respected fifth-generation lawyer and of the obligation upon this body:

While I am concerned about myself and my reputation, I much more am concerned about my country and the Supreme Court as an institution, and if there is substantial doubt about the propriety of what I did and my fitness to sit on the Supreme Court, then I hope the Senate will resolve the doubt against me. (Hearing Tr. at 105).

As a member of the bar of the venerable court and of the Senate, I have tried to answer the question, "Is approval of this nomination in the best interest of the Supreme Court and the citizens of this Nation?" After a painstaking review of the entire official and extraofficial record, I have concluded that there is doubt about the propriety of certain of the nominee's actions and that the doubt is substantial.

Up to this point I have not mentioned the question of the nominee's philosophy as reflected in his judicial acts. I do not intend to do so, because it no longer seems necessary. In any event, I would be most reluctant to base a decision on that subject for two reasons. In the first place, the independence of the judiciary is a hard won principle that could be jeopardized if judges are made to feel accountable for their decisions to either the executive or legislative branches of Government. Thus, it would seem undesirable to bring philosophy into a confirmation proceeding, unless it is patently necessary to the determination of the issues raised. Second, as a pragmatic matter, the philosophy of a nominee to the Supreme Court has proved to be a very volatile thing. The men of Cambridge, Sacramento, and Birmingham are not the same after their translation to Washington, and there is no reason to believe that this historical experience would be different in the case of a man from Greenville. And so, Judge Haynsworth's philosophy has played no part in my decision.

A final question that I have considered, however, is the practical effect upon all other Federal judges of a decision by the Senate to condone Judge Haynsworth's failure to abide by even his own stated concept of judicial conduct. Whether or not Judge Haynsworth's lapses were deliberate or inadvertent, and clearly stating that in no case was it necessary to prove a corrupt or dishonest motive, I think the question of the probable impact of his confirmation on judicial standards answers itself: judges across the country will be well aware if the Senate ignores the fact that Judge Haynsworth has done those things he ought not to have done. The only conclusion to which I can bring myself is that his confirmation would lower all judicial standards at a time when the public is anxious to see them raised.

And so I have come to a final and reluctant decision that the integrity of the judicial system at large and the Supreme Court in particular requires that this nominee should not be confirmed. Accordingly, I shall vote "no."

EXHIBIT 1

APPENDIX A—JOHN P. FRANK: EXCERPTS FROM ORAL TESTIMONY AND WRITTEN STATEMENT

In the first place, as I have tried to develop in this memorandum, it is immaterial that Judge Haynsworth was a shareholder in the vending company rather than that he owned it. That doesn't make any difference. The better view is that a shareholder stands in the same position as his corporation. And the rule is in the majority of cases, there are a few exceptions, apparently the Fourth Circuit makes some small exception, but the heavy weight of opinion in America is that if the judge has any interest in a corporation which is a party he may not sit.

In the poll which I conducted of all of the State Supreme Court Justices and the senior Circuit Judges of the United States in 1947, all but two of them adopted that view and while there are cases where judges have not sat where they had—for example, there is a case I have cited to you here, a fellow had 20 shares on 13 million and he felt free to sit but the heavy majority view is if he has any stock in a party he does not sit. (Hearing Tr. at 113–14; oral testimony)

* * * * *

For our purposes, it is immaterial that Judge Haynsworth was a shareholder in the vending company rather than owner of the company in a personal proprietary capacity. The law of disqualification, in the heavy majority and clearly better view, treats a shareholder as though he individually were the concern in which he holds shares. In other words, if a judge holds shares in a corporation which is in fact a party before him, he should disqualify as much as if he himself were a party.[10] As my study shows, every state and federal court reporting agrees that if the judge has a pecuniary interest in the party, he may not sit.

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[10] This is the heavy majority rule; see cases collected at Note, 48 A.L.R. 617, updated in a comprehensive collection at 25 A.L.R. 3d 1331. There is some refinements (sic) where the holding is very small; see *e.g., Lampert* v. *Hollis Music, Inc.,* 105 F. Supp. 3 (E.D.N.Y. 1952) (20 shares on 13,881,016). See also my

EXHIBIT 2

APPENDIX B—JOHN P. FRANK: EXCERPTS FROM ORAL TESTIMONY

Senator BAYH. How large is a substantial interest?

Mr. FRANK. I think that generally the better view, Senator, but not the only view, is that if there is any interest it ought to be regarded as a disqualifier. But the word "substantial" is used here to cover the marginal situation of the small stockholdings, let us say, in a corporation, somebody has a few shares of GM, that sort of thing. I have given an illustration in one footnote of a case of a district judge in the second circuit who had, as I said, 20 shares on 13 million and felt, thought it wasn't enough.

In my report in 1947, 33 State and Federal courts felt if there was any holding of stock they thought it should disqualify. Two courts thought if the holding was very small they felt it should not disqualify, and you heard Judge Haynsworth state that was the view of the fourth circuit.

Senator BAYH. Then general nationwide authority on substantial interest would be that if you hold stock of any appreciable value in any corporation that is before you, you should automatically disqualify yourself?

Mr. FRANK. Yes, that is certainly my view of it. (Hearing Tr. at 127)

* * * * *

Senator BAYH. Let me ask you about another specific case. *Brunswick Corp. v. Long*, 392 Fed. 2d 348, which was tried last year before Judge Haynsworth in which he sat on that decision and cast a vote for the majority which ruled in favor of Brunswick Corp. In looking at his portfolio of stock I see that he today has 1,000 shares of Brunswick Corp. worth, well, depending upon whose figures you use, I see on a list that was submitted to us $17,500 as of Tuesday, and as of right now it is worth $18.25 a share, so obviously it is worth a little more.

I have not yet checked out whether he did in fact own it last year when this came before him, but if he did is that a sufficient interest that he should have disqualified himself instead of sitting in that case?

Mr. FRANK. It certainly is my view that a judge should not sit in a case in which he owns stock in a party to the case.

Now, as to this particular case, I haven't the faintest idea at all because I never heard of it before.

Senator BAYH. Well, in fairness, I think, we should hear the judge as to whether he owned the stock.

Mr. FRANK. Well——

Senator BAYH. We can check that out, but since you are here now, I wanted to get your opinion of that particular case. (Hearing Tr. at 128)

EXHIBIT 3

APPENDIX C—THE HON. HARRISON L. WINTER: EXCERPTS FROM TESTIMONY RELATING TO CHRONOLOGY IN BRUNSWICK

November 10—February 2

(Hearing transcript at 238–40)

Judge WINTER. As I say, the case was the third case argued and the last case on November 10, and in accordance with our practice, the panel immediately went into conference to decide on the case.

I made a memorandum subsequently of our conference notes, and from it and my own recollection I well remember that this was not a case in which there was any dispute whatsoever among the members of the panel as to its outcome. We were unanimously of the opinion that the district judge should be affirmed.

We gave some serious consideration to affirming, by handing down an order to that effect that date, affirming on the basis of his opinion, but perhaps unfortunately, in the light of hindsight, we thought we could express the legal principle in the case a little better so we concluded to write our own opinion rather than to use his.

In due course, I would say about a week later, the assignment of opinions was made, and the opinion in this case was assigned to me for preparation. I undertook to write the opinion, and according to my file on the 27th of December 1967, I circulated an opinion to Judge Haynsworth and to Judge Jones, and of course in accordance with our practice to all of the other nonsitting judges on our court, since we consider that they have a right to offer comments on a proposed opinion as well as those who participated in the case.

Judge Jones responded by letter dated December 29, and concurred in the opinion as it was submitted. He went back to Richmond for a term of court the first full week of January 1968, and the early part of that week, I cannot fix the precise date, Judge Haynsworth told me that he had examined the opinion. He had one of his law clerks examine it also. And his law clerk thought that there was some inaccuracies in the language which I had used in the opinion, in describing the South Carolina action of claim and delivery.

I might say, sir, that in Maryland there is no similar action of which I am aware, and I had never run across this before, and on a matter of purely local law, it would certainly not be beyond the realm of possibility that I would have characterized it in a manner in which inadvertently might have upset local lawyers and local judges.

In any event, Judge Haynsworth—I expressed interest in examining the memorandum and he gave it to me. Then later that week, and I do have a letter from him to this effect, which he wrote in Richmond, on January 9, 1968. He also handed me back the opinion endorsed with his concurrence, in the form in which it had been originally issued, so that I understood that his concurrence was not in any sense conditioned upon my making the opinion.

In any event, after further study of the memorandum, after I returned to my home office in Baltimore following the conclusion of the term of court, I concluded to make some minor language changes in two pages of the opinion. These I mailed out under date of January 19.

I received acknowledgments from all of the judges on the courts, specifically on January—by letter dated January 24, Judge Haynsworth thanked me for revising these two pages, and said the revisions seemed to him to be entirely accurate and appropriate.

By letter dated January 26, Judge Jones agreed to the revised pages, and authorized their substitution in the copy of the opinion on which he had endorsed his concurrence. By the time I heard from Judge Jones, I had also received acknowledgments (sic) from other judges on the court, and so on the same date, January 26, I mailed the opinion and the copies, and returned the record and the tape of arguments to the clerk * * *.

The clerk would not ordinarily announce the opinion until the judgment in the case was signed, and in those days the judges themselves signed the judgment, so a judgment was prepared and sent to me as the author of the opinion.

I signed the judgment and mailed it to the clerk in Richmond on February 1, according to the acknowledgment from the chief deputy clerk, she announced the opinion and advised counsel the next day.

That, sir, briefly is the chronology of the actual decision and the filing of the opinion in the case. There were, of course, some post-argument motions.

March 12—August

(Hearing transcript of 243–45)

On March 12, 1968—please bear in mind, sir, that after a judgment has been filed in a case of this nature, parties under the rules have a period of 30 days in which to ask the court to reconsider its opinion or its decision. On March 12, 1968, there was filed a petition to extend the time for filing a petition for rehearing.

To summarize its allegations, it was, in effect, that counsel felt that the 30-day period in which to petition for a reexamination of what was decided ought not to be considered as having run against them until they had a copy of the opinion furnished them by the clerk, and they said that one had not been furnished them until February 27, 1968.

A copy of this petition was circulated to the judges who sat on the panel; that is to say, Judge Haynsworth, to me, and to Judge Jones. I received it on the 20th, and under our practice I as the author of the opinion would ordinarily be the moving party in recommending what sort of action ought to be taken on the petition.

I read it and I communicated with Judge Haynsworth and told him that I thought the petition should be denied. He confirmed this to me, and said he agreed. He said he had also talked to the clerk's office, and he had found that although copies of the opinion could be ordered from the clerk's office, that is a Xeroxed copy if somebody wanted it in a hurry, and of course the opinion was on file and was open to inspection by anybody who wanted to walk into the office and look at it, that no effort had been made here to extend, I mean to get a copy or to examine it, in addition to which the counsel had advised the clerk that even if we extended the time in which to file this petition, he was not really sure that he wanted to file a petition for reconsideration, and so he said that he would accept my recommendation that this petition be denied.

I tried to get in touch with Judge Jones, but Judge Jones sits in a district in which he must hold court in several places, and my recollection is that at that time, Asheville is his home station, that he was holding court, I think it is Asheville, in any event he was holding court in Charlotte.

He did not have his papers there. He was on the bench. So after trying to reach him, I prepared an order denying the petition for an extension of time in which to file a petition for rehearing.

At this time we were in the transitional stage of another change in practice. Ordinarily orders of this type would be signed by judges who sat in the particular matter but we wasted so much time circulating orders that we finally concluded if we were in agreement why one judge could sign on behalf of the whole panel.

The practice, however, was new and I was a little bit reluctant to sign myself particularly when I had been sitting with the chief judge as to whether I was robbing him of one of his prerogatives, so I transmitted the order and a covering letter to Judge Haynsworth, and Judge Haynsworth signed the order and forwarded it to the clerk. Of course, copies of this order were sent to everybody, and in the meantime Judge Jones had expressed himself as being in accord with the order.

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own article at 46 *Yale L. J.* 605, 537 (1947), reporting that in 33 state and federal courts there is disqualification in such circumstances, but that 2 state and 2 federal courts reported that disqualification might be waived where the holding was very slight, and 1 federal court reported that a judge had sat where the holding was very slight. Nonetheless, the view is overwhelming. There are also refinements not necessary to be considered here when the stock is held by a member of the judge's family; see Note, 4 *Minn. L. Rev.* 301 (1920). And see illustratively, *Goodman v. Wisconsin Elec. Power Co.*, 248 Wis. 52, 20 N. W. 2d 553 (1945). (Hearing Tr. at 119; written statement)

Senator BAYH. What was the date of that final disposition then, Judge Winter?

Judge WINTER. Just a minute. I have a copy of Judge Haynsworth's transmittal letter to the clerk. It was mailed to the clerk on March 26, 1968. I assume it would be received and entered the next day.

Senator TYDINGS. That is a denial of the order for a rehearing?

Judge WINTER. It was a denial of a petition for an extension of time in which to file a petition for a rehearing, Senator Tydings.

Senator TYDINGS. But in effect it was a denial of a rehearing?

Judge WINTER. Well, no; because there was nothing before us on what the merits of the rehearing was, except to say we do not like what you have decided. I mean you could infer that.

Senator TYDINGS. Is there any other way that the matter could have been brought up before the court of appeals again after that order was denied?

Judge WINTER. Well, this petition could have spelled out the reasons why they thought the decision was wrong, if there were any factual errors in it for false premises, but it did not undertake to do so. However, there was another one which came along some time in April, April 3 and April 4, a petition and a supplemental petition to reconsider the petition to extend the time for filing a petition for rehearing, a very complicated title. In any event, this did suggest, it not only asked us to reconsider our prior refusal to permit such a document to be filed, but it also suggested some reasons as to why the opinion was thought to be wrong.

This apparently got misplaced. The clerk sent the only copy to Judge Haynsworth and I did not know anything about it until I heard from Judge Haynsworth in August of 1968, in which he told me the matter had been misplaced. He commented on what he thought was the lack of meritorious basis for a rehearing, and he had prepared and enclosed an order which he had signed, but which provided for the signature by me and Judge Jones denying the petition not only on procedural grounds, but also on the merits.

Mr. DOLE. Mr. President, will the Senator from Maryland yield?

The PRESIDING OFFICER (Mr. COOK in the chair). Does the Senator from Maryland yield to the Senator from Kansas?

Mr. MATHIAS. I yield.

Mr. DOLE. I have read the Senator's statement with much interest. He has presented it in a forthright way. I recognize this is a difficult decision to make. I am disappointed—but not particularly surprised with the conclusion the Senator from Maryland has reached.

The Senator is apparently troubled with the same case that troubled me and others, and that is the Brunswick case. At least, I concluded, based on the number of pages devoted to the Brunswick case compared to the others, that it was of paramount importance in the Senator reaching his decision.

On Monday, I was impressed by the statement of the Senator from Virginia (Mr. SPONG), who was also troubled by the Brunswick case. He had written a letter in an effort to clarify the Brunswick case to John Frank, who has been quoted by the Senator from Maryland, and also by many of us, in this Chamber.

As I understand it, the response received by the Senator from Virginia from Mr. Frank indicated that there was no law, pertaining to inadvertent acquisition after a decision has been rendered. There was a mistake, and in fact, Judge Haynsworth said as much. Mr. Frank stated he did not believe the action by Judge Haynsworth rose to the level of ethics. That was the conclusion of Mr. Frank, and as I understand, he is regarded as an expert on the question of ethics.

I am wondering whether the Senator from Maryland had an opportunity to review the RECORD on Monday and to read the letter from Mr. Frank to the Senator from Virginia.

Mr. MATHIAS. I was not only aware of it, I also discussed the question and the existence of the letter with the distinguished Senator from Virginia (Mr. SPONG).

I have devoted a considerable amount of time and effort to this somewhat novel question of acquisition in the middle of a case, which, as the letter points out, apparently is a case of first impression. That is why I have devoted so much time to the analysis of it and how it impinges on the law in this case.

Let me say, that, although I have devoted a considerable amount of time to the Brunswick case, I have done so because I think it establishes the principles that apply to the Maryland Casualty cases and the W. R. Grace case.

I think it would be redundant to repeat the detailed application of the same principles to those cases, although I am willing to do it if the Senator from Kansas is willing to stay and go over it with me.

I would further say this: More than what Mr. Frank has said, more than the expert opinion, authorities such as Mr. Frank, I am influenced by what Judge Haynsworth himself has said. He knew what the rules were, as clearly indicated by his letter to Senator EASTLAND. He stated the rule. He simply did not abide by it. And I think that is the ultimate difficulty of this case.

Mr. DOLE. Mr. President, will the Senator yield further?

Mr. MATHIAS. I am happy to.

Mr. DOLE. I am not privileged to be a member of the Judiciary Committee. I understand however that during the course of the hearings it was revealed that Judge Haynsworth had sat on probably 3,000 cases since his appointment by President Eisenhower in 1957. I assume it is possible for a judge, without any effort or intent to profit, to make one mistake in 3,000 cases. He may make as many as three mistakes. He did indicate, and the record is clear, that when the decision was written on November 10, he did not own any Brunswick stock. I think the record is clear on this. So at the time the decision was made, he was not the owner of stock.

So as stated in my statement previously, I give the judge credit for admitting he made a mistake. I assume others have made mistakes that may not be public knowledge yet. Perhaps we have all made mistakes. So I felt that in my heart I should not vote against confirmation of the nomination of Judge Haynsworth because he made one mistake, because after he rendered the decision, not by himself, but with other judges, his broker recommended the stock, 6 weeks later, a motion was filed, and he did not disqualify himself.

I have reviewed the other cases. I understand in some of the cases the court has said that the court has a duty to sit, on the basis that if a judge wanted to excuse himself from sitting on a case, he could always find reasons.

There was a random selection system in the fourth circuit. It was apparently initiated by Judge Haynsworth. It has worked very well. They have avoided at least the temptation to be excused from sitting on cases.

So I say to my friend from Maryland that, of course, we can reach different conclusions, but I trust we are not saying to Judge Haynsworth, "We are going to punish Judge Haynsworth. We are going to make him an example so that other Federal judges in America will never make a mistake."

Perhaps that is what might be concluded from the paragraph at the bottom of page 11, because the Senator from Maryland asked what practical effect this will have on other Federal judges. Apparently the intention is that for this reason we should not confirm the nomination of Judge Haynsworth. If his nomination is not confirmed, it will be an example and a symbol for every other Federal judge in America.

I do not share that view, believing he can make one mistake and still be a great Associate Justice of the Supreme Court.

Mr. MATHIAS. I thank the distinguished Senator from Kansas for his observation. Let me say, of course, it is ridiculous to assume that anybody who is a human being is totally infallible and will not make a mistake. In fact, the existence of the very court Judge Haynsworth now sits on is predicated on the possibility that the judges of the district courts may make mistakes. The existence of the Supreme Court is predicated on the possibility that judges in the fourth circuit may be fallible.

I am indebted to whoever earlier dropped the pencil which I now hold in my hand. Let me say that for the mistakes that he made in the Brunswick case, there was a readily available eraser. If all of those things happened, if the broker called him up, and he forgot he was in the Brunswick case, and he went ahead and bought the stock anyway, he certainly knew, by the time he got around to revising the opinion, that he was deeply in it. It was a simple matter to call the other judges and say, "Look, boys, I have made a mistake. Let us unravel it." It would have taken two calls, one to Judge Jones and one to Judge Winters.

The Senator from Kansas has also raised the point that Judge Haynsworth participated in a large number of cases. It is a large number of cases. He has been an active jurist. But I would refer again to the practice followed by Justice Holmes over an even longer judicial career, which I am sure involved a great many more cases, in which Justice Holmes, to make sure he did not make such a mistake, kept a list of the securities he owned. A former distinguished dean of the Harvard Law School told me the other day he thought some of those lists

still existed, which were kept as mementos by law clerks of Justice Holmes.

So those mistakes, human as they are, are in the first place avoidable; and in the second place, are not irretrievable.

Mr. DOLE. Mr. President, if the Senator will yield further, I feel the Senator from Maryland will agree that Judge Haynsworth is a man of honesty and a man of integrity. The Senator from Maryland did not question his philosophy. I assume, then, the Senator from Maryland says that his nomination should not be confirmed because of what he says is, and what is referred to by others as, his "insensitivity"? Would that be a correct statement?

Mr. MATHIAS. I would go back to the statement with which the distinguished Senator from Kansas took some issue a moment ago, and say it again: that to confirm this nomination would, in my judgment, lower judicial standards at a time when I think we ought to be raising them.

I thank the Senator for his participation.

Mr. EASTLAND. Mr. President, because of the lateness of the hour when the nomination of Judge Haynsworth was called up this past Thursday, I interrupted my remarks on the nomination in order that other Senators be given an opportunity for opening remarks. At this time I would like to resume my remarks on the Haynsworth nomination and ask unanimous consent that the following letters be printed in the RECORD at this point. First, a letter from Mr. Coming B. Gibbs, Jr., a witness who came to Washington in order to testify on Judge Haynsworth's behalf, but who was precluded by the length of the hearings from doing so. Second, a letter from all of the Federal district judges of Maryland expressing complete confidence in Judge Haynsworth, and third, a letter from Congressman JAMES R. MANN, Democrat, Fourth District of South Carolina.

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

GIBSON, GIBBS & KRAWCHECK,
Charleston, S.C., September 5, 1969.

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

DEAR SENATOR EASTLAND: So that the Committee may know something of the person making this statement, I have included the following introductory comments.

My name is Coming B. Gibbs, Jr. I am a former law clerk to Judge Clement F. Haynsworth, and I am currently practicing law in Charleston, South Carolina as a member of the three man firm of Gibson, Gibbs & Krawcheck. I graduated from St. Marks School in 1954, from Princeton University in 1958 and the University of South Carolina Law School in 1961. From September, 1961 until September, 1962, I was law clerk to Judge Haynsworth. After active duty in the United States Army, I returned to Charleston and practiced law with my father, and, sometime after his death, formed a partnership with Charles M. Gibson and Leonard Krawcheck.

My law practice has been general in character. Together with a fairly active civil and criminal trial practice, I have among my clients the International Longshoremen's Association which I have been representing in litigation concerning attempted organization of warehouse workers of the South Carolina State Ports Authority. With one of my partners, I represented two Catholic Priests charged with contempt of Court because of picketing during the recent hospital strike in Charleston. I, with several other lawyers, organized an O.E.O. funded Legal Services for the Poor corporation, which has been operating successfully for several years, and which, despite initial opposition from a segment of the Charleston Bar, has now been generally accepted as a permanent and valuable addition to the local legal profession. I currently am chairman of its Board of Directors.

I was active in the organization of the Charleston Young Democrats and during the 1964 Presidential campaign I was co-chairman of the Charleston County Johnson-Humphrey effort. I have been active in the Democratic party and in bi-racial matters, among other things participating with a group of lawyers in preserving Negro participation in the Y.W.C.A. I am currently the Secretary-Treasurer of the Charleston County Bar Association and a member of its executive committee.

The foregoing is included here to give this Committee an understanding of a little of my background, and to show something of the great effect a close relationship with Judge Haynsworth had upon a young man with a traditional and conservative background in Charleston, South Carolina.

Judge Haynsworth's qualifications as a Justice of the United States Supreme Court are to me clear and free from doubt. His academic background and history show him to have been a brilliant and conscientious student. As a lawyer, he became senior partner in the largest and most prestigious firm in our state. His decisions as a Court of Appeals Judge are public record and will be discussed by lawyers far more eminent than me.

My thought is that I could be of assistance to the United States Senate in enabling them to understand a little of the personality and character of Judge Haynsworth, without specifically discussing his thoughts and conversations as they related to specific cases pending before the Court of Appeals.

Perhaps his most impressive quality to one who knows him is his compassion. His regard for the individual, in cases involving human rights, civil or criminal, is deep.

On the bench, in a Circuit noted for close scrutiny, sometimes acerbic, of counsel's argument, he has universally been kind and gentle. This winter I was in his Court and young counsel violated almost every rule of proper appellate argument, including not addressing himself to the Court's questions and ignoring the time limit. After a time, Judge Haynsworth with a smile sat back and let the young man finish reading his set speech.

Combined with his kindly and compassionate nature is a considerable sense of humor, mostly dry, but occasionally quite robust. To work with him, he was thoughtful, kindly and considerate. Good work and good ideas were praised and the bad were gently corrected.

For one who has worked with him daily for a year to read, as I have in the press, that he is a racist, is ludicrous. He epitomizes our common law heritage that each man is equal before the law. Without going into specifics, in all the school cases which came before him when I was his clerk, he conscientiously endeavored to apply to complex records the rules laid down by the United States Supreme Court as he understood them.

The similar charges that he has an anti-union bias is also, to me, equally false. During the period I worked for him he had before him many cases involving labor organizations and in all our vigorous give and take, no such thing was manifested.

The ons year that I spent as his clerk was the most important educational experience of my life. I learned from him the true meaning of intellectual and legal integrity. He equipped me with, I hope, the ability and certainly the self-confidence, to take part in South Carolina in sometimes unpopular and controversial causes. From him, I was equipped to attempt to cut new ground in our law and to join with a few older lawyers in similar efforts. I believe these other lawyers felt I had been equipped by Judge Haynsworth to work with them.

Speaking for myself, and I think for my colleagues at the bar in South Carolina whose practice has gravitated as has mine, there would be no hesitancy in bringing any matter before Judge Haynsworth. His decisions have and will reflect the thoughtful consideration of a good human being and good lawyer, applying justice with a compassionate heart and an even hand.

I recommend him to you as a man, as a lawyer and as a future great Justice of our Supreme Court.

With best wishes, I am,

COMING B. GIBBS, JR.

UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF MARYLAND,
Baltimore, Md., October 20, 1969.

Hon. CLEMENT F. HAYNSWORTH, Jr.,
Mayflower Hotel,
Washington, D.C.

DEAR JUDGE HAYNSWORTH: All of us have been reading about the recent developments in connection with your nomination, and we want you to know that all of the Judges of our Court have complete confidence in your integrity and ability, and in your fitness to be a Justice of the Supreme Court.

You are free to make such use of this letter as you may desire.

ROSZEL C. THOMSEN,
Chief Judge.
R. DORSEY WATKINS,
U.S. District Judge.
EDWARD S. NORTHROP,
U.S. District Judge.
FRANK A. KAUFMAN,
U.S. District Judge.
ALEXANDER HARVEY, II
U.S. District Judge.

HOUSE OF REPRESENTATIVES,
Washington, D.C., November 10, 1969.

Hon. JAMES O. EASTLAND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EASTLAND: As the time for full Senate consideration of the confirmation of Judge Haynsworth approaches, I wanted to pass on to you a few words of support from this member of the Democratic Party.

Shakespeare could well have been describing Clement Haynsworth when in Scene I, Act 3, of Timon of Athens he wrote, "Every man has his fault, and honesty is his." You and I know that the shrewd, the clever, the unscrupulous, the dishonest, in the judiciary or in politics, have no trouble covering their tracks. On the other hand, he who is inherently honest goes about his duties with no thought in mind but to do fairly and justly, with no search for, or even awareness of, reasons why he should be other than fair and just.

I mentioned my Democratic affiliation to emphasize my feeling that this matter is above party and to form a basis to join mentally with you in agreeing that this is not a decision based upon being "pro" this or "anti" that. I know that you do not regard your decision as one of either politics or advocacy. There are segments of the press, of special interest groups, and of the public which would not recognize that this is one of those rare instances when responsible objectivity and deep conscience are your foundation stones, and the clamor, from whatever source, will be resisted and ignored.

Your position on the confirmation of Judge Haynsworth demonstrates your objectivity and your fearless resistance to those forces that would distort and blacken without conscience in order to promote their special interests. I sincerely believe that your courage

in this instance will further enhance the stature and reputation which you already enjoy.

Respectfully,

JAMES R. MANN,
Member of Congress.

Mr. EASTLAND. Mr. President, the same columnist for the Washington Evening Star who scornfully noted that the President has given "the forgotten American a truly forgettable American" raised another issue that lies shallow beneath the surface of the debates and has been obvious by repeated references and innuendos throughout. On September 17 of this year this columnist's article appeared entitled, "Does Supreme Court Need a Southern Accent?" The article begins with this judgment:

It is quite obvious that Richard Nixon chose Clement Furman Haynsworth Jr. of South Carolina to please the enemies of the Supreme Court rather than its friends.

Its enemies think the court needs a Southerner, and Haynsworth is certainly that, having spent his entire life in Greenville, S.C.

I do not know whether this columnist has more courage or less sense than her associates, but at least this writer was perceptive enough to recognize this underlying motive behind the Haynsworth opposition and to lay it squarely on the line. At least this writer has said what others are embarrassingly reluctant to admit, but extremely anxious to exploit. Witness after witness has pointed up the nominee's Southern background. They have repeatedly, with bitter tone and inflection of voice, referred to the Judge as a "fifth generation South Carolinian." They have emphasized his Southern background in order to exploit the prejudices and resentments that still linger in the minds of some Americans toward the people of that region.

At a press conference a Senator is reported to ask "whether the moral standards of Greenville, S.C., are acceptable to the Nation? Mr. Schlossberg of the UAW said:

His decisions, his investments, his judicial conduct, and his lifetime close association with socially backward, irresponsib e, and reactionary economic interests in the South raise very serious doubts concerning his ability to administer justice objectively and impartially.

Even Mr. Rauh became concerned as the undertones of sectional hatred became more and more pronounced by opposition witnesses. Mr. Rauh hastened to say:

The suggestion is sometimes kind of intimated that somebody is against southern judges.

Mr. Rauh hastened to point out that he had no objections to liberal Southern judges such as Judge Brown of the fifth circuit. The junior Senator from Maryland also hastened to add:

I would agree and I think the South, as every part of the country, has the right to be represented on the Supreme Court.

It is not surprising that every citizen of a Southern State is offended and embittered by the privately spoken and publicly insinuated charge that they are precluded by birth from high national office. They recall when Senator John F. Kennedy, while a candidate for our Nation's highest office, pleaded eloquently for fair treatment. He asked that he not be judged as a Catholic candidate, but rather as an American who deserved to be tested on his qualifications. He said:

If I should lose on the real issues, I shall return to my seat in the Senate, satisfied that I have tried my best and was fairly judged. But if this election is decided on the basis that 40 million Americans lost their chance of being President on the day they were baptized, then it is the whole Nation that will be the loser.

Now comes Clement Haynsworth, a candidate for a seat on our Nation's highest court. I submit that he can paraphrase President Kennedy's plea as follows:

"If I should lose on the real issues, I shall return to my seat as chief judge of the Fourth Circuit Court of Appeals, satisfied that I have tried my best and was fairly judged. But if this nomination is decided on the basis that every American from the South has lost his chance to serve on the Supreme Court, then it is the whole Nation that will be the loser."

It is, of course, outrageous that the people of the South should have to plead for fair treatment.

Mr. President, another key to the sectional antagonism aroused by the nomination of Judge Haynsworth appeared in an article by Mr. B. J. Phillips in the September 7 issue of the Washington Post. The article stated that after World War II Judge Haynsworth was engaged "in a lot of legal work behind the scenes which brought the large textile firms in from the North." Questioned about the statement by a Senator opposing the nomination, Judge Haynsworth replied:

Well, beginning shortly after the second world war there began a general industrial expansion in the South. New plants were being built, and not just textiles, all kinds of industry. And many of the concerns interested in locating plants in the Stat came to me for legal advice. And being in the practice of law, I was not displeased t) see them. And I did what I could to help them resolve legal questions which they had. Of course, they had a great many. But I served only as a legal adviser to them with respect to legal questions they would run into in connection with the location or construction of a new plant in my State.

If the implication is that I went out to such people and enticed them into the State, I didn't do that. I was a lawyer, not a salesman.

The repeated references to the loss of Northern industry to the South ran like a broken record throughout the hearings. Typical of these remarks, Mr. Pollock noted:

I might say that listed here are a number of mills that were formerly located in the North, which were under contract with our union and our relationship was excellent.

The sectional animosity ignited by this nomination is deeply rooted in economics, upon the loss of p yrolls and union dues Like all ha e, it is rooted in fe r—fear of the industrial development in the South to date and its projected development in the future at the expense of northern prosperity.

This resentment exists partially because my section of the Nation has refused to content itself to the role of economic colony of the North, a pastoral state to provide cheap raw materials for Northern industry and a market for Northern products. It has only been with great sacrifice and effort that we have established an industrial base and every effort has been made to stop us, from discriminatory freight rates of yesterday to abolition of tax-exempt industrial bonds today. But we have come a long way from the days of which John F. Kennedy would write:

Vachel Lindsay's poem expressed clearly the helplessness and bitterness with which the South . . . watched the steadily increasing financial domination of the East:

"And all these in their helpless days
By the dour East oppressed,
Mean paternalism,
Making their mistakes for them,
Crucifying half the West,
Till the whole Atlantic coast
Seemed a giant spiders' nest.'"

Mr. President, I am reminded of the story of how Cato, shocked by the rapid recovery of Carthage from the effects of the Hannibalic war and fearful of her economic rivalry with Rome, thereafter concluded every speech with the words:

Ceterum censeo delendam esse Carthaginem Besides, I think that Carthage must be destroyed.

Mr. President, today the South is no longer ensnared in the economic "spiders nest" of which John Kennedy wrote. Nor will we be destroyed. Nor will our economic progress be thwarted or delayed. If Judge Haynsworth played a substantial role in bringing industry to South Carolina, it was to give his people a better life with more promise and opportunity. It is to his credit and those who resent him for it have not benefited their own people by making Judge Haynsworth the object of their vengeance. But since this has already been done, it is to Judge Haynsworth's favor that he has borne this abuse without complaint, without apparent bitterness and without striking back at his tormentors. As Prometheus withstood his unjust ordeal by vultures on the rocks of the Caucasus, Judge Haynsworth has endured his trial in a manner which proves conclusively the high character and nature of the man.

Some may protest that it is not the origin of Judge Haynsworth's birth that gives rise to their enmity but rather a desire to apply the same test as was applied in the Fortas case. They say their concern springs from a lack of confidence in the court which the Fortas hearing created and compels the extensive investigation, the grueling interrogation, and the demand for public disclosure in this case. Unfortunately for those who advance this justification for their conduct, the Burger hearing stands as an embarrassing contradiction. If their representations are true, why was the interrogation of Justice Burger routine and perfunctory? Why was Justice Burger not requested, required, or compelled to furnish any information or make any disclosure whatsoever? It is true that Justice Burger brought to the committee a reputation as a conservative, but he did not

bring with him a Southern heritage and therein lies the heart of the matter.

Mr. President, it is difficult to review in a comprehensive manner the testimony offered against Judge Haynsworth. I might say that it ran the full spectrum from the absurdly ridiculous to the embarrassing and distasteful. On the same day whites and Negroes were battling in the streets of Pittsburgh over union exclusion of Negro apprentices in the construction trades, Mr. Meany was telling the committee he opposed Judge Haynsworth because:

He has demonstrated indifference to the legitimate aspirations of Negroes.

On another occasion we heard Mr. Randolph Phillips attack the President of the United States, a U.S. Senator, and the nominee in a base and distasteful manner. According to Mr. Phillips:

What we thus have is not a single payoff not a double payoff, not a triple payoff, but a quadruple payoff. Roger Milliken, Strom Thurmond, Clement Haynsworth, Jr., and Richard M. Nixon all win. They win in one of the dirtiest and most sordid political games that has ever been played with judgeships as pawns and poker chips in the history of the Republic.

* * * * *

There is not a single judicial nomination to the Supreme Court of the United States, insofar as I can see by reading the history of the Supreme Court, Senators Hruska, Cook, and Mathias, that has ever been determined by such low principles as the present nomination seems to be.

We heard Mr. Stephen I. Schlossberg of the UAW demonstrate the technique of slander by insinuation and innuendo. We saw Mr. Schlossberg reveal himself as a man without the courage, the honor or simple decency to charge the nominee with improper conduct, but clearly intent upon leaving that impression. Consider, for instance, Mr. Schlossberg's following colloquy with Senator HRUSKA:

Mr. SCHLOSSBERG. I have been told by friends of mine who have studied these cases, the Fortas case and the Haynsworth case, that Haynsworth's conduct makes Fortas look like an altar boy. Since I am obviously not qualified to describe altar boys I cannot judge whether that is an accurate description or not. * * *

Are we to believe that the salesmen who sent to these various textile industries and tried to place these vending machines in their places did not say to these textile industries, "This is Judge Haynsworth's company"?

I can hear it right now just like the cowboy on television says when he rides over the horizon, "This is Marlboro country."

Senator HRUSKA. If he had that much influence and prestige, and if he was possessed of the near omnipotence that you assign to him, why didn't they get more business with the plants of the Deering-Milliken Co.?

Mr. SCHLOSSBERG. I do not know.

Senator HRUSKA. They had them in only three plants out of——

Mr. SCHLOSSBERG. Maybe those were the only connections that Dennis and Haynsworth had, you know. I just do not know.

Senator HRUSKA. They served only three plants in the mills of the Deering, Milliken——

Mr. SCHLOSSBERG. Three or four.

Senator HRUSKA. There were three companies in one of those mills, but it was one building as I understand it.

Mr. SCHLOSSBERG. Right.

Senator HRUSKA. And then there were two others. Now, if he had the position of dominance that you describe, why didn't he get more than $100,000 worth of gross sales in those companies?

Mr. SCHLOSSBERG. Senator, it is hard for me to speculate, and this is a terrible thing to say and I do not make it as a charge, but if I have to speculate I am going to speculate. Maybe Deering, Milliken decided that there comes a point when you draw the line, and that $100,000 is all we can afford to give this guy while he is a sitting judge hearing our cases. Now, I am speculating, Senator.

Senator HRUSKA. You take it that Deering, Milliken gave him $100,000?

Mr. SCHLOSSBERG. I did not say that.

Senator HRUSKA. You just said so.

Mr. SCHLOSSBERG. No, I did not, Senator.

Senator HRUSKA. Do you change that language?

Mr. SCHLOSSBERG. I said maybe they said, "This is all the business we can give this guy's company while he is a sitting Judge." I did not want to speculate, but you forced me into it.

Senator HRUSKA. I did not force you into it, and if you were here sitting at these hearings and considered the record, which is sworn testimony——

Mr. SCHLOSSBERG. Right.

Senator HRUSKA. And if you had had any desire to inform yourself you would not have to speculate, and when facts are available under sworn testimony, speculation is out of order in my judgment. The record will show that whatever contracts they got were acquired by reason of competition bids; and in three instances, the last three times, they were not the prevailing party. I just cannot quite square that result with an officer who has such an omnipotence that he can say anything and he gets paid off. Isn't that what you are saying?

Mr. SCHLOSSBERG. You do not understand. I am going to try once more to make myself clear and then I am really at a loss about how to do it. No. 1, I do not make the charge that Deering-Milliken paid off Judge Haynsworth.

Senator HRUSKA. That is good.

Mr. SCHLOSSBERG. I do not make that charge.

Senator HRUSKA. That is good.

Mr. SCHLOSSBERG. I do not make the charge that Judge Haynsworth consciously attempted to influence Deering-Milliken with his decision in the *Darlington* case.

Senator HRUSKA. That is good.

Mr. SCHLOSSBERG. I do not make that charge. The charge I make, Senator, and I make it again for about the fifth time, is that he was guilty of serious impropriety; that he misstated, perhaps inadvertently, to this committee, the secrecy of the vending machine business; it was not such a big secret when Wade Dennis was telling people, bragging, that Judge Haynsworth was the first vice president, that Deering-Milliken could have known of it, and that it was improper for him to sit because there was an appearance under canon 4 of impropriety.

Now, I do not say there was any payoff and I want to make that absolutely clear.

I am sure Mr. Schlossberg considered his testimony to be quite clever. However, there is nothing amusing or clever in a disgusting, underhanded effort to smear and discredit and degrade an honorable man with rumor, insinuation, lies, and half-truths. As we read the testimony of Mr. Schlossberg, as we hear Mr. Harrls' bragging about destroying the reputation of Judge Parker as an example to others and how he will be glad to reach the same result in this case, as we listen to Mr. Randolph Phillips, we might recall Louis Nizer's summation to the jury in the libel case of Quentin Reynolds against Westbrook Pegler:

What does a defense lawyer do in a case of this kind? He does what Mr. Henry so skillfully did—he attempts from the very first moment to becloud the issue, not to discuss the merits, not to discuss the facts, not to discuss the truth, but to raise every conceivable prejudicial issue he can. I would like to tell you something about an octopus.

When an octopus is attacked by an enemy, it emits a black inky fluid, and the water around it gets very black, and in the confusion the octopus escapes.

In this case from the very first moment . . . until this skillful summation, the defendants emitted black fluid to becloud the issues in this case.

And as we hear the relentless and repetitious campaign of character assassination that went on day after day, we hear another voice from the past, a voice from another day at another Senate hearing. It is the voice of a previously unknown lawyer from Massachusetts whose simple words were the turning point in the career of a U.S. Senator who, even though his cause was right and his motives just, had exceeded the bounds of what the average American considers to be fair play and a fair fight. His words were not spoken in anger or passion but in a manner calm and studied and sincere. The words were these:

Little did I dream you could be so reckless and so cruel as to do an injury to that lad. It is true he is still with Hale & Dorr. It is true that he will continue to be with Hale & Dorr. It is, I regret to say, equally true that I fear he shall always bear a scar needlessly inflicted by you. If it were in my power to forgive you for your reckless cruelty, I will do so. I like to think I am a gentleman, but your forgiveness will have to come from someone other than me. * * *

You have done enough. Have you no sense of decency, sir, at long last? Have you left no sense of decency?

As we read the press clippings and editorials that have appeared in certain quarters throughout these hearings, as we saw the testimony of Judge Harrison Winter headlined and portrayed as an attack upon the judge's character and reputation, as we saw the rumors which were daily attributed to "aides and sources on Capitol Hill," as we saw the headlines announcing discovery of links between Bobby Baker and the nominee, and as we saw and heard the countless other distortions and misrepresentations in our Nation's press, we cannot help but hear the summation of Louis Nizer before the U.S. court of appeals in the case of Quentin Reynolds against Westbrook Pegler as Mr. Nizer told the court:

Reckless attacks equivalent to character assassination have become too frequent an occurrence in personal column editorializing. Newspapers are like cannon. They must not be shot carelessly and with abandon.

This case afforded an opportunity to protect the individual from malicious libel; to inculcate a revived sense of responsibility in newspapers; to encourage the old tradition of checking facts, and to control reckless writers who build circulation by extremism and sensationalism.

It is the misfortune and the tragedy in a case such as this that, as Mr. Nizer says:

Libel seldom causes as much public indignation as it does private anguish.

Now, Mr. President, I do not want to belabor a comparison between the Haynsworth hearing and the Fortas hearing, but there are those who justify their conduct in this matter by saying, We are only giving Haynsworth the same treatment that Fortas got. Thus Mr. Schlossberg, whose testimony certainly needed some moral justification, posed the question as follows:

The people of this country, the young people, the students, the disillusioned people, the disinherited people, the intellectuals, people in all walks of life, want to know—is a northern liberal judge, a sitting Supreme Court Justice, to be judged by the same standards as a southern conservative or reactionary judge? * * *

People want to know, Is the test the same? Will the standards be the same? Will the same Senators and commentators who demand the purity of one judge demand it also of another?

While it is true that there are striking parallels between the Haynsworth nomination and the nomination of John J. Parker and Louis D. Brandeis, the only parallel with the Fortas case is the proximity of chronology. But for the record, I would like to make the following observations between the Fortas hearings and the Haynsworth hearings.

As I have detailed at length, Judge Haynsworth voluntarily made full disclosure of all his private financial transactions including the income tax returns of both himself and his wife. Justice Fortas made no such disclosure at all, nor was it suggested, requested, required, or compelled by the committee.

A comparison of testimony in these two cases reveals that Judge Haynsworth was open, frank, candid, and forthright in his testimony while Justice Fortas was clever, vague, and evasive.

Judge Haynsworth not only appeared before the committee and answered every single question put to him, but openly and publicly announced his availability to return at the request of any single Senator for further interrogation and on any and all matters concerning his nomination. It will be recalled that one of the most serious questions concerning Justice Fortas was an arrangement with American University, funded by former clients of his firm, where Justice Fortas received substantial fees for a short seminar. This information was not volunteered by Mr. Fortas, but came from independent sources and was substantiated by voluntary testimony by the dean of the law school at American University. The question was raised as to whether this arrangement was a setup designed as a conduit through which funds could be legitimized before being passed to the Justice. Justice Fortas was requested to return to the committee and set the record straight. For reasons best known to himself, reasons which future events would place in clearer perspective, Justice Fortas declined to return for further testimony.

Judge Haynsworth, in addition to filing with the committee all of his financial records and transactions and those of Carolina Vend-A-Matic Co., requested that the complete Justice Department files on the Darlington investigation be submitted to the committee and made available to the public. Despite charges to the contrary, the Justice Department has complied with every reasonable request made of them throughout these hearings. They have been completely open and have attempted to conceal nothing. It will be remembered that in the Fortas case requests were made or subpenas issued for a number of administration employees who declined to appear, nor did the committee see fit upon their refusal to force their exercise of Executive privilege.

As the Haynsworth nomination comes before the Senate for a final vote, there is no one who has or can deny that every fact that could possibly bear upon our consideration of this nominee has been revealed. As we approached a vote on the Fortas case, there was no doubt but that a great deal had been concealed and a general feeling that the damaging evidence against him had only scratched the surface. In any event, we approached the final vote on the Fortas case with a great deal unknown as to the true facts, whereas in this case we know what the facts are and have simply to draw our conclusions from them.

In this case no one has charged or inferred that Judge Haynsworth has, at any time, in any case, profited or hoped to profit personally from anything that he has done. In the Fortas case it was charged that Justice Fortas had courted the favor of the President with the hope of being rewarded with the office of Chief Justice and charged that, in fact, he had been. There was the further charge that Justice Fortas had in fact received what amounted to fees through the arrangement at American University and it was widely believed that Justice Fortas had received either directly or by the diversion of fees to his wife. At any rate, Justice Fortas for reasons best known to himself, but for reasons later understood more easily, declined to make any disclosure in order to set the record straight.

And might I add, Mr. President, another striking dissimilarity in these two hearings. Judge Haynsworth has from the very beginning faced an openly hostile press before these hearings even began. It was common knowledge that many representatives of the news media were out to get the nominee. Many were heard in the open hearing room refer to the judge and the President in disparaging terms before one word of testimony was even heard. In the Fortas case it was quite another thing. In the Fortas case it was not the nominee but members of the committee who were the focus of vilification and attack by the news media. This continued until it was no longer possible, in light of facts revealed, for them to maintain that posture. It was only then, at the 11th hour, that the liberal press began to hedge its bet and question the merits of the nomination.

Mr. President, the Haynsworth nomination has clearly revealed the paranoid psychology that compels the liberal establishment to try to silence every voice that is raised against them and to destroy every man who cannot be counted on 100 percent. I said a paranoid psychology. Why else would labor fear Judge Haynsworth with such intensity on the one hand while on the other hand saying that his position has been reversed in every single case that has gone to the Supreme Court by a unanimous court in nine decisions and with only one dissenting view in the other. Consider the following colloquy between Mr. Harris and Senator McCLELLAN:

Mr. HARRIS. He voted against the union, in every case he was reversed by the Supreme Court. In every case——

Senator McCLELLAN. He was not reversed alone. There were several other judges reversed, were there not?

Mr. HARRIS. He got the vote of one Supreme Court Justice, once, Justice Whittaker.

Senator McCLELLAN. Are you talking about these 10 cases?

Mr. HARRIS. These 10 cases which are all the labor cases he sat on which were reviewed by the Supreme Court.

Senator McCLELLAN. According to your judgment, he was not even entitled to that, was he?

Mr. HARRIS. No. [Laughter.]

Senator McCLELLAN. He just cannot do right. Very well.

Mr. HARRIS. But he never got the vote of a single judge, conservative or moderate. Judge Harlan, Judge Clark, Judge White. None of them ever cast a vote with him in a single labor case.

Senator McCLELLAN. Which clearly indicates to me he is neutral, he has a mind of his own.

Mr. HARRIS. I suggest it indicates two things, that he always holds against union if it is possible to do so and that judged by the standards of the Supreme Court, he was not a very good judge in labor cases because he was reversed all the time, time after time. And not on any five to four basis, either. Unanimously.

Senator HART observed during the hearings that out of 10 labor cases appealed to the Supreme Court, Judge Haynsworth "did manage to pick up one Justice's vote out of I guess 80 or 90 Warren court votes."

Mr. President, do the opponents of Judge Haynsworth have so little faith in the righteousness of the causes they espouse and the logic and reason of their position that they cannot tolerate one dissenting vote?

These hearings call to mind a quote of that great jurist, Judge Learned Hand. Judge Hand warned our people against the same kind of paranoid psychology that seeks to extinguish all dissent. Judge Hand cautioned:

That community is already in the process of dissolution where each man begins to eye his neighbor as a possible enemy, where nonconformity with the accepted creed, political as well as religious, is a mark of disaffection; where denunciation, without specification or backing, takes the place of evidence; where orthodoxy chokes freedom of dissent; where faith in the eventual supremacy of reason has become so timid that we dare not enter our convictions in the open liste, to win or lose.

Mr. President, I have asked why the leaders of organized labor, for instance, have decided to mount such a vicious attack to silence one voice and to bar one vote from a nine-man court. There is another reason, and these labor leaders have openly acknowledged what it is. They brazenly admit in open hearings that win or lose they intend to make an

example of Judge Parker as a means of intimidating other judges who might aspire to serve on a higher court. They made no effort to conceal it. Consider, for example, the exchange between Senator ERVIN, Mr. Meany, and Mr. Harris concerning the nomination of Judge Parker, of whom even Chief Justice Earl Warren said in 1958:

No judge in the land was more truly distinguished or more sincerely loved. His contemporaries appreciated and honored this man's qualities, and in the judicial history of the nation his great reputation will endure.

The colloquy I refer to is as follows:

Senator ERVIN. Mr. Meany, you say this is the second time in history that the organizations which you represent have opposed the confirmation of a nominee for Supreme Court Justice?

Mr. MEANY. That is my opinion. As far as I can remember.

Senator ERVIN. And the other time, the same organizations opposed the nomination of Judge John J. Parker.

Mr. MEANY. That is right, 1930.

Senator ERVIN. And he was defeated by two votes in the Senate and then continued on the Fourth Circuit Court of Appeals and became one of the most distinguished jurists that North America ever has known, did he not?

Mr. MEANY. As far as I know, your statement is true. He had a change of heart. [Laughter.]

* * * * *

Senator ERVIN. That is all?

Mr. MEANY. Well, that was one of the cases.

Senator ERVIN. If he had not followed the decision of the Supreme Court, he would have been guilty of judicial insubordination, would he not?

Mr. MEANY. I am not a lawyer. I cannot say.

Senator ERVIN. Mr. Harris just explained you are supposed to follow the decisions of the Supreme Court and I think we know that.

Mr. HARRIS. I agree with you that the attack on Judge Parker on that ground was unjustified. But the federation succeeded in blocking his confirmation to the Supreme Court and, as you say, he served for many years thereafter as a prolabor judge and if we can get both of the same two results here we will be happy. [Laughter.]

It takes a peculiar kind of man, inhibited by a special kind of baseness and meanness, to brag about and see humor in the destruction of an acknowledged man of worth. I do not believe the average American citizen would laugh at this sordid testimony. It recalls a passage from Louis Nizer's book "My Life in Court" wherein he discussed the efforts of defense attorneys to laugh down a slander suit in their closing arguments to the jury. As Mr. Nizer points out:

Such an approach, however, is subject to heavy counterfire. If it is possible to demonstrate that the facts have been ignored by the defendants and that they have toyed with the truth, their frivolous approach becomes calloused and offensive. That is why witty summations, which skirt the evidence, have short lives. As soon as they are subjected to analytical sunshine, they dry up. A jury will resent levity when the truth points to tragedy.

And so, Mr. President, I believe the average American, or the forgotten American of whom we have heard so much about of late, will find Mr. Harris' "frivolous approach calloused and offensive" and will resent his sick humor "when the truth points to tragedy." They will resent and feel outraged at Mr. Harris' view of the Parker nomination as they will at his tactics and motives in the Haynsworth nomination. The American people are not amused when an honorable and decent man is subjected to a campaign of slander and abuse as an example to other inferior judges and as a warning to anyone who stands in their way. I believe this is important because if there is any moral issue involved in the Haynsworth nomination, then this is surely it.

I could not state the moral issue which is involved here any more eloquently than was done in the Parker debates by Senator Frederick Huntington Gillett, of Massachusetts, former Speaker of the House of Representatives and noted statesman:

The Senator obviously was not here when I said, some time ago, that the fact that Judge Parker, as a judge of the inferior court, had submitted to the opinion of the Supreme Court, did not at all indicate that that was his opinion, and when he is on the Supreme Bench he might take an entirely different attitude. Now, as a member of the inferior court, he is bound by the decisions of his superiors. Then he will be one of the superiors himself and independently will help make the law.

Why, judges on the Supreme Court develop and change their opinions. I have in mind two very striking illustrations, which I do not think it would be proper for me to name, of judges who, in their course of service, showed a constant trend from their attitudes when they went on the bench, one gradually seeming to become much more conservative and the other appearing to become much more radical.

Such changes we ought to anticipate, and, indeed, we ought to hope of a judge that with his impressive associations and high responsibilities he will grow and develop.

It seems to me, from all I can learn of Judge Parker, that he exceptionally meets those requirements. I appreciate that a great practical argument is used against him How much it will influence Senators I do not know. From all over the country there have been showering in upon us letters and telegrams from organizations asking us to vote against him. That they will have weight, inasmuch as we are human and many of us candidates for reelection, is inevitable. But I should deeply regret that great organized bodies of voters should be encouraged to think that their selfish, interested wishes should decide who will go upon the Supreme Court rather than the qualifications of the candidate; that no man can be confirmed whose previous acts give them fear that he will decide cases according to his opinion of the law rather than according to popularity with them. That is a blow at the independence of the judiciary and it is a blow at the independence of the Senate.

Every lawyer or judge of an inferior court in the back of whose head lurks the not ignoble ambition that some day he may attain an eminence which will entitle him to be considered for that highest honor to a lawyer, a seat on the Supreme Court, ought not to have impressed upon his mind the suspicion, the degrading suspicion, that not talent and wisdom and courage will win the prize, but deference to the interested wishes of great organizations of voters; that the principles and conduct of the demagogue will unlock the door to the bench; and that the judicial ermine, as too often the political toga, is the reward of obedience to public clamor.

History continues to repeat itself and there are striking similarities between this controversy and the fight to stop the nomination of Judge Parker and Judge Brandeis. There is perhaps another moral issue to be drawn from these controversies. It is whether every young man who aspires to high office, whether in the world of the law or the world of politics, will necessarily conclude that the best avenue to advancement is to avoid controversy of every kind and nature, avoid every cause regardless of its merit, to drift with the tide as it ebbs and flows—in the words of Teddy Roosevelt "to take rank with those poor spirits who neither enjoy much nor suffer much because they live in the grey twilight that knows not victory nor defeat." If we are to open an era in which the politics of vendetta and reprisal are the order of the day, in which every man who has ever committed himself to any cause or idea can expect himself and his family to suffer slander and abuse of petty men, then our country will be the poorer for it and the quality of our public officials and our judges will be lower as the result of it.

This is the fear expressed by that great historian of the Senate, George H. Haynes, in his history of the U.S. Senate, wherein he commented on the significance of the Parker nomination as follows:

But the chief significance of the recent contests in the filling of vacancies upon the Supreme Bench lies not in the struggle between conservatism and liberalism, but in the group pressure which under the Senate's new procedure is likely to determine the fate of nominations. The nominee's entire record gets little chance for fair appraisal. It may prove a more difficult task in the future for the President to find strong men and able jurists, of the caliber of those who have built up the Supreme Court's prestige, who will allow their names to be placed in nomination, if they must first be subjected to an inquisition in committee hearings as to their past records, pertinent or not pertinent to Supreme Court service, as to their personal investments, and as to the opinions which they hold upon complicated and controverted economic and social questions likely to be involved in litigation before the Court, and then must have their nominations made the subject of bitter debate on the floor of the Senate, where racial, sectional, and political considerations may bulk so big that questions of the nominee's character and fitness are half forgotten. Yet it is upon the Senate's verdict as to the nominee's character and fitness that the nation's ultimate reliance must be placed.

Now, Mr. President, Judge Haynsworth's adversaries have sent investigators into South Carolina for weeks poring over this man's life and have investigated his every act with a vengeance. They have interrogated everyone in sight about his life as a man, his career as a lawyer and his tenure as a judge. They have relentlessly sought some incident in his personal or private life or some flaw in his character upon which to destroy him. They have pored over his tax returns, his financial records, the 300 or so cases in which he participated, and have interrogated him at length in search of something with which to discredit him.

And what have they found? Presenting the case against Judge Haynsworth

at its worst the Washington Post of October 9 said:

And so fairly or not, his has become the center of yet another nasty public row, which can do nothing good for the already tarnished reputation of the Supreme Court, however it may be resolved.

Based upon this specious argument the Post suggested that the nominee withdraw for the good of the Court and the country.

The junior Senator from Michigan was quoted in the Evening Star of October 8 as having concluded:

However unfair and however unjust, Judge Haynsworth is not free from suspicion.

The New York Times says:

None of his alleged misdeeds has turned out to be more than an unperceptive man's neglect in which there was neither profit nor, it would seem, the expectation of profit . . .

Another Senator, announcing his vote against confirmation, is quoted as saying:

I believe Judge Haynsworth is an honest man.

Another Senator is quoted as saying he will vote against Judge Haynsworth "in the firm belief that he is an honest judge who has not benefited personally or financially from any of his decisions."

Says another Senator:

However unfair and however unwarranted, Judge Haynsworth is not free from suspicion.

Many Senators announcing their intention to vote against the nominee have cited as their reason his insensitivity to appearances. No one thus far has suggested than any single act in this man's life has been improper, or has been done with the hope or expectation of personal profit or gain whatsoever. The individual views of several Senators acknowledge "that standard is a most exacting one and it is not necessarily a personal reflection on a nominee's accomplishments or integrity if the Senate should find that he fails to meet it." The individual views of another Senator acknowledge that "these views do not suggest that Judge Haynsworth decided cases in a manner designed to enhance his financial interest. Such a charge would be untrue."

And might I add, Mr. President, in my opinion had such a charge been at all reasonable, that charge would have been made.

And so, in a nutshell, the case against Judge Haynsworth, put in the very worst light, boils down to the charge that he has been insensitive to appearances.

Mr. President, I have been in the Senate for many years. I have listened to the arguments furnished on many matters of the most serious nature. But I have never heard the opponents of any nomination rest their case upon such a specious foundation. Had I not heard it, I would not have previously thought that any Senator would consider an argument worthy of the Senate's attention that says, in essence: "Fair or unfair, true or false, when a man is relentlessly attacked by selfish interest groups his nomination should be withdrawn or rejected for the sake of national unity."

The last time anyone had the nerve to present such an argument to the Senate was in the case of Louis D. Brandeis. And once again we seem to hear voices from the past. Listen to the words of Senator John D. Works stating his reasons for opposing the Brandeis nomination:

He had resorted to concealments and deception when a frank and open course would have been much better and have saved him and his profession from suspicion and criticism. He has defied the plain ethics of the profession and in some instances has violated the rights of his clients and abused their confidence. There is nothing in the evidence that leads me to think he has done these things corruptly or with the hope of reward. His course may have been the result of a desire to make large fees, but even this is not clear. He seems to like to do startling things and to work under cover. He has disregarded or defied the proprieties. It has been such courses as he has pursued that have given him the reputation that has been testified to, and it is not undeserved. It is just such a reputation as his course of dealing and conduct would establish in the minds of men. This reputation must stand as a strong barrier against his confirmation.

If it were Mr. Brandeis alone that is to be concerned, and it should be believed that this reputation is undeserved and unjust, it should have no weight; but the effect of such an appointment on the court is of much greater importance. To place a man on the Supreme Court Bench who rests under a cloud would be a grievous mistake. As I said in the beginning, a man to be appointed to the exalted and responsible position of justice of the Supreme Court should be free from suspicion and above reproach. Whether suspicion rests upon him unjustly or not his confirmation would be a mistake. It is argued against him that he is not possessed of the judicial temperament. There is just ground for this objection. As some of his friends said he is a radical, and for that reason he has offended the conservatives. That may be no cause of reproach but the temperament that has made him many enemies and brought him under condemnation in the minds of so many people would detract from his usefulness as a judge. . .

And consider the views of Senator W. E. Chilton, concurred in by Senator Duncan W. Fletcher:

It is suggested in the brief of counsel of the protestants that if a doubt shall be raised concerning the ethical conduct of the nominee, he should not be placed upon the Supreme Court. If that theory shall obtain, then it is possible, by a campaign of slander, to bar the best men and the best lawyers in the country from judicial office. I am not willing to indorse a campaign of slander, whether it was intended to be slander or not, when promulgated.

If after full investigation I find, as I do, that Mr. Brandeis is not guilty of the things charged against him by his enemies, then it is my duty to say so and to give him the benefit of a pure life and his upright conduct, regardless of the slander.

Also consider the views of Senator Thomas J. Walsh:

The testimony taken by the committee is voluminous. In the infinite multiplicity of the duties devolving upon Senators it is quite vain to hope that any considerable number, except those upon whom the burden of investigation has been directly imposed, will read it, all or read any of it.

Outside of the Senate opinion will be based in very small part upon anything more trustworthy than a resume of the evidence collected by the committee. . . .

It is not charged that he is corrupt, at least by any one not moved by reckless malevolence. The accusations, if they may be so called, relate entirely to alleged disregard of ethical standards in his professional relations. Singularly enough, there is very little opportunity for dispute in respect to the facts constituting the incidents which the committee deemed worthy of its notice.

There is wide divergence of view touching the significance of the facts disclosed. Interpreted by those bent on finding something to criticize or ready by prepossession to attribute discreditable motives to Mr. Brandeis, they assume a sinister aspect. Men of the highest character, frank admirers of that gentleman, who participated in the transactions in respect to which he is denounced, insist that his conduct was either irreproachable or altogether honorable. It is particularly important in this quite curious situation, in order to form a just estimate of the conduct and character of the nominee, to guard against the insidious influence of detraction and calumny.

It is said that it is to be regretted that any such controversy as this in which we are involved should arise over a nomination of a justice of the Supreme Court. So it is. But when it is said further that one might better be chosen over which no such bitter contention would arise, I decline to follow. It is easy for a brilliant lawyer so to conduct himself as to escape calumny and villification. All he needs to do is to drift with the tide . . .

As we saw in the Brandeis nomination, the exact argument was made by those seeking to bar him from the Court. And the same devastating rebuttal was offered in reply to them as I offer now in reply to those who fight this nomination.

In conclusion let us analyze the coalition of interests that have made common cause against this nomination. The labor bosses and their allies are against him because they say he is not prolabor. The Negro leaders and their allies say they are against him not because he is anti-Negro but because he has been reluctant to break new constitutional ground in their behalf as a circuit judge. Some are against him because of a sectional hatred that has divided our Nation and poisoned our national life throughout its history. A few—yet powerful and influential men—are against the nominee because they consider this seat as having been established by historical precedent as belonging to one religious faith and, thus regard the nominee as a trespasser and interloper. Still others oppose Judge Haynsworth to avenge Justice Fortas and settle a score, not realizing that vengeance breeds vengeance and the settling of one score opens new scores to be settled. Still others feel they must appear consistent with their opposition to Justice Fortas and find it easier to oppose Judge Haynsworth than to explain the differences in these two cases, even though by doing so they leave a stigma upon the reputation of a decent, honest man.

Now, Mr. President, as the vote on this nomination draws near I would like to recall a story recounted by a young Senator from Massachusetts in a book entitled "Profiles in Courage." This young Senator recounted how Lucius Q. C. Lamar, of Mississippi, was called upon to choose between political expediency and political popularity on a crucial Senate vote. Senator Lamar had even been directed by strongly worded resolutions of the State legislature to work for the

Bland Silver Act and the people of my State had flooded him with letters supporting that position. As the Senator from Massachusetts recounted in the book:

He felt that on this issue it was of particular importance that the South should not follow a narrow sectional course of action.

This young Senator then recounted the speech which Lamar made on the floor of the Senate in defense of his position. It was certainly one of the most powerful and courageous speeches this Chamber ever heard, but more than that, it sets the standard that every Senator should strive for. Senator Lamar said:

Mr. President, between these resolutions and my convictions there is a great gulf. I cannot pass it. . . Upon the youth of my state whom it has been my privilege to assist in education I have always endeavored to impress the belief that truth was better than falsehood, honesty better than policy, courage better than cowardice. Today my lessons confront me. Today I must be true or false, honest or cunning, faithful or unfaithful to my people. Even in this hour of their legislative displeasure and disapprobation, I cannot vote as these resolutions direct.

My reasons for my vote shall be given to my people. Then it will be for them to determine if adherence to my honest convictions has disqualified me from representing them; whether a difference of opinion upon a difficult and complicated subject to which I have given patient, long-continued, conscientious study, to which I have brought entire honesty and singleness of purpose, and upon which I have spent whatever ability God has given me, is now to separate us; . . . but be their present decision what it may, I know that the time is not far distant when they will recognize my action today as wise and just; and, armed with honest convictions of my duty, I shall calmly await the results, believing in the utterance of a great American that "truth is omnipotent, and public justice certain".

In conclusion, Mr. President, I ask that each Senator set a standard for himself which is no less than that which Senator Lamar set for himself. I therefore urge confirmation of this nomination.

Mr. BENNETT. Mr. President, when the clerk comes to my name on the question of approving the nominaton of Judge Clement F. Haynsworth to the Supreme Court, I will vote with a loud and clear "yea."

I cannot escape the feeling that there is a good deal of political maneuvering beyond the charges and countercharges made against the judge.

I think it is unfortunate that many of those leading the fight against Judge Haynsworth have not come forward to announce they are doing so because he is a southern conservative who just might help change the hitherto liberal-leaning makeup of the Supreme Court.

Another argument used against Mr. Haynsworth's confirmation has been the claim that he has voted against organized labor on several occasions, and therefore, should be disqualified from the Supreme Court. This is a disturbing argument. Are those who oppose him on these grounds saying indirectly that to qualify as a justice of the Supreme Court, a man must always have ruled a certain way? In this case it must be favorable to labor. Whatever happened to the time-honored doctrine of judicial balance and independence?

Equally disturbing is the fact that the antilabor bias charged to Judge Haynsworth has not been clearly established. It is bad enough to charge he is antilabor and thus give a special interest group a veto over a Supreme Court nomination, but to make the charge falsely is highly unfortunate. I strongly urge my colleagues in the Senate to reexamine the excellent and well-documented rebuttal of the AFL–CIO appraisal of Judge Haynsworth by Senators HRUSKA and COOK.

I take the liberty of citing again their very helpful and informative summary:

SUMMARY: JUDGE HAYNSWORTH'S LABOR RECORD—A REBUTTAL TO THE AFL–CIO APPRAISAL

I. *The Ten Supreme Court Reversals:* No objective evaluation can conclude that Judge Haynsworth is "anti-labor" as compared with the Supreme Court. Three of the cases involved changes of Congressional and/or Supreme Court policy *subsequent* to the Fourth Circuit's opinion. Two further cases were not "labor-management" cases. In one of the cases, the Supreme Court explicitly stated that its disagreement with the Fourth Circuit was "not large as a practical matter." In *none* of the reversals did the Supreme Court purport to reverse an "anti-labor" decision.

II. *The Divided Fourth Circuit Cases:* The AFL–CIO fails to mention one decision in which Judge Haynsworth dissented *in favor of the union.* The AFL–CIO *falsely labels* as "anti-labor" three cases in which the Fourth Circuit substantially *enforced* NLRB orders in favor of the Union, and four additional cases which are neutral decisions of procedure and evidence issues.

III & IV. *Judge Haynsworth's Undisclosed Pro-Labor Record:* The AFL–CIO completely fails to examine a large body of pro-labor cases in which Judge Haynsworth participated. These include at least *eight* pro-labor opinions *written* by Judge Haynsworth, and an *additional thirty-seven* pro-labor opinions in which Judge Haynsworth *concurred* but did not write an opinion.

The failure of the AFL–CIO to examine this aspect of Judge Haynsworth's labor record is inconsistent with their stated goal of obtaining an "objective" appraisal of Judge Haynsworth's labor views.

V. *The Fourth Circuit's Labor Record:* The suggestion that the Fourth Circuit, and Judge Haynsworth in particular, has consistently opposed the NLRB's efforts to secure worker's righte is demonstrably false.

The Fourth Circuit completely or substantially *enforced* 93 per cent of the NLRB petitions before it in 1968–69, as compared with only 81 per cent for all circuit courts during 1963–68.

I now turn to a few of the specific charges made against Judge Haynsworth by his opponents. To me, these show that opposition to the judge is a smokescreen. It has been argued that on November 13, 1963, the fourth circuit court voted 3 to 2, Haynsworth voting with the majority, to allow the Deering-Milliken Textile Corp. to close one of its plants to avoid unionization there. Because the judge had a one-seventh ownership interest in Carolina Vend-A-Matic Co., then doing $100,000 worth of business with Deering-Milliken, opponents claim he should have disqualified himself from the case. The answer to that charge is plain. Mr. Haynsworth had no duty to disqualify himself, and his role was cleared by his colleagues on the fourth circuit court and by the Justice Department. Even more amazing about the charge is that it fails to take into consideration the fact that Mr. Haynsworth, by voting with the majority, was actually voting against the economic interests of Carolina Vend-A-Matic. To close down the plant would have reduced the vending business available to the Carolina Vend-A-Matic Co.

Another charge was that Judge Haynsworth had committed his personal credit on behalf of Vend-A-Matic in amounts up to $501,987. It was alleged that some of this was done after he became a judge in 1957. The truth of the matter seems to be that Judge Haynsworth never endorsed more than $55,550 for Vend-A-Matic. This is quite a bit less than $501,987. Further, the credit endorsement occurred on February 19, 1957, before Mr. Haynsworth went on the bench, and not after.

Opponents have claimed that the judge had a conflict of interest in 1959 and again in 1961 in cases involving Cone Mills, which also did vending business with Vend-A-Matic.

This trade amounted to $97,367 in 1959, and $174,314 in 1961. Aside from the fact that Judge Haynsworth was not required by law or judical ethics to disqualify himself, it must have been a surprise to those making the charge to learn that in both cases Mr. Haynsworth voted against Cone.

Other charges against Judge Haynsworth included his decisions involving Kent Manufacturing Co. and the Monsanto Chemical Corp. In both cases, it was charged the judge had heard cases while having a related financial interest in the companies involved. Both charges were dropped and the smokescreen cleared a bit when opponents had to admit that the Kent Manufacturing Co. involved in the case was a Maryland fireworks firm and not the Kent Manufacturing Co. of Pennsylvania, which had a subsidiary doing business with Venda-A-Matic. Opponents were so careless in their charges about Monsanto, a company in which Mr. Haynsworth held stock, in that they claimed Monsanto was subsidiary of Olin Mathieson Co. The fact is that Monsanto and Olin are totally unrelated, as pointed out again by the distinguished Senator from Kentucky. Again, the smokescreen was diluted.

I now turn briefly to the question of integrity and judicial ethics. After all of the evidence was in and the hearings were completed, the American Bar Association Committee on the Federal Judiciary met again on October 12, 1969, and reaffirmed its confidence in the nominee. As also pointed out by Senators HRUSKA and COOK, all the other judges of the fourth circuit court of appeals have affirmed their complete faith and confidence in Judge Haynsworth's ability and integrity.

I accept the assessment of Judge Walsh of the ABA, who directly confronted the issue of whether or not Mr. Haynsworth should have participated in the Darlington case in 1963. Judge Walsh said:

We believe that there was no conflict of interest in the *Darlington* case which would have barred Judge Haynsworth from sitting, and we also concluded that it was his duty to sit.

Similar questions have been raised by opponents concerning the judge's participation in cases involving subsidiary companies in which he owned an interest. Why, they have asked, did he not avoid any kind of suspicion? Again the facts, as supplied by Senators HRUSKA and COOK, show that the "law requires that when a judge is not legally disqualified he must sit." As I understand the facts, Mr. Haynsworth was not legally disqualified in cases involving subsidiaries.

Mr. President, for myself, I am satisfied that Judge Haynsworth's record, actions, integrity, and honor are quite different than alleged by his opponents.

I call upon my Senate colleagues to reevaluate the available information.

Mr. METCALF. Mr. President——

The PRESIDING OFFICER (Mr. DOLE in the chair). The Senator from Montana.

Mr. METCALF. Will the Senator yield?

Mr. BENNETT. I am happy to yield to the Senator from Montana.

Mr. METCALF. In my discussion of Judge Haynsworth, I did not go into the question of ethics and disqualification very much. But I have sat on an appellate court, and I feel, and I ask the Senator from Utah whether he does not agree with me, that the canons of the bar association, which say that a judge should not only consider whether or not he is legally disqualified, but whether he has the appearance of disqualification, is the so-called sensitive area we are entering into.

We are not indicting Judge Haynsworth; we are not impeaching Judge Haynsworth; we are not prosecuting Judge Haynsworth. We are just asking, should this man, who has failed to react with sensitivity to the appearance of an interest, be elevated to the Supreme Court of the United States?

Mr. BENNETT. The Senator from Utah is not an attorney; therefore, he is not an authority on the canons of ethics of the bar. The Senator from Montana states he is not indicting the judge, and he is not doing a lot of other things to the judge. What is going on here reminds me of the old story of the fisherman who, having caught a fish, and the fish was squirming in his hands, said to him, "Don't worry, little fish. All I am going to do is gut you."

It seems to me that this proceeding is destroying Judge Haynsworth.

Mr. METCALF. We are not gutting Judge Haynsworth. We are not destroying him. I think that Judge Haynsworth can go back home and grow his camellias and, as chief judge of the fourth circuit, hand down his opinions for or against civil rights or for or against labor, as his conscience dictates. Nobody is criticizing that. We simply do not want to elevate him to the Supreme Court of the United States.

Mr. BENNETT. Does the Senator say he is not sufficiently sensitive, but he is perfectly willing to let him be insensitive on the fourth circuit court; that it requires a special kind of sensitivity for the Supreme Court?

Mr. METCALF. There is an appeal from the fourth circuit to the Supreme Court of the United States; but if we confirm his nomination we elevate him to a court from which there is no appeal.

Mr. BENNETT. This will not be the first time that a man has sat on the Supreme Court whose sensitivity has been questioned in this body.

Mr. METCALF. There is no question about that. I am grateful to the Senator for yielding.

Mr. BENNETT. I am happy to yield. But the Senator from Utah, for one, does not feel that this judge is so insensitive that this opportunity should be denied him.

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

Mr. BENNETT. I yield.

Mr. COOK. Mr. President, I was very interested in the question just asked, because, as Members of the Senate, we create the laws by which these judges must sit.

Mr. BENNETT. The Senator is correct.

Mr. COOK. And we sit here and talk about insensitivity and talk about the understanding that determines what we must do. Does not the Senator feel that we as Senators have an obligation to put into operation the theories or suggestions that we might have?

Mr. BENNETT. That is our obligation and duty.

Mr. COOK. Mr. President, I should like to read to the Senate what the law is, because I was interested in the question just asked.

The law states:

> Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest.

There are those that say that this insensitivity should go to any interest at all. Yet, that is not the law. Does the Senator agree?

Mr. BENNETT. Mr. President, as I have indicated, I am not a member of the bar. So my impression is that of a layman.

Mr. COOK. Mr. President, I was interested in the question asked by the Senator from Montana because somehow or other the code of judicial ethics applies to Judge Haynsworth, but the law established by the Congress of the United States does not when it seems to fit their convenience.

I raise that point with the distinguished Senator because we talk about insensitivity and when we discuss the impartiality that is supposed to be exhibited by a judge. I listened intently to the remarks of the distinguished Senator from Montana the other day, and he discussed this very thing, the fact that there must be this impartiality, that he must sit and not show any partiality whatsoever. However, the only thing that was wrong in the judgment of the Senator from Montana was that in the eyes of the Senator from Montana, Judge Haynsworth was an antilabor judge and reflected it in decisions.

The only thing I reiterate to the Senator from Utah is that we seem to be getting into the situation in the minds of some Senators of the old preacher who had two wives. He lost one and then married another one. He wrote in his will, "Bury me between them, but if you don't mind, tip me a little toward one of them."

When we discuss the question of sensitivity, I wonder if we are willing to make a judgment based on the law or on some other means.

Mr. BENNETT. Mr. President, the Senator from Utah feels a little like a tennis ball in a match.

Mr. METCALF. Mr. President, will the Senator lean this way a moment?

Mr. BENNETT. Mr. President, I will yield a minute and then will finish my statement.

Mr. METCALF. Mr. President, the only point is that if the question involved the impeachment of the judge, the reading of the law would be the only thing I would be concerned with. I would certainly concur with the distinguished Senator from Kentucky. However, we have canons of judicial ethics, and we have other criteria that are above and beyond and over the law. And those canons of judicial ethics are the criteria for the determination of whether a judge has the excellence and the superiority that should elevate him to be one of the nine members of the Supreme Court. One of the canons involves the avoidance of impropriety. And this is the canon that Judge Haynsworth has failed to observe. And this is the canon concerning which, when I outlined my discussion of labor law, I said that a labor man would look at the 10 rulings against labor and none on the other side and say, "Well, here is a man who has not avoided impropriety."

This is the distinction I am trying to make.

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

Mr. BENNETT. Mr. President, this is the last shot and then the game is over.

Mr. COOK. Mr. President, if the Senator from Montana is saying that the judge lacked propriety in the minds of a labor man because 10 decisions went to the Supreme Court of the United States from his court and were reversed, then I must confess that I am rather surprised.

Mr. METCALF. Ten decisions of Judge Haynsworth.

Mr. COOK. Mr. President, I think when we do this, we must evaluate not only his record in the Supreme Court, but also his record at the fourth district level. And if we do not take both of them and look at the overall record, we would be doing any man a tremendous injustice, whether this judge or any other judge.

That is the problem involved in the whole matter.

Mr. METCALF. Mr. President, I thank the Senator from Utah for yielding.

Mr. BENNETT. Mr. President, I realize that other Senators have not spoken and would like to have their turn. I would like to finish my speech and get out of their way as quickly as possible.

Mr. President, to return to my speech, I call upon my colleagues to reevaluate the available information. Let us not make the mistake of judging his nomination on the basis of the initial charges, several of which were admitted to be in error. Let us refrain from calling Judge Haynsworth "antilabor" when the facts show this to be a false accusation. Let us refuse to grant a veto over Supreme Court nominations to the AFL–CIO and other special interest groups. Let us re-

fuse to sacrifice the time-honored principle of judicial independence upon the narrow philosophical ground that says to be appointed to the Supreme Court one must have voted a particular way. Let us refuse to entertain the hollow argument that because the Supreme Court overruled certain opinions by the fourth circuit court in which Judge Haynsworth participated, he is unfit to serve.

At this point, I am led to observe that propriety, like beauty, lies in the eyes of the beholder.

Following this unreasonable logic—and that does not refer to the statement I just made—certain Supreme Court Justices who are often overruled by the majority are also not fit to serve simply because they thought differently on a particular legal issue.

I suppose we should impeach the four Associate Justices of the Court who have frequently dissented in several recent criminal law cases decided by 5 to 4 majority votes. By this same reasoning, I suppose those Senators who are often found voting in the minority are also not fit to serve in this body.

This line of reasoning could go on indefinitely, but it shows, I think, the absurdity of the argument that because some Haynsworth opinions were reversed by the Supreme Court, he is unqualified to sit on that Court.

I am sure many are tempted to draw a comparison between Mr. Haynsworth and the Justice Fortas situation. Since Mr. Fortas is not really an issue here, I will not go into the details of that matter. I would, however, like to draw a brief comparison. When certain actions of Mr. Fortas were questioned, he chose to resign from the Supreme Court rather than explain them. In contrast, Judge Haynsworth has carefully and painstakingly opened his public and private record for the unprecedented scrutiny to which it has been subjected. Seldom has a public servant gone so far in defending his good name and his honor. As far as I am concerned, Mr. President, the Haynsworth record is a good one and certainly justifies Senate approval as an Associate Justice of the Supreme Court. In fact, I feel his qualifications are even better than I had earlier supposed, due to the information which has been presented to refute the unfair and inaccurate attacks, accusations, and smokescreen directed at him.

One final comment, Mr. President. I remain convinced that the Senate should vote for this nomination on its merits. I could follow the mail which I have received from Utah which is running heavily in favor of Judge Haynsworth. However, I came to my present position long before the people of Utah began to react to this matter.

On the other side of the coin, I do not consider a recent mail inquiry to five trial lawyers in the State of Utah a valid measure of the legal opinion in my State or a fair sampling of public opinion generally.

Mr. President, I shall vote to confirm the nomination of Clement F. Haynsworth to be an Associate Justice of the Supreme Court of the United States, and hope that enough of my colleagues in the Senate will join me so that the career that he has had and served with distinction in the fourth circuit may continue in the Highest Court of the land.

Mr. SPONG. Mr. President, earlier in the debate I outlined my views of the role of advise and consent with regard to nominations to the Supreme Court. I stated that I do not believe we should base confirmation or rejection upon how a judge may have ruled in certain cases in which he participated. Also, that preconceived ideas of a man's philosophical, social, and political views are an uncertain basis upon which to predict how one will perform as a Supreme Court Justice. History has demonstrated this.

I believe our examination of a nominee should be limited to his qualifications, background, experience, integrity, and temperament. Demonstrated bias toward anyone in the course of judicial performance, however, goes directly to a nominee's fitness. Lack of prejudice is essential to our very concept of justice.

Earlier this week, the statement of G. W. Foster, Jr., professor of law at the University of Wisconsin, beginning at page 602 of the hearings on the nomination of Clement F. Haynsworth, Jr., was made a part of the record of these debates. Professor Foster has had intimate connection with the formulation of HEW standards, as well as long experience in interpreting judicial decisions involving desegregation of schools. It is appropriate that his views should have been made a part of this debate. His statement to the committee ended as follows:

To sum up: Judge Haynsworth is an intelligent, sensitive, reasoning man. He does not fit among that small handful of front-running federal judges who have consistently made new law in the racial area. He has earned a place, however, among those who serve in the best tradition of the system as pragmatic, open-minded men, neither dogmatic nor doctrinaire. His decisions, including those in the racial area, have been consistent with those of other sensitive and thoughtful judges who faced the same problems at the same time. And it simply cannot be said that his record in the racial field marks him as out of step with the directions of the Warren Court.

Thus the question for me is not whether I would have made another nomination for the Supreme Court. It is rather the question whether Judge Haynsworth possesses the qualities required to become a fine Justice of the Supreme Court. My view is that he will make a first-rate Associate Justice.

I hope this Committee—and later, the Senate itself—will support the nomination of Judge Clement Haynsworth to the Supreme Court of the United States.

A statement was also submitted to the Judiciary Committee by Charles Alan Wright, professor of law at the University of Texas. This statement, in my judgment, is a brilliant and detailed analysis of much of Judge Haynsworth's judicial career.

I ask unanimous consent that the statements of Charles Alan Wright, beginning on page 591 and ending at page 602 of the hearings before the Judiciary Committee on Judge Haynsworth's nomination, be printed in the RECORD and made a part of this debate.

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

STATEMENT OF CHARLES ALAN WRIGHT

My name is Charles Alan Wright. I am Charles T. McCormick Professor of Law at The University of Texas. I come to support the nomination of Judge Haynsworth to the Supreme Court.

For more than twenty years my professional specialty has been observing closely, and teaching and writing about, the work of federal courts. From 1950 to 1955 I was a member of the faculty at the University of Minnesota Law School and I have been at The University of Texas since that time. I was a visiting professor at the University of Pennsylvania Law School in 1959–60, at the Harvard Law School in 1964–65, and at the Yale Law School in 1968–69. I regularly teach courses in Federal Courts and in Constitutional Law, a seminar in Federal Courts, and a seminar on the Supreme Court. Since 1964 I have been a member of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States and prior to that time was a member of the Advisory Committee on Civil Rules. I was Reporter for the recently-completed Study of Division of Jurisdiction between State and Federal Courts made by the American Law Institute.

My writings include a seven-volume revision of the Barron and Holtzoff Treatise on Federal Practice and Procedure. That set of books is now being supplanted by a new treatise on the same subject. Publication of the new treatise began in February of this year with my three volumes on criminal practice and procedure, and the first of the volumes on civil litigation, which I am writing in collaboration with Professor Arthur R. Miller, was published in April. In addition I am the author of a one-volume hornbook, *Wright on Federal Courts*, a second edition of which is now at the publisher's, and, in collaboration with two others, am the author of the Fourth Edition of *Cases on Federal Courts*.

With this professional interest, and with these writing commitments, I necessarily study with care all of the decisions of the federal courts, and inevitably form judgments about the personnel of those courts. We are fortunate that federal judges are, on the whole, men of very high caliber and great ability. Among even so able a group, Clement Haynsworth stands out. Long before I ever met him, I had come to admire him from his writings as I had seen them in *Federal Reporter*.

Some of the criticisms of Judge Haynsworth that I have read in the press seem to me to fail to take into account the difference between the role of a Justice of the Supreme Court and that of a judge of an inferior court. In the first place, the nature of the work is different. The Supreme Court today is necessarily a public law Court, with almost all of its time devoted to momentous cases involving the interpretation and application of the Constitution and the statutes of the United States. In a court of appeals, such as the Fourth Circuit, there is much more private litigation, of interest only to the parties in the case, and many more cases of a kind that the Supreme Court rarely reviews, such as the construction of a particular patent, award of compensation in an eminent domain proceeding, the niceties of the Bankruptcy Act, sufficiency of the evidence in a personal injury case, and the meaning of state law in a diversity case. To form a judgment about Judge Haynsworth based only on his opinions in the comparatively few cases in which he has participated that are of the sort he is likely to hear on the Supreme Court is to ignore the vast body of his work and thus to risk forming a mistaken impression of his judicial qualities and of his conception of the role of a judge. To avoid falling into that same error myself, I have gone back in the last several weeks and looked at every opinion in which he has participated, opinions cover-

ing a span of 12 years and 167 volumes of *Federal Reporter*.

Second, it must be remembered that the function of a lower court judge is to apply the law as the Supreme Court has announced it, except for those rare instances in which there is solid reason to believe that the Supreme Court itself would no longer adhere to an old decision. He cannot disregard an authoritative Supreme Court precedent no matter how deeply he may feel that the highest tribunal has erred. At the same time, as Learned Hand once observed, he must be slow to embrace "the exhilarating opportunity of anticipating a doctrine which may be in the womb of time, but whose birth is distant * * *." [*Spector Motor Service* v. *Walsh*, 139 F. 2d 809, 823 (2d Cir. 1944) (dissenting opinion).] The example of John J. Parker shows what a tragic mistake it can be to suppose that the opinions of a conscientious and law-abiding lower court judge necessarily reflect his own understanding of the Constitution and the laws. Even those who think, as I emphatically do not, that it is proper to assess a judge on the basis of whether the results he has reached are in accord with one's own preferences should be careful, in reviewing the record of a lower court judge, to consider particular results in the context of what the law, as the Supreme Court had announced it, was at the time the case came down.

Let me give one example of the point I have just made. In 1960 Judge Haynsworth joined with Judges Sobeloff and Boreman in a short per curiam opinion. A plaintiff was arguing that state law denying an illegitimate child the right to inherit from his father was a denial of the equal protection of the laws to illegitimate persons. The court said that this argument was "so manifestly without merit" that it did not present a substantial federal question and the federal courts had no jurisdiction. [*Walker* v. *Walker*, 274 F. 2d 425 (4th Cir. 1960).] The decision seems strange, and probably wrong, when read today. In the light of the Supreme Court's decision that it is a denial of equal protection to refuse to allow an illegitimate child to recover for the wrongful death of its mother, the argument made to the Fourth Circuit in 1960 today certainly presents at the least a substantial federal question. But the Supreme Court decision did not come down until 1968 [*Levy* v. *Louisiana*, 391 U.S. 68 (1968)], and it is difficult to criticize lower court judges for failing to anticipate, eight years in advance, a Supreme Court decision that, when it finally came down, was criticized by three members of the Supreme Court as a "constitutional curiosit[y]" achieved only by "brute force." [*Id.* at 76.] I suggest the same point is equally applicable in other areas of the law.

There are judges who have been great essayists. We remember persons such as Justice Cardozo and Judge Learned Hand as much for their contributions to literature as for their contributions to law. Judge Haynsworth is not of this number. Very rarely does he indulge himself in a well-turned epigram or in quotable rhetoric. Instead his opinions are direct and lucid explanations of the process by which he has reached a conclusion. He faces squarely the difficulties a case presents but he resists the temptation to speculate about related matters not necessary to decision. There is one case in which, though affirming a decision, he wrote for more than a page about the "slovenly practices in offices of District Attorneys which come to our attention much too frequently" in connection with the drafting of indictments [*United States* v. *Roberts*, 296 F. 2d 198, 201–202 (4th Cir. 1961)], but in this instance he was expressly authorized to speak for all of the judges of the Fourth Circuit, and not merely those on the panel, and the warning he uttered was a useful one in reducing the opportunity for attack in future criminal cases.

On reading Judge Haynsworth's opinions I am reminded as Justice Jackson's classic advice to district judges about Judge Learned Hand and his cousin, Judge Augustus Hand. Justice Jackson said; "Always quote Learned and follow Gus." [Quoted in Clark, *Augustus Noble Hand*, 68 HARV.L.REV. 1113, 1114 (1955)]. If Judge Haynsworth's opinions are not quotable, they are easy to follow.

It would be very hard to characterize Judge Haynsworth as a "conservative" or a "liberal" —whatever these terms may mean—because the most striking impression one gets from his writing is of a highly disciplined attempt to apply the law as he understands it, rather than to yield to his own policy preferences. Thus in one case he felt compelled to hold that sovereign immunity barred any relief for a wrong committed by the National Park Service. In doing so, he wrote: "If some of us, appraising the policy considerations, were inclined to assign a more restricted role to the doctrine of sovereign immunity in this area, we could not follow our inclination when the Supreme Court, clearly and currently, is leading us in the other direction." [*Switzerland Co.* v. *Udall*, 337 F. 2d 56, 61 (4th Cir. 1964).] When the Board of Supervisors of Prince Edward County made midnight disbursements of tuition grants so that the money would be gone before the Fourth Circuit had an opportunity to rule on the legality of this action, Judge Haynsworth thought that their conduct was "unconscionable" and "contemptible," but, unlike the majority of his court, he could not find it "contemptous and punishable as such" since they had violated no court order in distributing the funds. [*Griffith* v. *County School Board of Prince Edward County*, 363 F. 2d 206, 213, 215 (4th Cir. 1966) (dissenting opinion).] Many lawyers would agree.

Judge Haynsworth shows a considerable respect for precedent, and has felt bound by decisions that he thought incorrect [*Eaton* v. *Grubbs*, 329 F. 2d 710, 715 (4th Cir. 1964)], but he insists that precedents be used with discrimination. In his first dissenting opinion he objected that the majority had applied language of other cases out of context and said "at least, if disembodied language is to be applied to a dissimilar question, it should not be regarded as controlling." [*Cooner* v. *United States*, 276 F. 2d 220, 238 (4th Cir. 1960) (dissenting opinion). See also *United States* v. *Bond*, 279 F. 2d 837, 848 (4th Cir. 1960) (dissenting opinion).] In a well-known later case he objected to the majority's reliance on the old and discredited rule that law officers may seize contraband or the instrumentalities of a crime but may not seize evidence of the crime, saying that "the language the Supreme Court has employed must be read in the light of what it has held." [*Hayden* v. *Warden, Maryland Penitentiary*, 363 F. 2d 647, 657 (4th Cir. 1966) (separate opinion).] He went on to make the argument that since the standards for use of confessions are being stiffened, the police must rely increasing on scientific investigation of crime, and that they cannot do this if they are denied access to evidence that may be subjected to scientific analysis. The view he took there was vindicated when the case reached the Supreme Court, and that Court discarded the "mere evidence" rule. [*Warden, Maryland Penitentiary* v. *Hayden*, 367 U.S. 294 (1967).]

In another case he held, contrary to an old Supreme Court decision, that habeas corpus would lie to attack a sentence that the prisoner was to serve in the future. He said: "This Court, of course, must follow the Supreme Court, but there are occasional situations in which subsequent Supreme Court opinions have so eroded an older case, without explicitly overruling it, as to warrant a subordinate court in pursuing what it conceives to be a clearly defined new lead from the Supreme Court to a conclusion inconsistent with an older Supreme Court case." [*Rowe* v. *Peyton*, 383 F. 2d. 709, 714 (4th Cir. 1967).] His prediction that the old case was so eroded that it would no longer be followed was proved accurate when the Supreme Court unanimously affirmed his decision. [*Peyton* v. *Rowe*, 391 U.S. 54 (1968).]

In that same habeas corpus case he showed, as he has throughout his judicial career, an awareness that law is not static and that changing times may require different solutions for problems. He pointed out how the nature of habeas corpus has changed since the Great Writ was first developed and said: "The problem we face simply did not exist in the Seventeenth Century. Now that recently it has arisen, if there is a substantive right crying for a remedy, it seems most inappropriate to approach a solution in terms of a Seventeenth Century technical conception which had no relation to the context in which today's problem arises." [383 F. 2d at 713–714.] This has been a consistent theme in Judge Haynsworth's opinions. In his first year on the bench, in a case holding that a medical examiner's certificate showing the percentage of alcohol in a defendant's blood was admissible, he wrote that the Confrontation Clause of the Sixth Amendment was not intended "to serve as a rigid and inflexible barrier against the orderly development of reasonable and necessary exceptions to the hearsay rule." [*Kay* v. *United States*, 255 F. 2d 476, 480 (4th Cir. 1958). Only last year, in an important opinion for his court adopting a new test of insanity, he emphasized the need for "judicial reassessment of notions too long held uncritically and of a verbal formalism too long parroted." [*United States* v. *Chandler*, 393 F. 2d 920, 925 (4th Cir. 1968).

The same respectful but discriminating approach Judge Haynsworth shows in the use of precedents is evident when the problem is one of construing a statute. He does not make a fortress of the dictionary. He insists, instead, on construing statutes in a fashion that will "effectuate the apparent purpose and intention of the Congress" [*Crosse & Blackwell Co.* v. *F.T.C.*, 262 F. 2d 600, 605 (4th Cir. 1959), and has refused "to adopt a literal interpretation of this statute without regard to its purpose or the extraordinary result to which it would lead." [*Alvord* v. *C.I.R.*, 277 F. 2d 713, 719 (4th Cir. 1960). See also *Baines* v. *City of Danville*, 377 F. 2d 579, 593 (4th Cir. 1965), *affirmed*, 384 U.S. 590 (1966).]

Another consistent theme in Judge Haynsworth's writings is his belief that it is not the function of an appellate court to make findings of fact. Both in civil and in criminal cases he shows great faith in the jury system. In an extremely important decision earlier this year he said that "faith in the ability of a jury, selected from a cross-section of the community, to choose wisely among competing rational inferences in the resolution of factual questions lies at the heart of the federal judicial system." [*Wratchford* v. *S. J. Groves & Sons Co.*, 405 F.2d 1061, 1065 (4th Cir. 1969).] This is merely the latest expression of an attitude he has had as long as he has been on the bench. [See, *e.g.*, *Dixon* v. *Virginia Ry. Co.*, 250 F.2d 460, 462, (4th Cir. 1957).] He has been quick to hold that there must be a new trial if there was any possibility that an improper influence might have been brought to bear on the jury. [*Holmes* v. *United States*, 284 F.2d 716 (4th Cir. 1960); *Thomas* v. *Peerless Mattress Co.*, 284 F.2d 721 (4th Cir. 1960); *United States* v. *Rogers*, 289 F.2d 433 (4th Cir. 1961); *United States* v. *Virginia Erection Corp.*, 335 F.2d 868 (4th Cir. 1964).] Long before the Supreme Court came to a similar conclusion [*Burton* v. *United States*, 391 U.S. 123 (1968), he showed a proper skepticism about the efficacy of instructions cautioning a jury that a confession is admissible against one defendant but not against another and called for the routine adoption of practices that would give

greater protection to the codefendant. [*Ward* v. *United States*, 288 F.2d 820 (4th cir. 1960).] He has recognized, too, that jurors can be swayed by prejudice, and has held that when Negro defendants were on trial counsel must be given an opportunity to explore whether any members of the jury panel belonged to organizations that might suggest prejudices against Negroes. [*Smith* v. *United States*, 262 F.2d 51 (4th Cir. 1958).]

The jury occupies a significant constitutional role in our system, but even when it is a judge rather than a jury who has found the facts, Judge Haynsworth has thought that great weight should be given to the findings and that the appellate court should not substitute its own view of the facts for that taken by the district judge. [*Hall* v. *Warden, Maryland Penitentiary*, 313 F.2d 483, 497 (4th Cir. 1963) (dissenting opinion); *United States* v. *Ellicott*, 336 F.2d 868, 872–874 (4th Cir. 1964) (dissenting opinion).]

Finally, Judge Haynsworth respects the place of the states, and of the state judiciaries, in our form of government. Indeed he has been reversed by the Supreme Court for deferring too much to the state courts. [*Griffin* v. *Board of Supervisors of Prince Edward County*, 322 F.2d 332 (4th Cir. 1964), *reversed*, 377 U.S. 218 (1964).] At the same time he has insisted on the independence of the federal courts. In an important decision he wrote that a state may not "deny the judicial power the states conferred upon the United States when they ratified the Constitution or thwart its exercise within the limits of congressional authorization." [*Markham* v. *City of Newport News*, 292 F.2d 711, 713 (4th Cir. 1964).] This was in keeping with his voiced "concern for the perpetuation of an independent federal judicial system * * *." [*Wratchford* v. *S. J. Groves & Sons Co.*, 405 F.2d 1061, 1966 (4th Cir. 1969).]

History teaches us that it is folly to suppose that anyone can predict in advance what kind of a record a particular person will make as a Justice of the Supreme Court. The awesome and lonely responsibility that the Justices have in considering the great issues that come before them has made them, in many instances, different men than they were before. All that one can properly undertake, in assessing a nominee to that Court, is to consider whether he has the intelligence, the ability, the character, the temperament, and the judiciousness that are essential in the important work he will be called upon to perform. Clement Haynsworth has shown in twelve years on the circuit court bench that he possesses all of these qualities in great measure. I hope that he will be quickly confirmed.

Thank you.

SUPPLEMENTAL STATEMENT OF CHARLES ALAN WRIGHT

On September 3d I sent to the Judiciary Committee copies of the prepared text of the testimony I expected to give in the hearing then scheduled for September 9th. The postponement of the hearing because of the regrettable death of Senator Dirksen and the delay in my own appearance before the Committee has made it possible for me to give further study to the cases in which Judge Haynsworth has participated and analyze in closer detail his philosophy in particular areas of the law to the extent that this is disclosed by his votes and his opinions. My attention has centered on the areas of criminal procedure and freedom of expression.

I continue to believe, as my original statement indicates, that it is impossible to know in advance what the voting record will be of any appointee to the Supreme Court and that it is especially treacherous to attempt to make such an advance assessment on the basis of what a man has done as a judge of a lower court prior to appointment to the Supreme Court. On many issues the record will be silent simply because the lower court judge has never been confronted with those issues. For one example, the meaning of the Establishment and Free Exercise Clauses of the First Amendment has never, so far as I can find, come up in any case in which Judge Haynsworth has participated. There are other important areas of the law of which this is equally true. Even where a lower court judge has been confronted with a particular issue he has done so as a judge writing within the framework of relevant Supreme Court decisions and not as a free agent.

For these reasons the remarks that follow are a description of the record of Judge Haynsworth. They are not an attempt to predict the record of Justice Haynsworth.

Few, if any, areas of the law are the subject of more controversy today than that of criminal procedure. It is an area of special interest to me because, as I noted in my original statement, earlier this year I published a three-volume treatise on federal criminal procedure. In the Preface to that treatise I said: "I freely confess to one bias. I admire and respect the Supreme Court of the United States." [1 Wright, *Federal Practice and Procedure: Criminal* viii (1968).] It is with that bias that I reviewed the criminal cases in which Judge Haynsworth has participated.

The overall impression that I get from these cases is that of an intensely practical approach to criminal procedure. This approach is hardly surprising in a judge who has expressed in many ways and in many contexts the thought that "Theoretical abstractions are of no help. Our conclusion must be founded upon practical considerations." [*United States* v. *Southern Ry. Co.*, 341 F. 2d 669, 671 (4th Cir. 1956).] Judge Haynsworth has been in the vanguard, often ahead of the Supreme Court, in protecting persons accused of a crime against any tilting of the scales of justice that might lead to the conviction of an innocent man. At the same time he has been reluctant to set free a person who is undoubtedly guilty because of some minor imperfection, saying that this is "too high a price to pay for indulgence of a sentimentalism." [*United States* v. *Slaughter*, 366 F. 2d 833, 847 (4th Cir. 1966) (dissenting opinion).] Let me give illustrations of the cases that have led me to these conclusions.

One area of potential abuse in criminal procedure, in which there is a very real danger of convicting the innocent, is where several defendants are tried at the same time. There is substantial risk that the guilt of one defendant will rub off on another and that the jury will not make an independent evaluation of the evidence against each defendant.

In 1968 the Supreme Court reduced a part of this risk when it ruled that two defendants cannot be tried together if one has made a confession implicating the other unless precautions have been taken to protect the right of confrontation of the defendant who has not confessed. [*Bruton* v. *United States*, 391 U.S. 123 (1968).] Eight years before that decision Judge Haynsworth had written of the need for precautions of this kind and had said that "in the normal case, such a precaution should be taken routinely." [*Ward* v. *United States*, 288 F. 2d 820, 823 (4th Cir. 1960).] Even prior to that case Judge Haynsworth had concurred in one of the leading opinions on joinder of defendants, *Ingram* v. *United States* [272 F. 2d 567 (4th Cir. 1959).] The holding in *Ingram* is that joinder of defendant is not permissible unless the requirements of the Rules of Criminal Procedure on joinder are satisfied, and that "it is not 'harmless error' to violate a fundamental procedural rule designed to prevent 'mass trials.'" [*Id.* at 570–571.] The *Ingram* decision seems to me demonstrably sound and I regret that the Second Circuit, in an opinion by Judge Friendly, has reached a contrary result [*United States* v. *Granello*, 365 F. 2d 990 (2d Cir. 1966). See 1 Wright, Federal Practice and Procedure: Criminal 327–329 (1969).]

The right to a speedy trial is one of the important protections in criminal procedure, secured by the Sixth Amendment. For many years this right had been effectively denied to many defendants because the cases held that a state was under no obligation to try a defendant who was in a federal prison or the prison of another state on some other charge. The Supreme Court announced a different rule earlier this year, in a case in which I had the honor to be appointed by the Court as counsel for the indigent prisoner. [*Smith* v. *Hooey*, 393 U.S. 374 (1969).] It ruled that a state must make a good faith effort to have a defendant confined elsewhere returned for trial on the charges pending in the state. Judge Haynsworth had joined in an opinion a year earlier anticipating the result the Supreme Court was later to reach [*Pitts* v. *North Carolina*, 395 F. 2d 182 (4th Cir. 1968)], and only a few days before the Supreme Court decision he wrote the opinion for an en banc court liberalizing the use of habeas corpus, despite some serious technical difficulties, in order to provide a remedy for state prisoners who wish to enforce their right to be tried by another state. [*Word* v. *North Carolina*, 406 F. 2d 352 (4th Cir. 1969).]

This term the Supreme Court also put teeth in the requirements of Criminal Rule 11 with regard to guilty pleas, by holding that the judge must personally address the defendant and determine that the plea is being made voluntarily and with an understanding of the nature of the charge. [*McCarthy* v. *United States*, 394 U.S. 459 (1969).] This came as no new doctrine in the Fourth Circuit, where the court, speaking through Judge Haynsworth, has long recognized a similar doctrine and held that Rule 11 "requires something more than conclusionary questions phrased in the language of the rule. It contemplates such an inquiry as will develop the underlying facts from which the court will draw its own conclusion." [*United States* v. *Kincaid*, 362 F. 2d 939, 941 (4th Cir. 1966).]

One of the major decisions of the final decision day of the Warren Court was *North Carolina* v. *Pearce* [395 U.S. 711 (1969)], severely restricting the power of a judge to give a defendant who has had a first conviction set aside a more severe sentence after a second conviction on the same charge. The decision there affirmed by the Supreme Court was one in which Judge Haynsworth had joined [*Pearce* v. *North Carolina*, 397 F. 2d 253 (4th Cir. 1968)], and indeed another decision in which he concurred, holding that the same rule applies even when the second sentence is imposed by a jury rather than by a judge [*May* v. *Peyton*, 398 F. 2d 476 (4th Cir. 1968)], speaks to a question on which the Supreme Court is still silent and may well go beyond what the Supreme Court will require.

Judge Haynsworth's concern for the sentencing process is evident in still another case. The usual rule is that an appellate court may not consider the length of a sentence provided that it is within statutory limits. The Senate has passed a bill that would change this rule but to date it remains the rule. It would seem to follow that the length of a sentence within statutory limits may not be challenged collaterally by a motion under 28 U.S.C. § 2255. But the Fourth Circuit, in an opinion in which Judge Haynsworth joined, held that this rule must yield where there are exceptional circumstances, and that there were such circumstances, and § 2255 relief was available, where the judge had given the maximum sentence authorized by statute under the mistaken impression that he had no discretion to give a lesser sentence. [*United States* v. *Lewis*, 392 F. 2d 440 (4th Cir. 1968).]

In 1966 the Fourth Circuit, sitting en banc, held unanimously that the method by which the police had had the victim of a crime identify the voice of a suspect was so suggestive that to allow evidence of the identification into evidence was a denial of due process. [*Palmer* v. *Peyton*, 359 F.2d 199 (4th Cir. 1966).] That decision was cited approvingly by the Supreme Court a year later [*Stovall* v. *Denno*, 388 U.S. 293, 302 (1967)], and the Court has subsequently set aside a conviction on this ground. [*Foster* v. *California*, 394 U.S. 440 (1969).]

Judge Haynsworth has taken a generous view of the right to bail. Years ago he joined in an opinion holding that "normally bail should be allowed pending appeal, and it is only in an unusual case that denial is justified." [*Rhodes* v. *United States*, 275 F.2d 78, 82 (4th Cir. 1960).] More recently he wrote an opinion holding, over vigorous dissent, that a federal court had properly released Rap Brown on his own recognizance from state custody on an extradition warrant. [*Brown* v. *Fogel*, 387 F.2d 692 (4th Cir. 1967).]

Judge Haynsworth has detected violations of due process both where counsel was not provided an indigent for more than three months after his arrest [*Timmons* v. *Peyton*, 360 F.2d 327 (4th Cir. 1966)], and where defendant was brought to trial three and a half hours after indictment and there was insufficient time for appointed counsel to investigate the case. [*Martin* v. *Commonwealth*, 365 F.2d 549 (4th Cir. 1966).] He also voted to grant habeas corpus on the ground that the prosecuting attorney in a state case had had a conflict of interest since at the same time he was prosecuting the defendant he represented the defendant's wife in a divorce proceeding. [*Ganger* v. *Peyton*, 379 F.2d 709 (4th Cir. 1967).]

One of Judge Haynsworth's opinions reverses a criminal conviction because the judge had given an unbalanced version of the "Allen charge"—or "dynamite charge" as it is known in my part of the country. [*United States* v. *Smith*, 353 F.2d 166 (4th Cir. 1965). See also *United States* v. *Rogers*, 289 F.2d 433 (4th Cir. 1961).] The case is particularly interesting because there had been no objection to the charge in the district court, as is normally required for the appellate court to consider the point, but the danger that even the pure "Allen charge" will coerce a divided jury into convicting a person is so great [2 Wright, *Federal Practice and Procedure: Criminal* § 902 (1969)] that Judge Haynsworth concluded that a one-sided version of that charge was "plain error" that the appellate court might notice on its own motion.

Senator Tydings has called attention earlier in these hearings to Judge Haynsworth's splendid opinion in *United States* v. *Chandler* [393 F. 2d 920 (4th Cir. (1968))], in which he rejected an antiquated test of mental responsibility and adopted for his circuit a new test more consonant with modern psychiatric knowledge.

There is an interesting passage in one of Judge Haynsworth's earliest opinions in which he wrote: "However compelling our conviction that Call has been guilty of wrongdoing, we may not affirm his conviction as a co-conspirator unless the evidence is reasonably susceptible of the inference that he knew of the conspiracy." [*Call* v. *United States*, 265 F. 2d 167, 172 (4th Cir. 1959).] The principle that a defendant may not be convicted because he is a bad man, but only if he committed the crime for which he is indicted, is one of great importance.

Judge Haynsworth has done much to remove shackles on the writ of habeas corpus and to make it freely available to those who claim that they have been denied their constitutional rights. At page 6 of my original statement I have discussed his best known case in this area, *Rowe* v. *Peyton* [383 F.2d 709 (4th Cir. 1967), affirmed 391 U.S. 54 (1968)], in which he correctly anticipated that the Supreme Court would no longer follow its earlier precedent holding that a prisoner in custody under one sentence could not challenge another sentence he was to serve in the future. In his opinion in that case he combines great scholarship with the practical approach that is a major theme in all of his opinions. A formalistic approach to statutory requirement that a prisoner be "in custody" would harm both the prisoner and the state. "It is to the great interest of the Commonwealth and to the prisoner to have these matters determined as soon as possible when there is the greatest likelihood the truth of the matter may be established. Justice delayed for want of a procedural, remedial device over a period of many years is, indeed, justice denied to the prisoner and, in an even larger degree, to Virginia." [383 F.2d at 715.]

But *Rowe* stands far from alone. Judge Haynsworth has written that the statutory requirement that state remedies be exhausted does not bar relief when the state court has decided the identical substantive point in a case involving another prisoner and pursuit of the state remedies, therefore, would be futile. [*Evans* v. *Cunningham*, 335 F.2d 491 (4th Cir. 1964).] He had held that petitions by prisoners are not to be read with a hostile eye and that "claims of legal substance should not be forfeited because of a failure to state them with technical precision." [*Coleman* v. *Peyton*, 340 F.2d 603, 604 (4th Cir. 1965).] The district court, on habeas corpus, is not bound by a wholly conclusionary finding by the state court [*Outing* v. *North Carolina*, 344 F.2d 105 (4th Cir. 1965)] nor may it accept the historical facts as found by the state court if the state court had no adequate basis for its findings. [*McCloskey* v. *Barlow*, 349 F.2d 119 (4th Cir. 1965).] In many ways the most interesting of the Haynsworth opinions on habeas corpus, other than the *Rowe* case, *is White* v. *Pepersack* [352 F.2d 470 (4th Cir. 1965).] A state court defendant, charged with first degree murder, had taken the stand and admitted the killing but testified to facts that would, if believed, show that it was not premeditated and that he could be convicted only of some lesser offense. The district court held that defendant's admission was tantamount to a plea of guilty and barred him from seeking habeas corpus on the grounds of an illegal search, and involuntary confession, and use of perjured testimony. The Fourth Circuit held to the contrary. In his opinion for the court, Judge Haynsworth wrote that defendant's testimony was surely not a plea of guilty to first degree murder and pointed out that if the state court had found the defendant guilty of second degree murder and imposed an appropriate sentence defendant himself might well have accepted his punishment as proper. Judge Haynsworth then said:

Extended judicial inquiry, with all of its expense and delay, is the natural product of overconstruction of a defendant's admissions and the imposition of an inappropriate sentence. The flood of postconviction cases in state and federal courts will be stemmed only if justice is made to shine more brightly in the trial courts.

[*Id.* at 473] The decision is reminiscent of an earlier one in which he had criticized slovenly practices in drawing indictments on the part of some United States attorneys and pointed out that the consequence of such practice is "the needless expenditure of much time and effort by [the United States Attorney], by defendants and their counsel and by the courts. Here, as in most situations, much waste could be avoided by an initial exercise of reasonable care." [*United States* v. *Roberts*, 296 F.2d 198, 202 (4th Cir. 1961).]

It seems to me clear that Judge Haynsworth has clearly shown his unwillingness to tolerate procedures in criminal cases that taint the factfinding process or that cast doubt on the fairness of the proceeding or that unreasonably clog claims of constitutional right. In one case he wrote:

Current astuteness in the protection of individual rights is not at odds with the interests of a society which places high values upon liberty and justice and freedom and fairness. It is the cornerstone of such a society.

[*Smallwood* v. *Warden, Maryland Penitentiary*, 367 F. 2d 945, 952 (4th Cir. 1966) (dissenting opinion).] Judge Haynsworth's whole record on the bench of the court of appeals demonstrates that that remark is not empty rhetoric but a statement of deeply felt conviction.

Some of the rules that the Supreme Court has laid down in criminal cases are not concerned with assuring a correct result or with preserving fairness in the proceeding but are intended to deter practices by those responsible for law enforcement that have been found to be inconsistent with the values of our free society. Judge Haynsworth has not been unmindful of this function of the courts. He had been on the bench barely a year when he joined in an opinion in which the court gave a broad reading to the then-recent decision in *Mallory* v. *United States* [354 U.S. 449 (1957)], and said:

The teaching of the Mallory case is that insistence on strict compliance with Rule 5(a) is necessary to discourage police from the use of third degree methods, and that only in that way will the opportunity and the temptation be denied them. Unnecessarily prolonged detention before bringing the accused to a Commissioner or other judicial officer, to give police opportunity to extract a confession, is odious to our federal criminal jurisprudence * * *. [*Armpriester* v. *United States*, 256 F. 2d 294, 296 (4th Cir. 1958).]

He wrote for his court in holding that the *Miranda* rules apply to custodial questioning even though the defendant was not formally under arrest. A dissenter argued that the majority was giving an overdrawn reading to *Miranda* and that the decision was "indeed a blow to law enforcement," but Judge Haynsworth said: "If the arresting officer's failure to make a formal declaration of arrest were held conclusive to the contrary, the rights afforded by Miranda would be fragile things indeed." [*United States* v. *Pierce*, 297 F. 2d 128, 130 (4th Cir. 1968).]

One other case about which Senator Tydings has already commented shows Judge Haynsworth's sensitivity to the role of the courts in deterring improper law enforcement practices. The case is *Lankford* v. *Gelston* [364 F. 2d 197 (4th Cir. 1966)]. The court en banc held unanimously, in a fine opinion by Judge Sobeloff, that an injunction should issue to prevent the Baltimore police from making blanket searches on uncorroborated anonymous tips. Most of the homes searched were occupied by Negroes. The court took note of the deteriorating relations between the Negro community and the police in Baltimore and said that "it is of the highest importance to community morale that the courts shall give firm and effective reassurance, especially to those who feel that they have been harassed by reason of their color or their poverty." The court took note of the serious problems of law enforcement, but it said:

Law observance by the police cannot be divorced from law enforcement. When official conduct feeds a sense of injustice, raises barriers between the department and segments of the community, and breeds disrespect for the law, the difficulties of law enforcement are multiplied. [*Id.* at 204.]

I spoke at the outset of the very practical approach Judge Haynsworth takes to problems of criminal procedure. Law enforcement is a deadly serious matter and of great

importance to all parts of society. It is not a game in which the police are to be called "out" for failure to touch every base.

The *Hayden* case, discussed at page 6 of my original statement, illustrates this. There Judge Haynsworth indicated his disagreement with the majority of the court in its adherence to the old rule that "mere evidence" may not be the object of a lawful search, and the Supreme Court, in reversing the decision, agreed with him. [*Hayden* v. *Warden, Maryland Penitentiary*, 363 F. 2d 647, 657–658 (4th Cir. 1966) (separate opinion), reversed 387 U.S. 294 (1967).] The "mere evidence" rule was an outdated relic of a former era. It stemmed from property law conceptions about search and seizure while today the Fourth Amendment is recognized as protecting an interest in privacy rather than interests in property. As a practical matter, the rule was a needless hobble on the police while at the same time it gave no substantial protection to the right of the people to be secure from unreasonable searches. Police could, and did, seize much evidence on the ground that it was a fruit of the crime, or contraband, or an instrumentality of crime, and thus properly the subject of a search. Only occasionally did a criminal defendant receive an unexpected windfall when a court was unable to bring particular evidence into one of these categories and was forced to exclude it. [See 8 Wright, *Federal Practice and Procedure: Criminal* § 664 (1969).] The rule had no reason for existence today and Judge Haynsworth was right, as the Supreme Court held, in believing that the time had come to discard it.

The practicality of his approach is evident also in a dissent he wrote in a case in which the majority held that a confession was involuntary. [*Smallwood* v. *Warden, Maryland Penitentiary*, 367 F.2d 945 (4th Cir. 1966).] Judge Haynsworth thought that the circumstances in the case were far milder than in any case in which the Supreme Court had found a confession involuntary, but his principal argument was that it was pointless to test a 1953 confession by 1966 standards. The practices the police followed were practices that the Supreme Court in 1953, and for some years thereafter, approved. The police at that time could not have anticipated the change in standards that was later to evolve. Nor would setting the prisoner free in 1966 assist the police today in understanding their duty. The later Supreme Court decisions, and *Miranda* in particular, inform the police more authoritatively than would a decision of the Fourth Circuit. All of these considerations led Judge Haynsworth to say:

It is not fair to the states or to the public to vacate judgments as old as this one on the basis of evolving constitutional standards which could not have been reasonably anticipated by the police at the time they acted. [*Id.* at 952.] His view did not prevail in that case, but even those of us who welcome most enthusiastically the developments of the last decade in the law of confessions must concede that there is much more to Judge Haynsworth's position.

In appraising his decisions in confession cases, it is necessary to keep in mind the point that I developed at pages 7–9 of my original statement about Judge Haynsworth's reluctance to substitute his view of the facts for those of a jury or a district judge. This is a consistent thread in his confession opinions. It appears perhaps most clearly in a decision he wrote in 1967 upholding a determination that a confession was voluntary. [*Outing* v. *North Carolina*, 383 F.2d 892 (4th Cir. 1967).] The case was obviously a close one. Judge Kaufman wrote a 26 page dissent, but the Supreme Court, unanimously so far as it appears, refused to review the case. [390 U.S. 997 (1968).] Judge Haynsworth said that if the district judge had drawn an ultimate inference that the confession was coerced the court might well have sustained him. But the district judge found that the confession was not coerced and this finding was neither clearly erroneous as an inference of fact not influenced by an erroneous view of law. Since this ultimate inference was a permissible one, the majority of the court felt that it should accept. I think that here, as in other areas of the law, Judge Haynsworth shares an attitude expressed by Judge Chase, of the Second Circuit, some years ago when he said: "Though trial judges may at times be mistaken as to facts, appellate judges are not always omniscient." [*Orvis* v. *Higgins*, 180 F.2d 537, 542 (2d Cir. 1950) (dissenting opinion).] Since this has been for many years my own view [see Wright, *The Doubtful Omniscience of Appellate Courts*, 41 Minn. L. Rev. 751 (1957)], I cannot find in it any ground for criticism of Judge Haynsworth or for believing that he is tolerant of coercive police practices.

In conclusion, I would like to turn away from criminal law and address myself briefly to the vitally important freedoms of expression protected by the First Amendment. I am one of those who believe that these have a "preferred position" in our constitutional scheme and that they are of special significance at a time when many groups in our country are unhappy with the established order and wish to air their grievances. Judge Haynsworth has had very little occasion to address himself to the issues these freedoms pose and the decisions are too few to form any solid judgments.

I can find only eight cases involving any significant question of freedom of expression in which Judge Haynsworth has participated. Four of these are obscenity cases, a class of litigation that is perhaps sui generis, and that is not only immensely difficult in itself but is even more difficult for a lower court judge to try to understand the rules, such as they are, that the Supreme Court has laid down. In two cases he wrote for a unanimous court holding particular magazines obscene and was reversed by the Supreme Court. [*United States* v. *392 Copies of Magazine Entitled "Exclusive,"* 373 F. 2d 633 (4th Cir. 1967), reversed 389 U.S. 50 (1967); *United States* v. *Potomac News Co.*, 373 F. 2d 635 (4th Cir. 1967), reversed 389 U.S. 47 (1967).] The reversals in each instance were per curiam decisions in which the Supreme Court relied on its Delphic opinion in *Redrup* v. *New York* [386 U.S. 767 (1967)], which came down after Judge Haynsworth's decisions. In a third case he was part of a 5–2 majority of the Fourth Circuit holding that obscenity cannot be determined on a per se basis that any collection of photographs of nudes is obscene if, in some of the pictures, the pubic area is exposed. [*United States* v. *Central Magazine Sales, Ltd.*, 381 F. 2d 821 (4th Cir. 1967).] Finally he joined in a 2-1 decision that if material has been found by the district court not to be obscene, it should be admitted through customs and its release should not be held up pending appeal. [*United States* v. *Reliable Sales Co.*, 376 F. 2d 803 (4th Cir. 1967).]

The other four cases are of more general importance. Judge Haynsworth was a member of a three-judge district court that held unconstitutional on grounds of vagueness a North Carolina statute limiting the kinds of persons who may speak on state university campuses. [*Dickson* v. *Sitterson*, 280 F. Supp. 486 (M.D.N.C. 1968).] Professor Van Alystne, who is to testify in support of Judge Haynsworth, appeared in the case as amicus curiae and is the leading expert in the country on that particular field of the law. He is better qualified than I am to tell you of the significance of the decision. Judge Haynsworth was a member of a panel of his court upholding suspension of students at Bluefield State College for taking part in a disruptive demonstration. [*Barker v. Hardway*, 399 F. 2d 638 (4th Cir. 1969).] The Supreme Court refused to review the decision. Justice Fortas, who had been spokesman for the Court one week before in the *Tinker* case [*Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969)], in which it was held that school students cannot be disciplined for wearing black arm bands to express their disapproval of the Vietnam war, wrote an opinion concurring in denial of certiorari in the Bluefield State case. He said that "the petitioners here engaged in an aggressive and violent demonstration, and not in peaceful, nondisruptive expression, such as was involved in *Tinker*." [*Barker* v. *Hardway*, 394 U.S. 905 (1969) (concurring opinion).]

In *United Steelworkers of America* v. *Bagwell* [383 F. 2d 492 (4th Cir. 1967)], Judge Haynsworth wrote the opinion holding unconstitutional a city ordinance prohibiting distribution of circulars about union membership without a prior permit from the chief of police. The decision on the merits is unexceptionable. The path was clearly marked by Supreme Court precedents. What is more interesting is the enthusiastic acceptance the court gave to the principle of *Dombrowski* v. *Pfister* [380 U.S. 479 (1965)] that in some cases in which First Amendment rights are involved the usual rules barring a federal court from interfering with a state's enforcement of its criminal laws no longer apply. One like myself who has doubts about whether the protection *Dombrowski* gives to cherished First Amendment rights is not outweighed by its cost in Federal-state relations must note with interest Judge Haynsworth's willingness to apply, if not indeed to extend, *Dombrowski*.

Indeed Judge Haynsworth may have partially anticipated *Dombrowski* in a well-known case arising out of demonstrations by Negroes in Danville, Va. The case is a complicated one, involving a number of different issues, and several different appeals disposed of under a single title. Many demonstrators were arrested in Danville for violation of a state court injunction and local ordinances. Some of these persons attempted to remove their cases to federal court. Others went directly to federal court and sought to enjoin the pending state court prosecutions as well as future arrests. The case, which produced one per curiam opinion and two opinions by Judge Haynsworth for the majority of the Fourth Circuit, established four things. First, the court held that the Anti-Injunction Act of 1793, 28 U.S.C. § 2283, did not bar it from issuing a temporary injunction restraining state court prosecutions in order to preserve the status quo while it determined whether grant of a permanent injunction would fall under any of the exceptions to the Act. [*Baines* v. *City of Danville*, 321 F. 2d 643 (4th Cir. 1963); *Baines* v. *City of Danville*, 337 F. 2d 579, 593–594 (4th Cir. 1964).]

This was a creative interpretation of the Anti-Injunction Act and is surely sound. [See American Law Institute, *Study of the Division of Jurisdiction between State and Federal Courts* 307 (Official Draft 1969).] Second, the court held that the circumstances did not permit removal of a criminal prosecution from state to federal court under 28 U.S.C. § 1443, which allows removal of certain civil rights cases. [*Baines* v. *City of Danville*, 357 F. 2d 756 (4th Cir. 1966).] This holding was affirmed by the Supreme Court. [*Baines* v. *City of Danville*, 384 U.S. 590 (1966).] Third, the court held that the Civil Rights Act, 42 U.S.C. § 1983, does not expressly authorize a stay of state proceedings and that the Anti-Injunction Act therefore barred an injunction against prosecutions already pending in the state court. [*Baines* v. *City of Danville*, 337 F. 2d 579, 586–594 (4th Cir. 1964).] The Supreme Court denied certiorari on this aspect of the case [*Chase* v. *McCain*, 381 U.S. 939 (1965)], and the question remains an open one in the Supreme Court. [See *Cameron* v. *Johnson*, 390 U.S. 611, 613 n. 3 (1968).] Finally, and most importantly for

present purposes, Judge Haynsworth held that the rule of comity by which federal courts do not ordinarily interfere with the states in the enforcement of their criminal laws is not absolute, and that the district judge should enjoin further arrests under the ordinances and the injunction "if he finds that in combination they have been applied so sweepingly as to leave no reasonable room for reasonable protest, speech and assemblies, and thus, in application, are plainly unconstitutional." [*Baines* v. *City of Danville*, 337 F. 2d 579, 594–596 (4th Cir. 1964).] *Dombrowski* demonstrates that Judge Haynsworth was right in going that far in allowing the federal court to give relief, although under *Dombrowski* a federal injunction against future prosecutions is also permitted if the challenged laws are unconstitutional on their face.

There is a passage in one of these opinions in which Judge Haynsworth speaks to the meaning of the First Amendment.

"Whatever constitutional basis there may be for the substantive demands of the demonstrators, they have, unquestionably, rights of free speech and assembly guaranteed by the First Amendment, and recognition of those First Amendment rights is required of Danville by the Fourteenth Amendment. Those First Amendment rights incorporated into the Fourteenth Amendment, however, are not a license to trample upon the rights of others. They must be exercised responsibly and without depriving others of their rights, the enjoyment of which is equally as precious. It is thus plain, for instance, that while Negroes, excluded because of their race from a privately operated theater, have a right to protest their exclusion and to inform the public and public officials of their grievance, they do not have the right, by massive occupancy of approaches to the theater, to exclude everyone else from it, or to coerce acceptance of their demands through violence or threats of violence.

"It is well established that public officials, charged with the duty of maintaining law and order, may enforce laws and injunctions reasonably necessary for that purpose, but injunctions and statutes which exceed the necessities of the situation cannot be lawfully enforced if they infringe upon constitutional rights. What is required is mutual accommodation of the rights of the public and those rights of protestants which are guaranteed by the First Amendment. [*Id.* at 586–587.] Later Supreme Court decisions, notably Justice Goldberg's opinion for the Court in *Cox* v. *Louisiana* [379 U.S. 536, 554–555 (1965)], demonstrate that the quoted passage from Judge Haynsworth's opinion represents sound First Amendment philosophy.

The record of the nominee on freedom of expression is scantier than his record on criminal procedure but from his decisions in that area of the law there is no reason to doubt his devotion to the great protections of the First Amendment.

I end as I began. I cannot predict the votes of Justice Haynsworth. The cases I have reviewed in this statement demonstrate, I believe, that in the areas of criminal procedure and freedom of expression the record of Judge Haynsworth on the Fourth Circuit has been a constructive and forward-looking one. But I support his nomination, not because his views on these subjects or others are similar to mine, but because his overall record shows him to have the ability, character, temperament, and judiciousness that are needed to be an outstanding Justice of the United States Supreme Court.

Thank you.

Mr. HOLLINGS. Mr. President, at this point in the debate, I think it would be appropriate also to include in the RECORD the statements of William Van Alstyne and Coming B. Gibbs, Jr. I ask unanimous consent that they be printed in the RECORD.

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

STATEMENT IN COMMENT ON APPOINTMENT OF JUDGE CLEMENT HAYNSWORTH TO THE SUPREME COURT OF THE UNITED STATES

It is not surprising that a Supreme Court appointment from the South, by a President who campaigned with some degree of criticism of the Warren Court, should attract a measured amount of liberal skepticism. The degree of reaction to Judge Clement Haynsworth's nomination, however, may be quite unworthy of some of the truly fine people who have too quickly given it currency. In those areas of statutory interpretation and constitutional adjudication where the issue is so unsettled that judicial discretion must necessarily play a major role, Judge Haynsworth's record cannot be seen as illiberal.

In Hawkins v. North Carolina Dental Society, Judge Haynsworth authored the court of appeals opinion which desegregated the North Carolina Dental Association, rejecting its claim that it was not subject to the equal protection clause of the 14th Amendment. He joined as well in North Carolina Teachers Association v. Asheboro City Board of Education, reversing a lower federal court which had upheld the displacement of Negro teachers who had lost their jobs to whites when schools were integrated. He also shared the court's decision in Newman v. Piggy Park Enterprises, applying the Civil Rights Act against a claim that insufficient food was sold for consumption on the premises to bring the business within the statute.

In the field of criminal justice, he authored an extraordinarily careful opinion in Rowe v. Peyton, extending the right of prisoners to have their convictions reviewed on habeas corpus—a new development later affirmed by the Supreme Court. He joined in Crawford v. Bounds to protect defendants in capital cases from being sentenced by death-prone juries from which all expressing any reservation to capital punishment had been excluded—a new development also subsequently affirmed by the Supreme Court in a related case. In Pearce v. North Carolina, he applied a constitutional principle newly developed at the federal level in his own circuit to protect defendants from harsher sentences following retrial—again in advance of the Supreme Court which affirmed the decision several months later.

In respect to First Amendment rights, he joined in the first federal decision which struck down a state law restricting the right of university students to hear guest speakers on campus—a principle later expanded by a half-dozen other federal courts and indirectly approved by the Supreme Court in a related case just this year.

On occasion when his opinion has differed conservatively from that of more liberal jurists, it has not been without care or reason. Thus, his conclusion in Baines v. City of Danville that only an extraordinary kind of civil rights case could be removed from a state court to a federal court was accompanied by a painstaking analysis with which a majority of the Supreme Court subsequently agreed in Peacock v. City of Greenville. Similarly, his conclusion in Warden v. Hayden that an otherwise constitutional search is not unreasonable because its object is only to secure evidence of a crime was also subsequently shared by a majority of the Supreme Court.

I do not submit that these decisions warrant that Judge Haynsworth will be a "liberal" justice. His record on the court of appeals does not—and in the nature of things could not—enable us to predict his votes in the substantially different role of associate supreme court justice. They do indicate, however, that he is an able and conscientious man who will approach his duties on the Supreme Court with a spirit of open-mindedness as well as an appreciation of the difficulties of the judicial process.

WILLIAM VAN ALSTYNE.

GIBSON, GIBBS AND KRAWCHECK,
Charleston, S.C., September 5, 1969.

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

DEAR SENATOR EASTLAND: So that the Committee may know something of the person making this statement, I have included the following introductory comments.

My name is Coming B. Gibbs, Jr. I am a former law clerk to Judge Clement F. Haynsworth, and I am currently practicing law in Charleston, South Carolina as a member of the three man firm of Gibson, Gibbs & Krawcheck. I graduated from St. Marks School in 1954, from Princeton University in 1958 and the University of South Carolina Law School in 1961. From September, 1961 until September, 1962, I was law clerk to Judge Haynsworth. After active duty in the United States Army, I returned to Charleston and practiced law with my father, and, sometime after his death, formed a partnership with Charles M. Gibson and Leonard Krawcheck.

My law practice has been general in character. Together with a fairly active civil and criminal trial practice. I have among my clients the International Longshoremen's Association which I have been representing in litigation concerning attempted organization of warehouse workers of the South Carolina State Ports Authority. With one of my partners, I represented two Catholic Priests charged with contempt of court because of picketing during the recent hospital strike in Charleston. I, with several other lawyers, organized an O. E. O. funded Legal Services for the Poor corporation, which has been operating successfully for several years, and which, despite initial opposition from a segment of the Charleston Bar, has now been generally accepted as a permanent and valuable addition to the local legal profession. I currently am chairman of its Board of Directors.

I was active in the organization of the Charleston Young Democrats, and during the 1964 Presidential campaign I was co-chairman of the Charleston County Johnson-Humphrey effort. I have been active in the Democratic party and in bi-racial matters, among other things participating with a group of lawyers in preserving Negro participation in the Y.W.C.A. I am currently the Secretary-Treasurer of the Charleston County Bar Association and a member of its executive committee.

The foregoing is included here to give this Committee an understanding of a little of my background, and to show something of the great effect a close relationship with Judge Haynsworth had upon a young man with a traditional and conservative background in Charleston, South Carolina.

Judge Haynsworth's qualifications as a Justice of the United States Supreme Court are to me clear and free from doubt. His academic background and history show him to have been a brilliant and conscientious student. As a lawyer, he became senior partner in the largest and most prestigious firm in our state. His decisions as a Court of Appeals Judge are public record and will be discussed by lawyers far more eminent than me.

My thought is that I could be of assistance to the United States Senate in enabling them to understand a little of the personality and character of Judge Haynsworth, without specifically discussing his thoughts and conversations as they related to specific cases pending before the Court of Appeals.

Perhaps his most impressive quality to one who knows him is his compassion. His regard for the individual, in cases involving human rights, civil or criminal, is deep.

On the bench, in a Circuit noted for close scrutiny, sometimes acerbic, of counsel's argument, he has universally been kind and gentle. This winter I was in his Court and young counsel violated almost every rule of proper appellate argument, including not addressing himself to the Court's questions and ignoring the time limit. After a time, Judge Haynsworth with a smile sat back and let the young man finish reading his set speech.

Combined with his kindly and compassionate nature is a considerable sense of humor, mostly dry, but occasionally quite robust. To work with him, he was thoughtful, kindly and considerate. Good work and good ideas were praised and the bad were gently corrected.

For one who has worked with him daily for a year to read, as I have in the press, that he is a racist, is ludicrous. He epitomizes our common law heritage that each man is equal before the law. Without going into specifics, in all the school cases which came before him when I was his clerk, he conscientiously endeavored to apply to complex records the rules laid down by the United States Supreme Court as he understood them.

The similar charge that he has an anti-union bias is also, to me, equally false. During the period I worked for him he had before him many cases involving labor organizations and in all our vigorous give and take, no such thing was manifested.

The one year that I spent as his clerk was the most important educational experience of my life. I learned from him the true meaning of intellectual and legal integrity. He equipped me with, I hope, the ability and certainly the self-confidence, to take part in South Carolina in sometimes unpopular and controversial causes. From him, I was equipped to attempt to cut new ground in our law and to join with a few older lawyers in similar efforts. I believe these other lawyers felt I had been equipped by Judge Haynsworth to work with them.

Speaking for myself, and I think for my colleagues at the bar in South Carolina whose practice has gravitated as has mine, there would be no hesitancy in bringing any matter before Judge Haynsworth. His decisions have and will reflect the thoughtful consideration of a good human being and good lawyer, applying justice with a compassionate heart and an even hand.

I recommend him to you as a man, as a lawyer and as a future great Justice of our Supreme Court.

With best wishes, I am,

Your very truly,

C. B. GIBBS, Jr.

DESIGNATION OF PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW—ORDER FOR DIVISION AND CONTROL OF REMAINING TIME

Mr. BYRD of West Virginia. I ask unanimous consent that, when the Senate convenes tomorrow, there be a period, not to exceed 30 minutes, for the transaction of routine morning business as in legislative session, and that all time thereafter until 1 o'clock, the time set for the vote on the nomination, be equally divided and controlled by the majority and minority leaders, or Senators designated by them.

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

The unanimous-consent agreement was subsequently reduced to writing, as follows:

Ordered, That on Friday, November 21, after the Senate convenes that there be a period of 30 minutes for the transaction of routine morning business as in legislative session, and that the time thereafter until 1 o'clock be equally divided and controlled by the majority and minority leaders or persons designated by them.

Mr. HRUSKA. Mr. President, in its issue of today, November 20, 1969, the Wyoming State Tribune, of Cheyenne, Wyo., printed an editorial the text of which I ask unanimous consent to have printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HRUSKA. Mr. President, it is a very splendid editorial. One can gather that it subscribes to the views of the senior Senator from Nebraska that Judge Haynsworth ought to be confirmed. However, here is a part of the editorial which I think is very significant:

So now we get down to the real issue in the Haynsworth case which really does not have anything to do with his identity with litigants and possible conflicts of interest which have been raised by people who have their own and not inconsiderable conflicts of interest themselves; the real issue is that Haynsworth is not a judicial activist of the stripe of former Chief Justice Earl Warren or Justice William O. Douglas or the other majority members of the Supreme Court.

If Haynsworth is confirmed, they fear there may be an entirely new political cast to the Supreme Court, a potentially conservative one that will not seek to make law or to usurp the functions of Congress as the Warren majority has consistently done, but which may render decisions in accordance with a stricter interpretation of the Constitution and legal precedent.

It is altogether a conflict between liberal and conservative judicial philosophy and it may as well be branded as such.

EXHIBIT 1

EDITORIAL FROM THE CHEYENNE, WYO., STATE TRIBUNE, NOVEMBER 20, 1969

The Senate votes at 1 P.M. eastern standard time tomorrow on confirmation of Judge Clement Haynsworth, Jr., as President Nixon's appointee to the Supreme Court. It is our hope that Judge Haynsworth will be confirmed, first because he has been made a target of forces which oppose his views on the basis that he is a conservative, whereas they are liberals, and secondly, because insufficient reasons have been raised against the appointment. It also is our hope that both of Wyoming's Senators will vote for Judge Haynsworth's nomination. Senator Clifford P. Hansen already has indicated he will support, and vote for, the nomination. Senator Gale McGee has not yet given any definite indication how he will answer the roll call.

Although Haynsworth is a nominee of a Republican President, he is a member of the Democratic Party himself, and he receives substantial support from many Democrats and considerable opposition from many Republicans in the Senate, including the Assistant Leader, Senator Robert Griffin of Michigan.

Thus this is not a matter of partisan politics, but a philosophy; and since Griffin is a co-author of the Landrum-Griffin labor law of some years ago, it seemingly does not stand as a matter of broad labor concern despite the announced opposition to Haynsworth by a substantial segment of the organized labor movement in this country—not the rank and file, but the leaders.

The issue of racism also has been raised against Judge Haynsworth by the NAACP and other organizations, but during Senate debate on the issue on November 14, Senator Marlow Cook of Kentucky noted that a Greenville, South Carolina lawyer who has specialized in representing both organized labor and the NAACP told the Senate Judiciary Committee in testimony on the nomination: "Judge Haynsworth, in my opinion, has one of the best legal minds, the most incisive legal minds that I have run into."

Despite efforts to convey the impression that Judge Haynsworth has violated the code of judicial ethics, for which there is no definite evidence whatsoever, the plain fact is that the opposition to his confirmation is based in what his opponents have actually charged against him—political bias. Here, for example, is the indictment lodged by Senator Jacob Javits, a Republican, of New York: "It is my intention to vote against the confirmation. I will do so because I have found, on reviewing the written opinions of Judge Haynsworth, particularly in racial segregation cases, that, without any derogation of him personally, his views on the application of the Constitution to this most critical Constitutional question of our time are so consistently out of date, so consistently insensitive to the centuries-old injustice which we as a nation have caused our black citizens to bear, that I could not support the introduction of Judge Haynsworth's judicial philosophy into the nation's highest court."

That, summed up, is the real reason why the bitter fight is being made against Haynsworth: His judicial philosophy does not accord with the activist concept that has been enunciated on the Supreme Court of the United States during the past one and one-half decades under the stewardship of another Republican like-minded to that of Senator Javits of New York, namely now-retired Chief Justice Earl Warren of California.

So now we get down to the real issue in the Haynsworth case which really does not have anything to do with his identity with litigants and possible conflicts of interest which have been raised by people who have their own and not inconsiderable conflicts of interest themselves; the real issue is that Haynsworth is not a judicial activist of the stripe of former Chief Justice Earl Warren or Justice William O. Douglas or the other majority members of the Supreme Court.

If Haynsworth is confirmed, they fear, there may be an entirely new political cast to the Supreme Court, a potentially conservative one that will not seek to make law or to usurp the functions of Congress as the Warren majority has consistently done, but which may render decisions in accordance with a stricter interpretation of the Constitution and legal precedent.

It is altogether a conflict between liberal and conservative judicial philosophy and it may as well be branded as such.

As for Senator McGee, he has assiduously sought to project a conservative political image in recent months; in keeping with this image, if it is a real one, we do not think it would be inconsistent for him to join Cliff Hansen in voting for Haynsworth's nomination.

ORDER OF BUSINESS

Mr. DOLE. 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. HRUSKA. Mr. President, I ask unanimous consent that the order for the quroum call be rescinded.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. COOPER. Mr. President, the decision I have made to vote against the nomination of Judge Clement F. Haynsworth to be an Associate Justice of the Supreme Court is a difficult one.

I recognize the constitutional author-

ity and the responsibility of the President to select and nominate an appointee of his choice. I have wanted very much to support President Nixon. I have not wanted to be unfair to Judge Haynsworth. I have thought some of the accusations and attacks were unfair. They have caused me to search the record and to examine closely the validity of my own reasoning.

Many other considerations have run through my mind; that the Senate seeks to apply to the Court, standards that it does not apply to itself; that I might be arbitrary in placing my judgment above that of able and conscientious Members of the Senate.

I have received many communications from Kentucky and other States. I have been glad to have their expressions of interest and opinion, for they are an important part of the governmental process.

Many who are friends of Judge Haynsworth spoke in the warmest terms of his ability and integrity. Other letters were directed to his views—philosophical, economic, and social.

I have not made my decision on this factor, for I have found no bias or extremism expressed in his judicial record.

I would like to see the court more balanced.

I have come to my decision upon other factors. My decision is based on the cases reviewed in great detail in the hearings of the Committee on the Judiciary and in the debate—upon the issue as to whether Judge Haynsworth should have disqualified himself under the statute and the applicable canons of judicial ethics.

At this point, I include them in the RECORD:

28 U.S.C. 455 provides as follows:

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein.

Canon 4—Avoidance of Impropriety.—A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

Canon 26—Personal Investments and Relations.—A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and after his succession to the Bench, he should not retain such investments previously made longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relationship warp or bias his judgment, or prevent his impartial attitude of mind in the administration of judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin.

V. Canon 29—Self-Interest.—A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation on the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

I hold that under the Federal statute, the language of the canons, and the purposes and principles upon which the statute and the canons are based, Judge Haynsworth was required to disqualify himself in the cases which I will discuss briefly.

In making this statement, I do not impugn the honesty of Judge Haynsworth, for no evidence can be found of dishonesty or of any motive on his part toward enrichment.

I do not rely on a judgment of insensitivity. The basic principle and purpose of the law and canons, which have been placed in the RECORD, coupled with the circumstances of his financial interest, required, in my judgment, his disqualification; and his judgment, experience, and knowledge of the law, as a capable judge, should have directed him to do so.

I refer first to the Brunswick case. It has been discussed in a great deal. I will not again relate to the Senate all the facts of the case.

Judge Haynsworth purchased 1,000 shares of stock, valued at approximately $16,000, after the three-judge panel, of which he was a member, had agreed unanimously upon an opinion. It is fair to say that the members found no difficulty in arriving at their opinion, because the facts and the law, in their judgment, were clear.

However, after this opinion had been reached by the three-judge panel, and before it was made public to the litigants, and before the possibility of petitions for rehearings and actual rehearings had been exhausted, Judge Haynsworth purchased the stock to which I have referred. In fact, a petition for a rehearing was filed after Judge Haynsworth had purchased the stock, and he denied the petition. I do not challenge the substance of his denial.

The applicable Federal statute in this case is this:

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein.

Judge Haynsworth testified in the course of the hearings that his interest in Brunswick was substantial, and that if he had owned the stock prior to assuming jurisdiction of the case, he would have disqualified himself.

Judge Winter, one of the judges on the panel, when questioned on this subject before the Committee on Judiciary, testified as follows in answer to a question directed to him by Senator Hart: I refer to page 241 of the hearings:

Senator HART. Now, would you regard it as proper on your part to have purchased the Brunswick Corp. stock before the release of the opinion?

Judge WINTER. Before the release of the opinion? I think, sir, if I had been in that situation, I would have avoided buying the stock until after the opinion had been filed and the matter had been disposed of. I do not think, however, that I would have been legally disqualified, since a decision had been reached in the case in my mind, since the nature of the decision was not one which could have affected the value of the stock one way or the other.

I do not think I would have been legally disqualified from doing it. But I think that had I been fully conscious of this case, I certainly would have avoided buying the stock.

That is the opinion of a member of the panel upon which Judge Haynsworth sat, and it speaks for itself.

Judge Haynsworth testified that his stock interest in Brunswick was substantial. He stated that at the time he purchased the stock he did not recall or think of his participation in the Brunswick case, but at the time the formal opinion was forwarded to him for his concurrence, he recalled his purchase. In that connection, he said, as quoted on page 271 of the hearings:

The next time, of course, that the case entered my mind was when I received the proposed opinion from Judge Winter. At that stage, I realized it had not been completely disposed of, and at that time I thought what I should do. I had now become a stockholder.

My conclusion was that I should endorse it since Judge Winter had written an opinion precisely as we had agreed, since Judge Jones concurred, since no one had any doubt about it, and nothing else occurred to return the case to the discussion stage. Now, it does occur sometimes, as was brought out from Judge Winter, that when an opinion is assigned to a judge for a number of reasons he may change his view.

This may be the result of something he found in the record of which we were not aware. It may be the result of some research he did in his library to bring out some point that we were not aware of, were not fully appreciative of, and the case then reverts to the conference stage. It goes back for a brand new, fresh viewpoint. That happens now and then, not with great frequency but it does occur.

Nothing of the sort occurred in this instance. If it had occurred, I would have gotten myself out. Indeed I would not only have gotten myself out, I would have gotten Judge Winter out and Judge Jones, because if I was not qualified to sit in this case, I had conferred with them and if it was wrong for me to be in, it was wrong for them to be in it, so I would have gotten all three out and the case would have been set to be reheard before three new judges.

The point has been made in this debate, and correctly, that the case had not been concluded. As Judge Haynsworth said, while it was unlikely, there was a possibility of petitions for rehearings being filed and actual rehearings, and in the course of further proceedings it might occur that new material had been found which would change the decision of the judges.

So I say flatly that Judge Haynsworth was under a duty to disqualify himself, under the Federal statute. A purpose of the statute is to protect individual judges, and to protect other members of a panel such as the one on which Judge Haynsworth sat in the Brunswick case.

Judge Haynsworth said if he had thought it was improper for him to sit, he would have notified the other members of the panel, Judge Winter and Judge James, so they could have "gotten out." But he did not do so. He did not give them the chance to advise him and to de-

termine whether they should sit further in the case.

A just purpose of the statute is to protect litigants. Much has been said about the standards that judges should establish for themselves and their subjective judgments about them. I submit that little has been said in the debate about litigants before the courts and their protection. The law and the canons are intended to assure justice to litigants in their causes. No substantial interest of a judge shall stand in the way of justice or cause any substantial doubt of bias in the minds of litigants. A substantial interest of a judge does stand in the way of justice and causes litigants to doubt that justice has been rendered in their causes.

It is upon these tenets, and they are quite simple, that observance by the courts is demanded if justice is to be done, that the people may believe justice is done, and upon which the confidence of the people in the courts resides.

The Carolina Vend-A-Matic case presents a technically different case, but substantially the same issues as in the Brunswick case. It is differentiated from the Brunswick case because Carolina Vend-A-Matic was not a party litigant in the case of Darlington Manufacturing Co., against NLRB, et al., in which Judge Haynsworth participated. But Judge Haynsworth had a very substantial interest in Carolina Vend-A-Matic, which was a customer of Deering Milliken, which owned the controlling interest in Darlington.

Again, I do not impugn the honesty or motives of Judge Haynsworth. I argue that the principles of the Federal statute, even though not technically applicable in this case, and of the canons and their purpose, should have required Judge Haynsworth, with a substantial interest in Carolina Vend-A-Matic, to have disposed of his stock under the precept of canon 26 or to have disqualified himself in the Darlington case.

It seemed reasonable to believe Judge Haynsworth should have considered that the textile companies, which are important business interests in his circuit, would be apt to be involved in litigation, and he should have followed the injunction of canon 26 and disposed of his interest in Carolina Vend-A-Matic.

There is no express statement in the canons, and it is argued that as the Federal statute of disqualification did not apply, no responsibility attached to Judge Haynsworth. I believe the principle implicit in both the Federal statute and the canons required Judge Haynsworth to sell his stock or to disqualify himself in the Darlington case.

Objectivity and commonsense, especially to a judge, would have pointed the way to disqualification, to assure the litigants that the court was without bias and that equal justice under the law was being rendered.

I do not think it important that the question of his interest was not raised. The point is that the litigants did not know about his interest. It was never disclosed. In such cases, justice might not be rendered, and of great importance, litigant could believe that justice had not been rendered to them.

It may be said that the standards on which I base my decision should not apply to this nominee as they are standards which did not prevail at the time the cases to which I have referred were before him. I answer by saying that the standards were applicable at the time.

What is at issue is whether judges will observe them, and I am confident that the overwhelming majority do; and what is at issue is whether the Senate will apply strictly the standards of the statute and the canons.

Mr. President, I make another point. The cases have been argued as if they were the only cases of interest to the courts, the litigants, and the people. I make the point that if the practice of failure to disqualify became a common practice in the Federal courts, if Judge Haynsworth or other judges should pursue this practice, without disclosing to litigants their interests, or without disclosing to fellow judges an interest, we would come to a situation where the courts would lose confidence and respect, and where litigants would despair of receiving equal justice under the law.

Mr. President, last year the nomination of Justice Fortas to be Chief Justice of the United States was sent by President Johnson to the Senate.

The cases of Justice Fortas and Judge Haynsworth are in no way similar. There is no question in my mind about the motives of Judge Haynsworth, and about his honesty. But we are not dealing with subjective intent; we are dealing with the objective conduct of judges and courts, because only the objective action can be known by litigants and by the people of the United States.

As a result of the interest in and demand for stricter standards for members of the Court, it has been urged in Congress and throughout the country that higher standards, or at least clearer standards, should be established. Some have urged, including Members of Congress, that Congress should enact a code of standards or ethics. I believe it would be better if the courts would develop and prescribe their standards. The courts are experienced and better qualified from practice to comprehend the more difficult situations which must be dealt with. I also believe it would be better for the courts to prescribe their standards because of the constitutional separation of the legislative and judicial branches. But the Senate has a responsibility to apply strictly the existing standards in its process of considering the confirmation of judicial appointees. This will help achieve the purpose which I believe the Senate desires and the people desire. This process is of particular importance with respect to nominees to the Supreme Court—a coequal brand of the Government, a court with constitutional authority to reverse the enactments of the Congress and the decisions of the President, and to pass final judgment upon the rights of all citizens.

We can help protect the members of the judiciary, assure, so far as is humanly possible, litigants from bias, faith and confidence in our courts, and maintain the ancient principle upon which the continuance of our system of government at last must rest: that citizens, great or small, can believe that equal justice under law is rendered to them.

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

Mr. COOPER. I yield.

Mr. JAVITS. Mr. President, for the many years that I have served in the Senate, and the many that I sat next to the Senator from Kentucky, he has been regarded almost as a model of probity and of understanding, as well as of parliamentary ability, in this Chamber. I believe that history will record that his words spoken tonight will substantiate that concept in which his colleagues have found such gratification in respect to the Senator from Kentucky in all the years that I have served here.

There are many things I would say of personal gratification for the position, and the arguments to sustain it, which the distinguished Senator from Kentucky has taken. But that would only derogate from what I hope history will record as the imperishable reputation for the highest kind of decency of which a Senator is capable, as shown by JOHN SHERMAN COOPER of Kentucky.

Mr. BAYH. Mr. President, in my own feeble way, I should like to echo the comments of our articulate colleague from New York.

The Senator from Kentucky has been one Member of this body to whom I have always looked for advice and counsel. If the Senator from Kentucky had looked at the facts of this case and had decided contrary to the position he has taken, it would in no way have lessened my admiration for him.

As the Senator from Kentucky spoke, I thought, of the standard of conduct which he himself followed when he was a judge and which he has, indeed, stamped indelibly upon this body as a standard of conduct toward which all of us should strive. I must say that he moved me greatly.

Mr. President, I concur not just in what the Senator from Kentucky said about the difficult decision that each of us is asked to make, but I also believe that this body should take heed from what the Senator from Kentucky said about this case and about the very unfortunate set of circumstances that, indeed, led to the vacancy which we now seek to fill. I hope we will look in that mirror of self-conscience and conclude that it is not enough to require a high standard of conduct for a nominee to the Highest Court of the land. Before this Congress is finished I hope we also seek to set the same standard for ourselves.

The Senator from Kentucky has been one of the leading advocates of disclosure of financial relationships of Members of Congress. I salute him for it.

Out of this whole cauldron of discussion, disagreement, and debate in the finest sense, we can, at long last, set the record straight. In addition to exercising its right to advise and consent, the Senate must do more; it must set a higher standard of conduct for itself.

If the Senate will do that, then I think it will have the distinguished Senator from Kentucky (Mr. COOPER) to thank for moving us in that direction.

Mr. SPONG. Mr. President, I concur in the last thought given to the Senate

by the distinguished Senator from Indiana (Mr. BAYH).

I would hope that there will not be many more instances of deliberation by this body when it will be called upon to sit in judgment upon others, when we have failed in our own standards to adopt the principle of full financial disclosure.

I would hope that, regardless of how the vote turns out tomorrow, the Senate, before the end of this term of Congress, will turn its attention to the problem and will adopt for itself a higher standard insofar as financial disclosure is concerned.

I thank the Senator from Indiana for making this suggestion, and I agree with it.

Mr. HRUSKA. Mr. President, some very kind and generous compliments have been paid to the distinguished senior Senator from Kentucky (Mr. COOPER) and I want to associate myself with all of them.

However, Mr. President, I believe, to leave the RECORD concerning the nomination as it is, on the basis of the comments made by our esteemed colleague, would not be doing a favor to the Senate or to the public.

The record in this case will show that great consideration and study of the Brunswick case have been given in great detail. This includes study of the statute which the Senator quoted and also canons 26 and 29.

I should like to refer to the record in that connection.

Judge Winter, who is a judge on the Fourth Circuit Court of Appeals, was one of our witnesses, and at page 252 of the testimony, after all of the circumstances of the purchase of stock by Judge Haynsworth, after the decision had been made in the Brunswick case, he was asked by the Senator from Indiana (Mr. BAYH):

> Judge Winter, if you had been made aware that Judge Haynsworth had purchased the stock as he did in the latter part of December, what action, if any, would you and Judge Jones have taken?

Judge Jones was a district judge sitting as the third of the circuit judges participating in the decision on the Brunswick case.

The answer by Judge Winter reads:

> I think that I would have called the matter to Judge Haynsworth's attention, that this was a case in which the opinion had not been announced, but I think that I would have left the decision of what part he should play in it entirely up to him, because I think matters of personal disqualification are peculiarly a matter for personal decision.

Then the question was asked, with reference to the Brunswick case:

> Senator HART. You think that it was not apt to be a litigant since it already had been a litigant?
>
> Judge WINTER. What I am saying was that——
>
> Senator HART. That made it less likely?
>
> Judge WINTER. Its days of a litigant in the eyes of the decisional process were at an end because its rights had been adjudicated.

Senator ERVIN then asked a question:

> Senator ERVIN. Now certainly this 0.0005 proportionate ownership of the Brunswick Corp. by Judge Haynsworth could not have given him any very substantial interest in the outcome of that case, could it?
>
> Judge WINTER. Sir, I think the arithmetic of it would show that it was not certainly a big interest in the absolute sense, and I would not quarrel. I do not know whether Judge Haynsworth was aware that he had this or whether he had not.
>
> Senator ERVIN. Yes.
>
> Judge WINTER. I have not attempted to talk to him or to find out about it. But let me put it this way. If he concluded that that was not a substantial interest I would not have questioned his judgment for a moment, or if he had concluded that it was a substantial interest, but nevertheless it was not improper for him to sit, I would not have quarreled with him for a moment.

Mr. President, that is very important, because the language of the statute puts the burden on the judge as to whether or not he should disqualify himself in a case. I read the text of title 28, United States Code, 455:

> Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion—
>
> The judge's opinion—
>
> for him to sit on the trial, appeal, or other proceeding therein.

Mr. BAYH. Mr. President, will the Senator yield at that point?

Mr. HRUSKA. I am happy to yield.

Mr. BAYH. Does the Senator feel that Judge Winter's determination, or indeed Judge Haynsworth's determination is really the important question? The question is whether we, as individual Members of the Senate, believe that the judge's judgment, in not disqualifying himself when he had a substantial interest, as he admitted to the committee, was good or bad.

Mr. HRUSKA. But the judge did not say he had any interest at all at the time of the decision. The Senator from Indiana jumps over that part. Judge Haynsworth did say that when he realized that the case was still pending, he wished he had never heard of the Brunswick case. Nevertheless, the letter to the Senator from Virginia, from Mr. Frank, said he supposed different people could conclude differently as to what could have been done. It was necessary to balance the cost of the argument on a perfunctory case with the other cases involved. "While I think this is a matter of practical judgment, I do not believe that it rises to the level of ethics."

We can put all kinds of construction on this case, but here is perhaps the outstanding authority on the subject of qualification and disqualification of justices, John Frank. And we have the judgment of fellow judges of the Fourth Circuit Court of Appeals on this subject. I say that is as good an interpretation of the application of the statute as anything.

If we want to change the scope of the title 28, section 455, that is something else again. If we want to say that, regardless of the size of the interest the judge is disqualified, that is something else again. But let us not make a bill of attainder out of this principle, without a rule or canon or statute.

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

Mr. HRUSKA. I yield.

Mr. COOPER. I appreciate the questions the distinguished Senator is raising. I considered them, and I came to the conclusion that the Federal statute required his disqualification in the Brunswick case. He did have a substantial interest which he admits. He did not disqualify himself. He did not disclose his interest. When he realized that he had purchased the stock, he did not dispose of the stock. He did not consult with his fellow judges to determine the effect upon them and the case.

As the Senator has said, Judge Winter stated that if he had known Judge Haynsworth had the stock, he would have gone to him and talked to him about it.

Why would he have done so? Because he was troubled, just as I am troubled, just as we are troubled. There is no question here of a bill of attainder. The law was the law at the time. He should have disqualified himself. It is not a bill of attainder. We are not setting new standards. I hope we are requiring that standards be observed by judges.

I make one further point. I did not make it very clear in my written statement. We speak of the cases as if they were the only cases which the Senate might be considering. The point is, Shall we say that this kind of reasoning about disqualification, the practice of not disqualifying one's self when there is a substantial interest, shall be the practice of other judges in other cases? Or if it is the practice, shall we approve that practice?

The Senator from Nebraska is a great lawyer. He is experienced. He has kept at his studies and is one of the most able members of the Committee on the Judiciary and in the Senate. I have not kept up my studies as I did when I was a lawyer and judge, but I have studied the issue before us.

I may have simplified the question, but I think the question is simple. It is not a question from the way the judge looks at it subjectively, and whether he thinks he should do this or not. The statute says he must do it—he must disqualify when his substantive interest is involved.

Also, as I have tried to bring out, from the standpoint of the litigant. In the Vend-A-Matic case, the question of the interest of the judge was not raised by the litigants in time and was not prosecuted——

Mr. HRUSKA. In what way? Every bit of detail on the Vend-A-Matic affairs was disclosed in the record and was discussed at length.

Mr. COOPER. I agree. I am talking about the practice of the case itself.

Mr. HRUSKA. Vend-A-Matic was never in litigation. There was no case that involved Vend-A-Matic.

Mr. COOPER. I know that. I said that in my speech.

Mr. HRUSKA. If the Senator will pardon the interruption, the statute says if he has any interest in any case. As far as Vend-A-Matic is concerned, and the entire history of the Vend-A-Matic Co., or any part ownership thereof, there was

no case in which Vend-A-Matic was involved.

If we want to stretch the statute to say in any case in which a company is involved or in any case where a company, or its customer, is also involved—that is something else again.

But Vend-A-Matic was not a party. It was not in the case by court rule, by canon, or by statute; and if we are going to try to bring it into the case, we will be, in fact, getting into the area of ex post facto application of rules. I do not see any other course.

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

Mr. COOPER. Mr. President, I must finish. I know that Vend-A-Matic was not a party litigant, and I said so. I have read the record. And technically, the Federal statute does not apply. But the principle of the Federal statute applies, considering the circumstances of the case.

I believe that, although not required by statute, as the judge held a considerable, a very large interest in a customer of companies involved, the interest should have been disclosed to the litigants under the canons.

Mr. HRUSKA. If the Senator is going to stretch a statute of as great importance as this to a principle which is involved, I am glad that is made clear, but I suggest that it is a statute that has great importance, and one should be entitled to depend upon the language of that statute, and also the interpretation and application thereof according to the judicial opinion from which I read, as a part of the record.

But I turn now to the matter of the canons, specifically canon 29.

Senator TYDINGS asked Judge Winter:

I am going to refer to canon 29:

"A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved."

Do you feel that Judge Haynsworth was in violation of canon 29 when he purchased the Brunswick stock?

Judge WINTER. The way I would construe canon 29; no.

Then we get to canon 26. Senator TYDINGS asked the judge:

Let me divert your attention to canon 26:

"A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court, and after his ascension to the Bench he should not retain such investment previously made longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should so far as reasonably possible refrain from all relations which would normally tend to arouse the suspicion that such relations would bias his judgment to prevent his impartial attitude of mind in the administration of his judicial duties."

I will ask you the same question. Do you think he was in violation of canon 26 when he made that purchase?

Justice WINTER. I do not.

Mr. President, here is a Federal judge, and he is a man who is familiar with all this. He has studied the record. This he gives as his opinion. Each one of us can have his own opinion, if he wants to, but here is a judge who gives this as his judgment, and he knows what he is talking about.

Now, if we are going to say, "Oh, but we must not have any appearance of evil, or any sort of reproach visited on someone," then indeed we will find it difficult to find any nominee for a judgeship able to comply with that kind of a test. It is a test that would elicit 100 different results within this body. That is certainly not contemplated in the statute, nor is it contemplated in any of the canons.

On the issue of substantiality, Judge Winter did take issue with the idea that there was a substantial interest, as I have already illustrated by reading the question by Senator ERVIN:

Senator ERVIN. Now certainly this 0.0005 proportionate ownership of the Brunswick Corp. by Judge Haynsworth could not have given him any very substantial interest in the outcome of that case, could it?

Judge WINTER. Sir, I think the arithmetic of it would show that it was not certainly a big interest in the absolute sense.

And he says that if the judge decided that it was not substantial in his opinion, and that there was no conflict of interest, he would respect that determination.

That is what Congress put in the law. That is what is in the law, and I think we ought to go by that law.

Mr. BAYH. Mr. President——

Mr. HRUSKA. Again, if we should decide to change the rules, that is something we can do, but prospectively, and let us change the law. But let us not impose our subjective ideas of what the principle of the law is and try to apply them to this man.

Mr. BAYH. Mr. President, will the Senator yield a moment? Or may I have the floor?

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. BAYH. Mr. President, it seems to me there are two words which are the cause of our disagreement and differing interpretations. They are the two words "substantial interest," as used in section 455.

As one Member of this body, I can see how another Member of the body could look at those two words and come to a different conclusion as to their meaning from that of the Senator from Indiana.

But I must say I concur with the Senator from Kentucky in his determination as to what is a substantial interest. I share the concern of our good friend and colleague from Nebraska that we not, indeed, get involved in an ex post facto situation. But, in my judgment, we have ample evidence now to say that the business relationship that Judge Haynsworth had was sufficient to come under the coverage of the statute as it is now.

Let me, if I may, quote some of those who have previously been quoted. In fact, we have talked about what Judge Winter said, and we have talked about what Mr. Frank said. Before proceeding further, I think it might be helpful if we place in the RECORD at this time a letter from the dean of the Yale University Law School concerning this matter of conflict of interest. I ask unanimous consent that a letter addressed to the two Senators from Connecticut by the dean of the Yale University Law School, dated November 19, 1969, be printed in the RECORD.

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

YALE UNIVERSITY LAW SCHOOL,
New Haven, Conn., November 19, 1969.

HON. THOMAS J. DODD,
HON. ABRAHAM A. RIBICOFF,
Senate Office Building,
Washington, D.C.

DEAR SENATORS DODD AND RIBICOFF: Much has been said—much has been written—on the vexing question whether the Senate should vote its constitutional "consent" to the nomination of Judge Clement Haynsworth, Jr., as an Associate Justice of the United States Supreme Court.

I do not propose to burden you with an extensive review of all the issues. But permit me to add a few words on one aspect of the nomination—the question whether Judge Haynsworth has fully insulated himself from "the appearance of impropriety" (Canon 4 of the Canons of Judicial Ethics)—which seems to me in danger of being blurred out of focus for the regrettable reason that partisans on both sides have been making extreme claims which cloud the real issue.

Some of these extreme claims suggest—wholly falsely, I submit—that the question at issue is whether Judge Haynsworth is an honest and upright man.

By way of example of one such extreme claim, there was testimony before the Senate Judiciary Committee from a highly-placed labor leader which included the assertion that Judge Haynsworth "operates within that (Southern textile) conspiracy"—a shockingly scurrilous assault on Judge Haynsworth's integrity, for which, I venture, there is not an iota of evidentiary support in the record made before the Committee.

But it is the profoundly unfortunate fact that partisans on the other side have contributed to this false view of the issue. I am thinking, for example, of suggestions emanating from certain members of the House of Representatives that non-confirmation of Judge Haynsworth should trigger impeachment proceedings against Mr. Justice Douglas. Quite apart from the fact that those who have floated their suggestions have not vouchsafed any remotely plausible grounds for impeachment (and have thus gratuitously slandered a defenseless sitting Justice), it is evident that the intended import of these suggestions is to persuade the Senate that non-confirmation of Judge Haynsworth would be tantamount to an accusation that the Judge has been guilty of actual misfeasance in the performance of his judicial duties on the Court of Appeals for the Fourth Circuit.

That, however, is not the issue before the Senate. No responsible opponent of the nomination argues—or has, I believe, any basis for arguing—that Judge Haynsworth has been guilty of any actual impropriety. The single question before the Senate is, as Senator Griffin rightly phrased it, "whether he should be promoted to a place on the Nation's highest court."

Measured by that standard, the nomination should not, in my judgment, be approved, for I am not satisfied that Judge Haynsworth has demonstrated substantial sensitivity to the punctilious norms of judicial behavior we would want a Justice of the Supreme Court to adhere to.

I offer this judgment with some diffidence, for I appreciate the contrariety of perspectives from which reasonable and honorable men, including the members of the Judiciary Committee, have viewed the several questioned episodes in Judge Haynworth's judicial career which were canvassed by the Committee. Of these episodes, I wish to comment upon only one—the much-mooted *Brunswick* case. There are two aspects of this which trouble me. One is the way in which Judge Haynsworth dealt with what was, concededly, an "inadvertent error" (the pur-

chase of stock in the Brunswick Corporation while the case was pending before him)—namely, by taking no steps to undo the error. The second aspect which troubles me (and I say this with all deference) is the fact that the majority of the Judiciary Committee in effect placed its stamp of approval on Judge Haynsworth's decision not to undo the error: a dictum of the Committee which, I am afraid, can only serve to undercut the Committee's own authority and prestige insofar as the Committee has appeared to acquiesce in a standard of judicial behavior less rigorous than that which ought to apply in the courts of the United States.

With respect to the first aspect, let me say at once that manifestly Judge Haynsworth did not, by reason of purchasing stock in the Brunswick Corporation, acquire any measurable financial stake in the outcome of the pending litigation. That is not the point. The point is that Judge Haynsworth, upon realizing (on receipt of Judge Winter's draft opinion) that he had inadvertently purchased stock in a corporation which was a party to a law suit pending before him, and in order meticulously to avoid "the appearance of impropriety," ought to have taken at least one of three courses of action: (1) divest himself of the shares forthwith; (2) bring his shareholder status to the attention of the litigants' counsel and his fellow members of the panel; (3) withdraw from the panel. He took none of these courses of action. Instead he chose to stay on the panel and participate in the final disposition of the case. This choice does not, in my view, reflect that instinct for judicial decorum which I would hope to find in a man nominated to be an Associate Justice of the Supreme Court.

On the second aspect of the matter, I am distressed by the readiness of the majority of the Judiciary Committee to approve Judge Haynsworth's decision to remain on the panel:

The committee is of the opinion that because the purchase was inadvertent and because the issues in the case had been decided prior to the purchase, neither the statute nor the canons were violated. Judge Haynsworth stood to make no financial gain by reason of the stock purchase and could not have been influenced in his judicial actions. While a change in the court's opinion was technically possible prior to the issuance of the written opinion, as a practical matter the chances for such a reconsideration were nil.

Under these circumstances and in view of the nature of the case Judge Haynsworth reasonably concluded he should not disqualify himself from the case. This would have required assigning a new panel to hear the case, rescheduling oral argument, deciding the case anew and rewriting the draft opinion. As chief judge, charged with the administration of the court, Judge Haynsworth recognized this procedure would have been unduly burdensome in this case where the merits were not in doubt.

I find it difficult to concur in the proposition that, where a case is a routine one in which "the merits were not in doubt," a federal judge faced with Judge Haynsworth's problem should have "reasonably concluded" that he need not undertake either to divest, or to disclose, or to disqualify himself. As to the standard of judicial punctilio to be observed, I would have thought it common ground that no case is routine. And I am particularly surprised at the suggestion that because Judge Haynsworth was "chief judge, charged with the administration of the court," it was particularly appropriate for Judge Haynsworth to conclude that disqualification "would have been unduly burdensome." I would have hoped the Judiciary Committee would have expected a chief judge to be at particular pains to see to it that the members of his court, himself included, would avoid "the appearance of impropriety." I especially would have hoped this when the issue on which the Judiciary Committee was to counsel the Senate was whether the chief judge "should be promoted to a place on the Nation's highest court."

Sincerely,

——— ———.

Mr. BAYH. In the letter, he indicates that he feels very definitely the Judge should have disqualified himself from the Brunswick case.

I also ask unanimous consent to have printed in the RECORD once again, if I may do so without belaboring the printer, a letter from David Mellinkoff, professor of law, University of California at Los Angeles, dated October 20, 1969, addressed to the Honorable James O. Eastland, with copies to myself and other Senators, in which he shares the same concern about the Judge's having a substantial interest.

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

UNIVERSITY OF CALIFORNIA,
LOS ANGELES,
Los Angeles, Calif., October 20, 1969.

Hon. JAMES O. EASTLAND,
U.S. Senate, Chairman, Senate Judiciary Committee, Washington, D.C.

MY DEAR SENATOR EASTLAND: As a professor of law teaching legal ethics to future lawyers, I write to invite your further attention to what I believe to be the central issue in the consideration of the fitness of Mr. Justice Haynsworth for appointment to the Supreme Court of the United States.

Three instances of apparent conflict of interest have been given prominence in the press: the Justice's purchase of Brunswick Corporation stock before announcement of his Court's decision in favor of Brunswick; his substantial ownership of Carolina Vend-O-Matic, a company having a valuable business relationship with a successful litigant before the Court; and his small stock holdings in the W. R. Grace Co. at the time of a decision favorable to its subsidiary Grace Lines. According to report, Justice Haynsworth has explained that the Brunswick case had been decided and forgotten before he bought any Brunswick stock, and that financial interest did not influence his vote in any of these cases. As a member of the bar for 30 years I accept Justice Haynsworth's explanation.

At the same time I cannot but observe that to the unsuccessful litigant in Justice Haynsworth's Court the explanation would ring hollow. At best losing a lawsuit is a disheartening, at worst a crushing experience to anyone convinced rightly or wrongly of the justice of his cause. The disappointment is endurable only under a system of justice in which the loser knows that the process by which he lost was a fair one.

In a grosser age, when the brilliant Francis Bacon was forced from office and forced to acknowledge that as Lord Chancellor of England he had been taking gifts from litigants, he was still able to assert, ". . . I am as innocent as any born upon St. Innocent's day: I never had a bribe or reward in my eye or thought when pronouncing sentence or order." It may have been true, but it was hardly satisfying, least of all to the man who lost his case in the Lord Chancellor's court.

In a United States district court a jury awards an injured seaman $50.00 on a claim against Grace Lines he thought worth $30,000.00. Saddened, he takes his case to the United States Circuit Court of Appeals. It is not difficult to imagine the bitternass in the heart of the injured seaman when he learns that one of the judges to whom he appealed in vain to right the supposed wrong of the Grace Lines was even a small owner of the company that owns Grace Lines. By the standard of the marketplace Justice Haynsworth's stockholding was trifling. It looms large in the mind of the unhappy litigant searching to discover just what it was that tipped the scales of justice against him.

To avoid such avoidable strains on the legal system, it has long been a maxim of the law that courts shall not only do justice but that they shall seem to do justice. This ancient wisdom finds expression in the Canons of Judicial Ethics of the American Bar Association providing that a judge's conduct should not only he "free from impropriety" but from "the appearance of impropriety." (Canon 4). The importance of the appearance of things is stressed again and again (Canons 13, 24, 26, 33), culminating in the injunction that "In every particular his conduct should be above reproach." (Canon 34).

These Canons apply to judges at every level. They apply most stringently to the men who are to grace the court which sets an example of right to the rest of the nation. I hope, Senator, that you will consider the nomination of Mr. Justice Haynsworth in this light. If you do, I believe you will come to share my conclusion that his confirmation would not promote that necessary public respect for our system of justice which each of us in his own way seeks to preserve.

DAVID MELLINKOFF,
Professor of Law.

Mr. BAYH. Inasmuch as Mr. Frank has been quoted as saying that the judge did not have a substantial interest in Carolina Vend-A-Matic, I should like to call the attention of the Senate to what Mr. Frank——

Mr. HRUSKA. Mr. President, will the Senator yield? Is it suggested that I said the judge did not have a substantial share in Vend-A-Matic?

Mr. BAYH. No. Heavens, no; the Senator has been very meticulous about this, and if I inadvertently inferred that, I apologize.

Mr. HRUSKA. I did not know to whom reference was made.

Mr. BAYH. I was not quoting the Senator from Nebraska. I was quoting Mr. Frank, when he said—I tried to get him to say something else, but he refused, and I disagreed——

Mr. HRUSKA. I did not realize the Senator was quoting.

Mr. BAYH. I was quoting Mr. Frank.

Mr. HRUSKA. Very well.

Mr. BAYH. Mr. Frank said consistently that in his judgment, Judge Haynsworth did not have a substantial interest in the Darlington case; but the Senator from Kentucky brought up the question of Brunswick, which is relevant to the Grace Lines case and the Maryland Casualty cases.

Mr. Frank said, when I asked him, as shown on page 127:

How large is a substantial interest?

I think that generally the better view, Senator, but not the only view, is that if there is any interest it ought to be regarded as a disqualifier. But the word "substantial" is used here to cover the marginal situation of the small stockholders, let us say, in a corporation, somebody has a few shares of GM, that sort of thing. I have given an illustration in one footnote of a case of a district judge in the second circuit who had, as I said, 20 shares on 13 million and felt, thought it wasn't enough.

In my report in 1947, 33 State and Federal courts felt if there was any holding of stock they thought it should disqualify. Two courts thought if the holding was very small they felt it should not disqualify, and you heard

Judge Haynsworth state that was the view of the fourth circuit.

Again, later on, as I tried to develop this more fully, Mr. Frank said:

Senator, in the overwhelming majority view, and there is a citation here of the most recent ALR note, shareholding would be enough. Any. But it is not quite unanimous.

In going now to what Judge Winter had to say about this matter, I point out that on page 260 of the hearings, the Judge said:

Well, I think the rule of thumb is that if he has knowledge, he ought not to sit in the case unless there is some exceptional circumstance, and the parties or the counsel for the parties agree that he should sit. I have reference to this fact, Senator. We, of course, live in a metropolitan State, and the Court of Appeals of the Fourth Circuit is a metropolitan court. I mean it is a multijudge court.

In other words, even in the fourth circuit, which holds the minority view that if one has some stock, he may sit, that judge should disclose his holdings. And Judge Haynsworth did not disclose.

Mr. HRUSKA. Mr. President, on the contrary, that is not what Judge Winter testified. He was asked this question by the Senator from Indiana himself:

If you had been made aware that Judge Haynsworth had purchased the stock, what action, if any, would you and Judge Jones have taken?

The answer implied that Judge Winter would have left the decision to him because the statute requires that those matters of personal disqualification are purely a matter for a person's judgment. And that is why we have in the statute not only the words "substantial interest," but also the words, "in his opinion."

Judge Winter's testimony is clearly relevant together with the testimony of Judge Haynsworth when he said:

The (first) time, of course, that the case entered my mind was when I received the proposed opinion from Judge Winter. At that stage, I realized that it had not been completely disposed of, and at that time I thought what I should do. I had now become a stockholder. My conclusion was that I should endorse it since Judge Winter had written an opinion precisely as we had agreed, since Judge Jones concurred, since no one had any doubt about it, and nothing else occurred to return the case to the discussion stage . . .

It does occur, as brought out by Judge Winter, when an opinion is assigned to a judge, that for a number of reasons he may change his opinion. But no such thing happened here. When the decision was finally made, he was not a stockholder.

Mr. BAYH. Mr. President, I suggest to the Senator that either he and I respectfully disagree with one another or Judge Winter is saying one thing in response to my question and another thing on page 260 in response to my question and another thing on page 260 in response to a question from the Senator from Maryland (Mr. MATHIAS).

When it states that the judge should disclose his holdings and get approval from counsel, it seems to me the very least Judge Haynsworth should have done was to disclose his interest in Brunswick.

Let me deal with one or two other aspects of the matter and then I will let the Senator pursue this in any direction he wishes.

Looking at the words "substantial interest," I think that we in Congress have been negligent. And I hope that after this is over, we will clarify this statute so there will be a uniform interpretation throughout the country.

I call attention to page 37 of the report from the Senate Judiciary Committee, to an article written by Judge Simon Sobeloff in the Federal Bar Journal in which he talked about conflict problems. Inasmuch as Judge Sobeloff's name has been drawn into this matter and inasmuch as he was chief judge of the fourth circuit. I think what he has to say has some relevance. Judge Sobeloff said:

One can readily see that if a judge serves as an officer or director of a commercial enterprise, not only is he disqualified in cases involving that enterprise, but his impartiality may also be consciously or unconsciously affected when persons having business relations with his company come before him.

It seems to me this condemns Judge Haynsworth's unfortunate relationship with Carolina Vend-A-Matic.

I also would like to make one concluding observation to reinforce the position of the Senator from Kentucky (Mr. COOPER) as to his definition of substantial interest.

I think most of us who have had some experience in the legal profession realize that the cold words of the code mean nothing until they are put into practice.

I think the best way to interpret what substantial interest means is to look at what the courts have said about the interpretation of substantial interest. And the court has spoken last year in the case of Commonwealth Coatings Co. against Continental Casualty Co. about this very thing. In that particular instance, there was an arbitration in which an arbitrator had a 1-percent interest with one of the litigants, whereas in the Darlington case, there was a 3-percent involvement. In the Commonwealth Coating case, the relationship had not existed for at least a year, whereas in the Carolina Vend-A-Matic-Darlington situation the relationship was an ongoing thing.

I would like, if the Senator from Nebraska will bear with me, to read into the RECORD at this time what really convinced me that the judge had a substantial interest.

This is a direct quote from the opinion in the Commonwealth Coating Company v. Continental Casualty Company case. It says:

It is true that petitioner does not charge before us that the third arbitrator was actually guilty of fraud or bias in deciding this case, and we have no reason, apart from the undisclosed business relationships, to suspect him of any improper motives.

This points out that it makes no difference that Judge Haynsworth was not trying to feather his own financial nest or improve his stock benefits. I do not think that at all. The case continues:

But neither this arbitrator nor the prime contractor gave to petitioner even an intimation of the close financial relation that had existed between them for a period of years.

Then, in what I feel is very significant language, the Court stated:

We have no doubt that if a litigant could show that a foreman of a jury or a judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would be subject to challenge.

Further—and I feel that this is what the Senator from Kentucky (Mr. COOPER) was striving for—in concluding that case, after talking about the arbitration ruling, after bringing the canons of ethics into a case before the Supreme Court, and quoting from canon 33 extensively, the Court said:

This rule of arbitration and this canon of judicial ethics rest on the premise that any tribunal permitted by law to try cases and controversies must not only be unbiased, but must avoid even the appearance of bias.

Although I am sure all Senators do not concur in the view of this relative neophyte member of the bar, the Carolina Vend-A-Matic relationship concerns me.

Mr. HRUSKA. The Senator from Indiana was quoting from the Supreme Court decision in the Coating case. Professor Frank clearly distinguished that case. That case involved an arbitrator who was a part owner of a business that had provided consultation to one of the parties on a matter that was at issue in the proceedings. That was not the case with Judge Haynsworth.

Mr. BAYH. With all due respect, if the Senator from Nebraska will read my colloquy with Mr. Frank, he will see that Mr. Frank was basing his interpretation on the fact that he thought the Court's decision rested on arbitration rule 18.

Mr. HRUSKA. That is correct.

Mr. BAYH. If the Senator from Nebraska will read further, he will find that the Court said that the final determination did not depend on arbitration rule 18; it also quoted from canon 33, and stated, as I said earlier, that it was deciding the case on a broader principle, deciding it on something more than arbitration rule 18.

Mr. HRUSKA. I agree that the Senator is trying to do that.

Mr. BAYH. I am not, but the Court did.

Mr. HRUSKA. The fact remains that rule 18 of the American Arbitration Association is highly significant but not controlling. But, regardless, it is still a case in which arbitration is involved and not a judicial matter.

Let us get back to the matter of Judge Sobeloff.

Mr. BAYH. May I repeat that the Court goes so far as to say:

We have no doubt that if a litigant should show—

Not that an arbitrator but—

that a foreman of a jury or a judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would have been subject to challenge.

It seems to me that the Court is saying that if this case had involved a judge, the judge would have had to disqualify himself.

Mr. HRUSKA. In the first place it

is dictum. In the second place, to be applicable, the facts would have to be the same as in this case, and the facts in the Vend-A-Matic case are not the same as in this case.

Let us get back to the quotation from Judge Sobeloff. This is what I mean by bill of attainder, Mr. President. Here is a quotation from a law journal, written for the Federal Bar Journal, in 1964, in which Judge Sobeloff makes a comment on canon 24. The application of that law article is now sought to be imposed upon Judge Haynsworth.

Mr. BAYH. Will the Senator tell me when canon 24 was first adopted as part of the canons of ethics? Is that ex post facto? It was adopted in 1924.

Mr. HRUSKA. The article is certainly ex post facto, and the Senator is relying on the article which goes beyond the canon and beyond the statute.

On page 3 of the committee report we have a telegram signed by Judge Sobeloff, as the first of six judges of the Fourth Circuit Court. That telegram is specific, and he knew all the facts involved. The telegram reads:

> Despite certain objections that have been voiced to your confirmation, we express to you our complete and unshaken confidence in your integrity and ability.

If Judge Sobeloff felt that Judge Haynsworth was guilty of violating all these canons and showing insensitivity, he would not have given him this clear expression of confidence in his integrity and ability.

Mr. BAYH. Will the Senator yield? I want to make the RECORD clear.

I think the Senator has raised a good point relative to the ex post facto matter. But I am looking at those canons of ethics which were on the books before I was born.

Mr. HRUSKA. I would not be prepared to say. I do not think the canons of ethics were in existence.

Mr. BAYH. I think they were adopted in 1924. I stand corrected, if someone can say differently. I merely mentioned Judge Sobeloff's interpretation because it seems to me——

Mr. HRUSKA. And then sought to apply it.

Mr. BAYH. It seems a reasonable interpretation. If Judge Sobeloff was a reasonable man in 1964, he probably was a reasonable man when he was sitting as chief judge of his court.

Mr. HRUSKA. Yet, the application of general language in a law article to a situation as serious as this seems to me to be a little out of order.

Mr. President, let me point out that there is some law on this subject in the Fifth Circuit Court, and the Senator from Kentucky (Mr. COOK), cited it in his brief, on November 14, in the RECORD, at page 34270. There we have the case of Austral Oil Co., Inc., against Federal Power Commission. The Fifth Circuit, in a ruling issued in October, although transferring the case to another panel for rehearing, unequivocally held that Chief Judge Brown and Judge Jones were not disqualified for any reason to sit on the case, despite the fact that both judges had considerable stock interests in several of the parties. Judge Brown individually owned stock valued at $36,400 in three of the litigants as of the date of the hearing and was a trustee of several trusts holding oil company stocks worth approximately $500,000. It goes more into that situation.

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

Mr. HRUSKA. I quote now from the ruling of the Fifth Circuit:

> The judges of the panel to which this case was assigned are not disqualified by prejudice, neither are they disqualified by interest, whether individual, fiduciary, or otherwise.

There is another case, Kinnear-Weed Corp. against Humble Oil. That was a patent infringement case that commenced in 1953, and it involved a claim for $285 million in damages, plus interest, against Humble. The trial judge owned not only 100 shares of Humble stock worth approximately $10,000 but also 25 percent of the stock of a company—and was an officer and director in a company—which, during the time the judge sat on this case, averaged almost 16 percent of its business with Humble. Second, he was a plaintiff in a contested lawsuit against Humble in which he received $409.24 out of the final settlement. Third, he executed certain oil leases with Humble.

As for the stockownership in Humble, the Fifth Circuit Court, in an en banc ruling written by Chief Judge Brown, held:

> This tiny fractional interest in the equity ownership of this huge industrial enterprise does not amount, either as a matter of fact, or law, or both, to a substantial interest by the trial judge in the case or a prohibited connection with a litigant.

Other cases were cited in the very well-prepared and documented remarks of the Senator from Kentucky (Mr. COOK).

This is the law. This is not a quotation from a law school article or a bar journal. There is the law as announced by the Fifth Circuit Court of Appeals.

Mr. BAYH. Will the Senator from Nebraska point out one Supreme Court case to me in the Senator from Kentucky's brief or, indeed, in the brief that was prepared by the Assistant Attorney General, Mr. Rehnquist. The Senator from Nebraska is doing an excellent job of citing law in the Fifth Circuit, but I want to know what the law in the United States is. The Senator talks about this Fifth Circuit case.

Mr. HRUSKA. Two cases.

Mr. BAYH. He omits to say that after the Fifth Circuit held this way, two of the judges involved decided they would remove themselves voluntarily.

Mr. HRUSKA. But the decision and the ruling was that there was no disqualification.

Mr. BAYH. That is the Fifth Circuit.

Mr. HRUSKA. If the Supreme Court authority is a case of arbitration which refers only in a very tangential way to this situation, I do not think it would make sense. It is only dictum. The situation is not parallel, and there is no similarity in the facts.

Mr. BAYH. I have before me approximately five pages, a relatively short decision, made in the October term of last year—it is about a year old—written by Justice Black.

It is very easy for the Senator from Nebraska to suggest that part of the case which proves my point is dictum. The Senator from Indiana takes the opposition. I think I should ask unanimous consent that Commonwealth Coatings against Continental Casualty be printed in the RECORD in toto so that everyone can make this determination for himself.

Mr. HRUSKA. I think that would be splendid. I join in the request.

The PRESIDING OFFICER (Mr. SPONG in the chair). Is there objection?

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

SUPREME COURT OF THE UNITED STATES

No. 14.—October Term, 1968

COMMONWEALTH COATINGS CORP., PETITIONER, v. CONTINENTAL CASUALTY CO. ET AL.

(On Writ of Certiorari to the United States Court of Appeals for the First Circuit)

[November 18, 1968]

Mr. Justice Black delivered the opinion of the Court.

At issue in this case is the question whether elementary requirements of impartiality taken for granted in every judicial proceeding are suspended when the parties agree to resolve a dispute through arbitration.

The petitioner, Commonwealth Coatings Corporation, a subcontractor, sued the sureties on the prime contractor's bond to recover money alleged to be due for a painting job. The contract for painting contained an agreement to arbitrate such controversies. Pursuant to this agreement petitioner appointed one arbitrator, the prime contractor appointed a second, and these two together selected the third arbitrator. This arbitrator, the supposedly neutral member of the panel, conducted a large business in Puerto Rico, in which he served as an engineering consultant for various people in connection with building construction projects. One of his regular customers in this business was the prime contractor that petitioner sued in this case. This relationship with the prime contractor was in a sense sporadic in that the arbitrator's services were used only from time to time at irregular intervals, and there had been no dealings between them for about a year immediately preceding the arbitration. Nevertheless, the prime contractor's patronage was repeated and significant, involving fees of about $12,000 over a period of four or five years, and the relationship even went so far as to include the rendering of services on the very projects involved in this lawsuit. An arbitration was held, but the facts concerning the close business connections between the third arbitrator and the prime contractor were unknown to petitioner and were never revealed to it by this arbitrator, or by the prime contractor, or by anyone else until after an award had been made. Petitioner challenged the award on this ground, among others, but the District Court refused to set aside the award. The Court of Appeals affirmed, 382 F. 2d 1010 (C. A. 1st Cir. 1967), and we granted certiorari, 390 U.S. 979 (1968).

In 1925 Congress enacted the United States Arbitration Act, 9 U.S.C. §§ 1 15, which sets out a comprehensive plan for arbitration of controversies coming under its terms, and both sides here assume that this Federal Act governs this case. Section 10, quoted below,

sets out the conditions upon which awards can be vacated.[1] The two courts below held, however, that § 10 could not be construed in such a way as to justify vacating the award in this case. We disagree and reverse. Section 10 does authorize vacation of an award where it was "procured by corruption, fraud, or undue means" or "where there was evident partiality . . . in the arbitrators." These provisions show a desire of Congress to provide not merely for any arbitration but for an impartial one.

It is true that petitioner does not charge before us that the third arbitrator was actually guilty of fraud or bias in deciding this case, and we have no reason, apart from the undisclosed business relationship, to suspect him of any improper motives. But neither this arbitrator nor the prime contractor gave to petitioner even an intimation of the close financial relations that had existed between them for a period of years.

We have no doubt that if a litigant could show that a foreman of a jury or a judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would be subject to challenge. This is shown beyond doubt by *Tumey* v. *Ohio*, 273 U.S. 510 (1927), where this Court held that a conviction could not stand because a small part of the judge's income consisted of court fees collected from convicted defendants. Although in *Tumey* it appeared the amount of the judge's compensation actually depended on whether he decided for one side or the other, that is too small a distinction to allow this manifest violation of the strict morality and fairness Congress would have expected on the part of the arbitrator and the other party in this case. Nor should it be at all relevant, as the Court of Appeals apparently thought it was here, that "[t]he payments received were a very small part of [the arbitrator's] income . . ." [2] For in *Tumey* the Court held that a decision should be set aside where there is "the slightest pecuniary interest," on the part of the judge, and specifically rejected the State's contention that the compensation involved there was "so small that it is not to be regarded as likely to influence improperly a judicial officer in the discharge of his duty . . ." [3]

Since in the case of courts this is a *constitutional* principle, we can see no basis for refusing to find the same concept in the broad statutory language that governs arbitration proceedings and provides that an award can be set aside on the basis of "evident partiality" or the use of "undue means." See also *Rogers* v. *Schering Corp.*, 165 F. Supp. 295, 301 (D.C.D.N.J. 1958). It is true that arbitrators cannot sever all their ties with the business world, since they are not expected to get all their income from their work deciding cases, but we should, if anything, be even more scrupulous to safeguard the impartiality of arbitrators than judges, since the former have completely free rein to decide the law as well as the facts and are not subject to appellate review. We can perceive no way in which the effectiveness of the arbitration process will be hampered by the simple requirement that arbitrators disclose to the parties any dealings that might create an impression of possible bias.

While not controlling in this case, Rule 18 of the American Arbitration Association is highly significant. It provides as follows:

"Section 18. Disclosure by Arbitrator of Disqualification—At the time of receiving his notice of appointment, the prospective Arbitrator is requested to disclose any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial Arbitrator. Upon receipt of such information, the Tribunal Clerk shall immediately disclose it to the parties, who if willing to proceed under the circumstances disclosed, shall, in writing, so advise the Tribunal Clerk. If either party declines to waive the presumptive disqualification, the vacancy thus created shall be filled in accordance with the applicable provisions of this Rule."

And based on the same principle as this Arbitration Association rule is that part of the 33d Canon of Judicial Ethics which provides:

"33 Social Relations.

". . . [A judge] should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct."

This rule of arbitration and this canon of judicial ethics rest on the premise that any tribunal permitted by law to try cases and controversies must not only be unbiased but must avoid even the appearance of bias. We cannot believe that it was the purpose of Congress to authorize litigants to submit their cases and controversies to arbitration boards that might reasonably be thought biased against one litigant and favorable to another.

Reversed.

Mr. BAYH. Mr. President, I would like to make one last point. I hope my friend from Nebraska will consider it further because I have great confidence in his legal judgment. However, I do not see a great distinction between the facts of Carolina Vend-A-Matic and Commonwealth Coatings. I have never been able to persuade the Members of this body of the real concern I have for the relationship of the judge to Carolina Vend-A-Matic. It goes right to the similarity, not the disparity but the similarity, between Commonwealth Coatings and the Darlington Mills case.

Mr. HRUSKA. Mr. President, will the Senator yield for a little interpolation?

Mr. BAYH. I yield.

Mr. HRUSKA. Is the Coatings case not a good example of the ex post facto situation? Here are events 6 and 7 years ago; and here is a case being quoted from the Supreme Court which was decided last year. What power of clairvoyance are we going to ask a nominee to have? Will he have to be able to predict what the Supreme Court will be saying 5 years from now, and will he have to comply with that ruling?

Here is a case decided in 1968 and an effort is being made to make it apply to a decision and conduct that happened 6 years ago. I would say it would be highly unfair to expect Judge Haynsworth to know what the Supreme Court would do 5 years hence. And in my judgment that is what he is asked to do.

Mr. BAYH. I would not expect a judge in 1953 to be able to determine what the Supreme Court is going to do in 1968. I do not think the Senator and I can tell what they are going to do today or tomorrow.

Mr. HRUSKA. The Senator is correct.

Mr. BAYH. I think that a judge, with his standing on the circuit court, should be able to know what the Supreme Court said in the case of Tumey against Ohio in 1927. That was a landmark case on which Commonwealth Coatings was based, and that case provided the precedent for the Court to say in 1968:

We have no doubt that if a litigant could show that a foreman of a jury or a judge in a court of justice had unknown to the litigant any such relationship the judgment would be subject to challenge.

That is from the Tumey case in 1927.

Mr. HRUSKA. What kind of case was it? What were the facts? Did that not have to do with stock ownership in one of the parties litigant?

Mr. BAYH. In Tumey?

Mr. HRUSKA. Yes.

Mr. BAYH. No.

Mr. HRUSKA. What was the situation?

Mr. BAYH. It had to do with a justice-of-the-peace situation as to which the court said, "The payments received were very small"——

Mr. HRUSKA. That is right.

Mr. BAYH. And the Tumey case and the Commonwealth Coatings case are the law of the land, not just the law of the Fifth Circuit Court of Appeals. They say if you have the slightest interest——

Mr. HRUSKA. In the case.

Mr. BAYH. In the case.

Mr. HRUSKA. Exactly. As to Vend-A-Matic, its customer was the litigant. Vend-A-Matic was not a party in the case.

Mr. BAYH. The Senator looks at this matter one way, and I look at it another way. The Commonwealth Coatings case is exactly the same.

Mr. HRUSKA. I refuse to subscribe to a case which has to do with an arbitration situation and apply it to a case having to do with stockholders.

Mr. BAYH. Is it the only ground for the Senator's opinion that this ruling was in an arbitration case? I am willing to concede the Tumey case was a justice-of-the-peace case, and Commonwealth Coatings was an arbitration case. It is difficult, if not impossible, to find a case that is on all fours with every situation.

However, in Commonwealth Coatings, the Court said:

We have no doubt that if a litigant could show that a foreman of a jury or the judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would be subject to challenge.

The Court speaks unequivocally on this, and not just about arbitration.

Mr. HRUSKA. What is the date of that decision? Can the Senator inform me of the date of the decision?

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[1] "In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

"(a) Where the award was procured by corruption, fraud, or undue means.

"(b) Where there was *evident partiality* or corruption in the arbitrators, or either of them.

"(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of *any other misbehavior by which the rights of any party have been prejudiced.*

"(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

"(e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators."

[2] 382 F. 2d, at 1011.

[3] 273 U.S., at 524.

Mr. BAYH. What decision is the Senator referring to?

Mr. HRUSKA. The decision in the case of Commonwealth Coatings against Continental Casualty Co.

Mr. BAYH. It is a 1968 decision.

Mr. HRUSKA. October 1968.

Mr. BAYH. Yes.

Mr. HRUSKA. Mr. President, I suggest again this is an odd procedure. It is not called an ex post facto rule but it has every badge of it. Here there is the attempt to apply a Supreme Court decision which was rendered in 1968. The decision cannot be over 1 year old and there is an attempt to apply this ruling to events that happened 6 years ago. That does not seem very fair under this system of jurisprudence that we have developed in this country in the last 200 years.

Mr. BAYH. May I suggest the Senator has the right to interpret in this way but the Senator has no desire to pose this retrospectively. I think that if, indeed, the Commonwealth Coatings case was the law of the land in 1968 then Tumey against Ohio was the law of the land in 1963 and 1964.

Another matter that concerns me is that we are asking the Senate to confirm the nomination to the Supreme Court of a judge who, with eight other judges, will determine what the law is going to be tomorrow or the next day.

Mr. HRUSKA. The Senator is correct.

Mr. BAYH. As I mentioned to the Senator from Nebraska earlier, the second day of the hearings, after we had had a lengthy session—and the Senator is always very helpful in sitting through all these sessions—I had a speaking engagement in Chicago.

I got the last seat in the plane; it was near those facilities located in the back of planes. I sat next to a young lawyer from Chicago who had been before the Court that day. He had led a petition for certiorari in a case involving two supreme court judges of Illinois who were directors in banks and had significant stockholdings in banks. These judges had held that in drafting a will a bank has no fiduciary relationship to a senile, elderly lady. The question is whether the Court will grant certiorari and hear that case. The Court is going to determine what is ethical conduct.

At page 99 of the hearings, after expressing my concern about Judge Haynsworth's past relationship with Carolina Vend-A-Matic, I asked him:

> Senator BAYH. Now, you have been quoted, and I wonder if it is accurate, that if you had the *Darlington-Deering Milliken* case to do over again, that you would still feel that you did not have a sufficient conflict of interest.
>
> Judge HAYNSWORTH. Even if I knew at the time all that I know about it now, I would feel compelled to sit. (Hearings, p. 99.)

In other words, he said, "I would do the same thing today and tomorrow."

Mr. HRUSKA. What thing?

Mr. BAYH. Maintain a relationship——

Mr. HRUSKA. What did he do?

Mr. BAYH. He felt the relationship not only was proper and I feel he was sincere in this, but he felt in light of all the discussion it still was proper.

Mr. HRUSKA. That latter part is a little gratuitous supposition on the part of the Senator from Indiana. The testimony, as I remember it, had to do with reaffirmation by the judge, that if he had to decide whether to sit again while he owned Vend-A-Matic stock, he would do the same thing, and he did. Why not? There is no rule of court. There is no statute. There is no canon. There is no decision that says he could not do it and do it legally and without fear of being criticized for doing anything improper. Why should he not say that?

Mr. BAYH. Of course, this has been a difficult situation.

Mr. HRUSKA. It surely is difficult. Let us have some authority for these conclusions, instead of having the "appearances" or statements such as we do not want to trust him with this responsibility. Why not? What law, what decision, what canon, what court case? That is what we want to know.

Mr. BAYH. I have gone through this and, in my judgment, the judge was in violation on the Tumey case, reiterated and reinforced by Commonwealth Coatings. The law of the land now is Commonwealth Coatings. Is there any question in the mind——

Mr. HRUSKA. Insofar as it goes, but it does not decide all questions.

Mr. BAYH. The law of the land is Commonwealth Coatings——

Mr. HRUSKA. In arbitration cases.

Mr. BAYH. Well, that is the Senator's interpretation.

Mr. HRUSKA. On the contrary.

Mr. BAYH. My attention goes to the fact that the Court talked about the foreman of the jury and judge in a court. Now I am concerned about tomorrow and what happens. We cannot relive the Darlington case, but I am concerned about what is going to happen to the Illinois case, and I am concerned that we not put a judge on the bench, whoever he is, who will reverse the decision of Commonwealth Coatings, or who will weaken the standard established—a rather high standard which I admire.

Yet, as I look at page 99, it seems to me that Judge Haynsworth, by saying that if he had this to do all over again he would still feel compelled to sit, indicates that the judge in Illinois faced with the bank stock situation would also be compelled to sit. He would not establish the standard that I think should be established for the judiciary throughout this country.

Mr. HRUSKA. I would respectfully disagree with the Senator from Indiana when he goes so far as to say that Judge Haynsworth would reverse this situation in Illinois. There is no foundation for that. That is pure conjecture. The decision cannot rest upon the Commonwealth Coatings case, on an arbitration case. When we look back at our law school notes we will find that reference to this sort are dictum. Then look at the Tunney case. It deals with a justice of the peace who has a direct stake in the fine he will levy. That is not the situation in the Vend-A-Matic case. The Coatings case was rendered 5 years after the acts of which the Senator is complaining.

Mr. BAYH. Another difficulty that concerns me, and I am sure that the Senator from Nebraska is deeply troubled about my convictions on this matter.

Mr. HRUSKA. The Darlington case was in the same connection, a part of the study of the American Bar Association Committee on Judicial Selection, and after the record was in, and all the testimony was in, they reconsidered and reaffirmed their proposition that Judge Haynsworth was not only not disqualified to sit but that he had a duty to sit.

It can be argued that we, as Senators, should come to a different conclusion, that we should decide that it is enough that he has been charged with something.

But here is a very splendid committee, almost two decades old, which is always kept up to date by eminent and distinguished lawyers. That was their decision.

If we use Tumey or a lot of other stuff, there will be no nominee who we can be assured will ever be satisfactory. He cannot meet the requirements that he be immune from charges or that he be immune from attack on any question.

Mr. BAYH. Mr. President, I must say that the fact the American Bar Association endorsed Judge Haynsworth, in my judgment, is a significant factor on his behalf.

I was disturbed, however, when about one-third concluded they would not recommend Judge Haynsworth. I think, according to Judge Walsh, there has been only one other occasion like this in 18 years where there has not been a unanimous endorsement. So I think, perhaps, this is evidence that reasonable men, educated in the law, can look at the facts that we have been discussing here somewhat heatedly and come to different conclusions.

Mr. HRUSKA. Now we will require unanimous decisions, and, I presume, from the Supreme Court, too. Two-to-one decisions in a committee of 12.

Horrendous thought, that it is not unanimous.

So, we want not only perfection on the part of a nominee and an immunity from being even charged with something, but now we want people who will be approved unanimously.

I suppose the next demand will be that this body of 100 Senators will have to be unanimous concerning a candidate to the Court, before he will be allowed to reach this pinnacle of perfection.

I believe, really, that that is asking just a little too much.

Mr. HOLLINGS. Mr. President, I have listened for the past hour with interest to this debate. I know that the Presiding Officer looks weary, as do the clerks at the desk. We have heard enough. I wish, at this particular time, for the Senator from South Carolina, who has been critical of the leadership on the opposite side of the aisle, affirmatively to recognize the erudition, the tremendous detail and attention, done with brilliance, which has been given to the Haynsworth matter which the distinguished Senator from Nebraska (Mr. HRUSKA) has more than ably led.

Unfortunately, as I mentioned 2 days ago, there is no debate. The RECORD will show that the distinguished Senator from Nebraska is in the Chamber, the dis-

tinguished Senator from Indiana, the distinguished Senator from West Virginia, and the undistinguished Senator from South Carolina.

With two people in the press gallery, with everybody waiting around for the last 2 hours to go home, with every Senator for the last 2 weeks having made up his mind, suffice it to say that we could continue to try to make it look like we are making a record.

I have outlined the matter as clearly as I am able. When it comes to the matter of stocks and the law, let us not confuse it. There is no question what the law is on Carolina Vend-A-Matic. If we go to Brunswick and listen to the difference of opinion, there is a difference. One is an arbitration case. Tumey is a completely different case. In light of the Tumey case came the Carolina Vend-A-Matic case. Unanimously, said the American Bar Association, under the law and under the canons that we promulgated, we give Judge Haynsworth the highest recommendation.

That was Judge Walsh's testimony in the record, as sustained by Judge Winter when he was asked about the case, as sustained by Dean Foster in his particular opinion, and also by Mr. Frank, a leading authority on disqualification.

So the four Senators on the floor can argue until the day is long and the night is past, but the best authorities have all outlined the law of the case.

When it comes to the facts and doing what he did before, the judge said that under the law, faced with the same circumstances, he would do the same thing. This was an allusion to the questioning of him that "I hate to embarrass you." "Embarrass?" said Judge Haynsworth? "Not at all. Under the same circumstances, under the same law, I would do the same thing." That is absolutely clear.

What about the stockholding evidence? He showed what he thought was the proper practice when we look at the best holding in his portfolio. It so happens that the distinguished Senator from Delaware (Mr. WILLIAMS) does not think a judge should have money, but he looks at this as gainful employment, whether he is going to get enough pension, whether he is going to get annual leave, whether he is going to have enough time to spend with his family. That has nothing to do with the Supreme Court. It so happens that Judge Haynsworth, when first appointed, was a successful businessman and attorney and had practically, for all intents and purposes, a portfolio of half a million dollars, which has now grown to $1 million, but he lost another half million by doing what he thought he should do.

Mr. HRUSKA. Mr. President, if the Senator will yield, when he assumed the judgeship in the fourth circuit, he got the magnificent salary of $22,500.

Mr. HOLLINGS. Twenty-two thousand five hundred dollars; and yet in 1953, when they finally decided that a judge should not be an officer or director, the distinguished chairman of the House Judiciary Committee, EMANUEL CELLER, proposed a bill 2 years ago, and it failed in the House. This is beyond the statutes and the law of the land. It says, "You should not be an officer or director." So said the Judicial Conference. Judge Haynsworth sold his stock, at a loss of half a million dollars. They said, "You should not own that is to be involved." Everybody knows that when he heard the Brunswick case, he did not own any Brunswick stock. Thereafter, he did buy stock.

Carolina Vend-A-Matic never had a vending machine at Darlington Manufacturing Co., in Darlington, S.C.

I will state that again for the RECORD. In Grace Lines, he owned no stock in a party litigant. To have the portfolio he had, and have no one of them as a party litigant before him showed what Judge Haynsworth thought and what he did. He led the way.

So when my distinguished friend comes now and says, "I am afraid if we get this man on the Supreme Court he will pass laws so that everybody can own all kinds of stocks and wheel and deal and feather his own nest."

The Senator from Indiana, to my shock and surprise, said he did not think he was trying to feather his own nest. He entered the bill of particulars over a month ago. He could not wait for the Judiciary Committee to file its report. He said this debate is an important thing and we ought to carry it on on the floor and we ought not to carry it on in the committee. He did not wait for his own committee's report, the majority report, and he could not wait to get in his own minority views; but in the news, in the headlines, on the TV screen, we saw the bill of particulars charging crimes, 37 violations of the canons, and at least four violations of the statute.

I heard my friend mention a while ago that the Congress was negligent. Why did he not put that in the bill of particulars?

I introduced a bill on that subject. There are cosponsors of it. The RECORD shows the Senator from Indiana did not join in it. I put that bill in to try to clarify the matter. I thought the better view was that one should not hold any stock and that that should be the law, and that we should not leave it in the judge's discretion, in this nebulous way. But they have not joined in that proposal.

So now, as we go into the last hours, we are going to have it brought up that a great debate ensued, by which minds were made up. It is not that at all.

After he makes all the charges and says that he solicited business and charges him with soliciting business and charges him with giving out favorable opinions and judgments and decisions to his customers and to his own stockholders, now maybe it is that we were just a little negligent and men who are honest and candid are bound to differ in that contest.

Let me simply say that this has not been a credit to the Senate, for the main and simple reason that this man was tried before he came. He was indicted and tried before he even came to Washington. When he answered, he was blamed for the appearances of answering charges. The conclusion of the opposition was that it was bad for the U.S. Supreme Court to have a judge appointed to the highest Court of the land, who has sought to defend himself and who is being charged with things that, right or wrong, have the appearance of being bad, "and, therefore, I am going to vote against him."

That is what we are talking about. The more we talk, the more we prove that the appearance is bad.

Mr. BAYH. Mr. President, I have not had nearly the experience of my distinguished colleague from South Carolina, who was a very successful member of the bar of his State as well as Governor of his State. As a distinguished Member of this body, I am proud to serve with him. In fact, I did not go back to law school until 1957, and did not graduate until 1960. So I am really wet behind the ears as far as the legal practice is concerned. But I remember very well a professor we had talking about trial tactics and debating tactics. He said, "If you approach a case and you have the law on your side, you pound the law; and if you approach a case and you have the facts on your side, you pound the facts. But if you don't have either the facts or the law, you pound the table."

The Senator from South Carolina, I think, has done an excellent job of following that rule. I know he is doing what he thinks is right, and I would not for a moment suggest otherwise, because he is a man of the highest character. But it appears to me that when we have a nominee who has faults, or when we have a nominee whose ideas or actions have been examined, those favoring the nominee decide to vilify the press or attack the Senator from Indiana. I accept this as part of the strategy.

I have not said we should, and I think it would be rather ludicrous, but I suppose we could, if we were not careful, get ourselves in a position where, as the Senator from Nebraska and the Senator from South Carolina suggested, set a standard that was so high that no one could meet it.

Here is one member of the bar, and one Member of this body, who would never want that to happen. I want to have a successful lawyer as a judge. I would like to have a man who had a good judicial record.

I am concerned, not about Judge Haynsworth's being a wealthy man or accruing a great deal of material wealth as a member of the bar, but the fact that once he was put on that high court, he did not sever his business relationships.

Nobody forced the man to serve on the court. That is one of the highest honors. I do not think it is asking too much to suggest, that if you are going to be a Federal judge with a lifetime appointment and all of the emoluments that the Senator from Delaware pointed out with some degree of particularity, yesterday, that you go just a little bit farther than the average person would go, so that you will give the appearance of justice as well as provide justice yourself.

I admit that the bill of particulars did have some errors in it, for which I have publicly apologized. In fact, I even sent a letter to the Senator from South Carolina as soon as two errors

became evident to me, openly admitting them. I sent that same letter to every Member of this body, and I apologized publicly; but I do not recall ever suggesting that Judge Haynsworth involved himself in decisions with the intention and purpose of increasing or improving his stock portfolio or feathering his own nest, to use a cliche that I mentioned a moment ago. I have never said that. I have done quite the opposite.

Each of us is going to make his own determination on this matter. The Senator from Nebraska and the Senator from South Carolina are going to make a different determination from the Senator from Indiana. Each of us is going to decide whether or not Judge Haynsworth has maintained that standard of conduct, that standard of ethical propriety, and, indeed, to quote a half dozen canons of legal ethics, that appearance of propriety that we feel is important for one of the nine members of the Supreme Court of the United States.

I, for one, do not believe that Judge Haynsworth has met that necessary standard. I am fully convinced that the Senator from South Carolina and the Senator from Nebraska deeply believe that he has.

Mr. HRUSKA. Mr. President, I wonder where the end is, if we are going to ask judges to not possess anything that will be a basis for conflict of interest charges or the appearance of conflict. Where are we going with it? Are we going to ask them to be men of no property, and to dispose of all of their assets? Are we going to ask them to sell their stocks and their bonds and buy Government bonds?

Had a Senator done that 12 years ago, and all his money was converted from personal holdings to U.S. Government bonds, one of the major decisions that such a Senator would have to make is whether or not the interest limitation of 4.25 percent on long-term Government bonds would be increased or not; and by his vote, he would place his whole standing in jeopardy because of conflict of interest.

Are we going to ask judges not to own anything? If so, when will we start applying this rule? Are we going to ask them to be devoid of any basis for concern? Shall we turn our attention to the other members of the circuit courts of appeals in America? Shall we turn our gaze over to the white marble palace right across the parkway here which houses those nine justices and ask them, "Have you any holdings? If so, tell us what they are, and how long you have owned them. Did you ever sit in cases having to do with those corporations, or the people with whom they deal?"

Talk about ex post facto and bills of attainder, Mr. President. We had better think prospectively and not retrospectively, and decide in our own minds whether, when something like this arises, we have to be, all of a sudden, insistent upon a pattern of conduct that has never been applied before.

I hope we get our thinking straight on this thing, and not end up with judgments which are not founded on relevant propositions.

Mr. HOLLINGS. Mr. President, the issue between the Senator from Indiana and the Senator from South Carolina at the moment is feathering the nest. The Senator from Indiana says he does not recall ever charging the judge with trying to feather his nest. He says he has made no personal attack. If there is no personal attack, I am attacking the facts, and I will stand here until we never get to a vote, and just hold the floor, if I have to, to clarify these facts, because we will not yield on these. They are either true or false.

Here are the facts as of October 8, over a month ago, as stated by the Senator from Indiana. This is too important a matter, you know, to wait until you get on the Senate floor; so we got it off the Senate floor. This was delivered to every Member of the Senate, all the reasons, all in heavy type headlines, and the substance in the headlines came from this language:

Judge Haynsworth was an organizer and founder of Carolina Vend-A-Matic, with an original investment of so and so. He was vice president and a director. His wife was in it, and everything else, and though he claimed he was an inactive officer, here is the testimony which leads me to believe he was an active officer——

Mr. BAYH. Mr. President, will the Senator yield? If the Senator is going to quote, I suggest he quote it all, and not just a part of it.

Mr. HOLLINGS. The Senator from Indiana can get the floor later and quote it all. I do not want to quote it all; it bores me to death. We have heard it over and over again. But I will refer to it again specifically, and he can quote it all. This is on page 1 of a statement by Senator BIRCH BAYH, Democrat, of Indiana, on October 8, 1969, where, on that occasion, at the beginning of the charge, he charged as I have just related, and thereafter, on the second page, page 2:

In 1957, after Judge Haynsworth assumed the bench, the gross sales of CVAM and its subsidiaries increased tremendously. Gross sales increased only slowly from $169,000 and some odd in 1951 to $296,000 some odd in 1956. But in 1957—

Says the Senator from Indiana, who has made the attack on Judge Haynsworth, and now, when we answer it, says it is personal on him—it is on these facts that I am attacking him.

The year Judge Haynsworth assumed the Federal bench, sales jumped to $435,000-some-odd and continued a precipitous climb, reaching $3,160,665 in 1963, the last full year in which Judge Haynsworth owned a major share of the company.

Then, if one did not understand it, the Senator from Indiana drew a picture for him. He showed the chart and the record which shows that it went up gradually in 1951, 1952, and 1953, almost horizontally across until Clement F. Haynsworth assumed the judgeship in 1957. And the line goes off the page in the diagram.

Then, referring still to Senator BAYH'S charge, exactly what he says, word for word, under IV on page 7, Canon 25 is cited, and reading after citing the canon:

Judge Haynsworth's financial interest and active participation in the affairs of CVAM constituted a clear breach of this standard. The remarkable rise in gross sales of CVAM after he assumed the Federal bench justified the suspicion that the prestige of his office was used to promote his own interests—

I am still quoting from Senator BAYH:

as well as those of his fellow stockholders. In addition, his practice of taking part in cases involving customers of CVAM furnishes further grounds for the belief that his office was used to promote patronization of a business in which he had a substantial interest.

That is my answer to the charge of feathering his own nest which the Senator from Indiana said he never had in the back part of his mind.

I saw it in every headline. I saw it on every television broadcast. I had to listen to it for the last 6 weeks. It is now too late.

The distinguished Senator from Virgina (Mr. SPONG) is presiding, and the Senator from Indiana and the Senator from West Virginia (Mr. BYRD) and the Senator from Nebraska (Mr. HRUSKA) are present. Here we are. And we are not going to change each other's minds. I do not want the record to say—I do not know how many weeks from now—that we engaged in a heated debate and went right down to the wire and no one is about to make a vote count. I do not want to do it. I do not want to reveal confidences. It has long since been decided. I think it comes with ill grace. I do not know about the politics. However, there is the record on feathering his nest.

It would be unheard of for me to stand by mute and not contest it. It would be unconscionable. I had to rise and correct the record.

That is what the Senator from Indiana charges the judge with.

Mr. BAYH. Mr. President, the hour is late. Any Senator who has heard or read the very articulate 2-hour statement given yesterday or the day before by the Senator from South Carolina can determine whether it was a personal attack. I take him at his word that it was not. Others interpret it differently.

As far as the vote count is concerned, I do not know what the Senator from South Carolina has determined the vote will be. I do not know. I think it is very much up in the air.

The Senator from Kentucky (Mr. COOPER) came over here, and I had not the slightest idea which way he was going. The Senator did not tell me. And frankly the tallies that I had seen had him listed the other way.

I think it is interesting for the Senator from South Carolina to suggest now that we are debating this after every Senator has made up his mind. That statement will come as news to half a dozen Senators that I do not think have made up their minds as yet. This has not been an easy decision for the Senate.

I think there are at least half a dozen Senators that have not made up their minds.

The Senator from South Carolina gives me a great deal of credit with relation to the news media. I would like to show the Senator some of the clippings from South Carolina and Indiana and other places and the scurrilous things

that have been printed about me. The word has been heard.

I do not think that Members of the Senate make their determinations on the basis of one sheet of paper or on the allegations of one Senator. I would be mighty proud if I thought I could send one sheet of paper to the other 99 Members of the Senate and have them fall into line without listening to the opposition.

They have listened to the Senator from South Carolina, and they have listened to the President of the United States when he branded me, other Senators, and everyone who opposed him as character assassins. Presidential assistant, Clark Mollenhoff, expanded the President's attack on me in a very distasteful manner.

The fact of the matter is that the relationships described are accurate. The Senator from South Carolina cannot deny the facts of the judge's relationship with Carolina Vend-A-Matic.

It seems to me to be a little unfair——

Mr. HOLLINGS. Will the Senator yield at that point?

Mr. BAYH. Let me finish and then I will be glad to yield.

Mr. HOLLINGS. I was going to ask a question.

Mr. BAYH. I yield for a question.

Mr. HOLLINGS. Does the Senator from Indiana think that Judge Haynsworth solicited business for Carolina Vend-A-Matic?

Mr. BAYH. No; I do not. The Senator is reading from material. Frankly, I do not have a copy of it. It is easy to read part of it without reading all of it.

As I said yesterday or the day before—we have had so much debate that I find it difficult to put one day in its proper perspective—I think it is patently unfair to read one part of a document and not read it all.

I know every document I sent out stated something similar to this sentence. I quote from a document in which I said:

> The question is not whether Judge Haynsworth is dishonest, but whether he has shown the temperament necessary to sit on the highest judicial council.

I am talking about what the average man on the street can have in his mind. I do not think the judge has ever used his position. I do not think for a moment that he got out his stock portfolio and decided how he was going to decide the Darlington Mills or the Brunswick case. However, I think that his activities flew in the face of the case law and a half a dozen of the canons of ethics that are concerned with the appearance of impropriety. It concerns me when a judge does anything, even inadvertently, that gives the appearance of impropriety.

If the Senator from South Carolina is not concerned about that, he is totally within his right.

Mr. HOLLINGS. Mr. President, I will be glad if the others make their statement and we can then hear the Senator from Indiana comment.

We now hear in the 11th hour that Congress has been negligent—that the Senator from Nebraska and I have been negligent.

We now hear from the Senator from Indiana, "I really do not think he was trying to feather his own nest." I have just cited the record on that.

We now hear from the Senator from Indiana that he did not believe the judge solicited business for Carolina Vend-A-Matic. I asked him, "Senator, do you think the judge was soliciting business for Carolina Vend-A-Matic?"

He said, "No."

On page No. 4 of Senator BAYH's bill of particulars—I cited it in toto, absolutely all of it, and put it in the RECORD. If one of the pages would be kind enough, he could get the Senator a copy of the CONGRESSIONAL RECORD for the day before yesterday. The Senator will find it quoted there.

I am reading from it, under the heading "Demonstrated Lack of Candor; Denial of Active Participation in the Business of CVAM."

> In a letter to the chairman of the Judiciary Committee dated September 6, Judge Haynsworth said:
>
> (Paragraph 12) "The specific locations of vending machines were simply not a matter of interest to me and, as stated before, I was never involved in any way in securing new vending machine locations."
>
> In testimony before the Judiciary Committee on September 16, 1969, the following exchange occurred.

Then Senator BAYH quotes from the RECORD:

> CHAIRMAN.—

I do not know whether it was Senator EASTLAND or one of the other members of the Judiciary Committee.

> CHAIRMAN. Did you have anything to do with the preparing of bids or soliciting business for Carolina Vend-A-Matic?
>
> Judge HAYNSWORTH. Nothing whatsoever.

Mr. President, that is under the heading, in Senator BAYH's bill of particulars, of "Demonstrated Lack of Candor."

I read further from the bill of particulars:

> Senator TYDINGS. As a part of your work, or as a part of your association with Carolina Vend-A-Matic, did you formally or informally seek to obtain business for Carolina Vend-A-Matic?
>
> Judge HAYNSWORTH. Never. I did not.

That is under Senator BAYH's "lack of candor," the two answers of the judge, because Senator BAYH says "fact." What is the other, if this is fact? He has it under the heading "Demonstrated Lack of Candor." You do not use falsehoods or words of harshness, but the picture is here. He got what he thinks is fact, and I quote from Senator BAYH's bill of particulars:

> Judge Haynsworth was consistently and intimately involved with the operation of Carolina Vend-A-Matic from June 1957 until October 1963 and regularly accepted funds from CVAM during that period subsequent to a resolution by the board of directors which appears in the minute books of the corporation and states that:

Then he quoted from the minute books, which was just a couple of months after Judge Haynsworth took the bench. I will read what he says:

> It was pointed out that the main sales and promotional work of CVAM had been done by its directors who are also the officers of the corporation and that any new locations were the result of many conversations, trips and various forms of entertainment of potential customers of one or more of the directors or officers over an extended period of time. A review was had of the various locations that had been acquired during the past several years and new locations that were being considered and practically without exception, these were the result of the Board of Directors.

Now, Mr. President, we hear for the first time that Senator BAYH does not think that Judge Haynsworth had anything to do with soliciting business. So we know now that section 28–455 of the disqualification section of the code was a negligent passage of Congress that should have been beefed up and cleaned up; and I rather agree, and that is why I introduced a bill. We know now that the Senator from Indiana does not think that Judge Haynsworth was feathering his own nest.

Get that headline tomorrow. Can you see that in the Washington Post? "Senator Bayh Says Do Not Believe Judge Haynsworth Was Feathering Own Nest." Would that not be grand. You could really sell some copies of that paper down in South Carolina. And then we can see another headline: "Senator Bayh Says He Does Not Think the Judge Was Soliciting Business on the Bench."

Where do you think Herblock got the Vend-A-Matic and the "Vend-A-Justice," when everybody in America has seen justice is being sold? It is a serious matter, and this is a chief judge, and you do not charge him lightly. That is an ethic, too.

So all you have seen for weeks on end is "selling justice." Here is Haynsworth and "selling justice." Vending justice means selling justice. That is what you have going on. No wonder I feel strongly about this. It is over with, because that has been done—the headlines and the pictures.

The Senator from Indiana wants to know where the headlines are. He has not seen any in Indiana. But I know what has been said about Judge Haynsworth as a chief judge: He has been selling justice. It is in the bill of particulars, and it is unfortunate that now we have corrected at least three sections of it in the last half hour on this floor.

Mr. BAYH. Mr. President, the Senator from South Carolina is to be commended for the introduction of the measure to clarify the standard of 455. Can he advise the Senate when he introduced that measure?

Mr. HOLLINGS. On October 19, if the Senator please. It is Senate bill 2994, referred to the Senator's Judiciary Committee.

Mr. BAYH. Senator EASTLAND will be surprised to hear it referred to that way, but I appreciate the compliment.

In other words, although the Senator's interest in this matter is real, he, too, is an after-the-fact scrivener of the statute. I want to join him, if he will let me, after this colloquy, either in that bill or in a joint effort. I have been giving a great deal of thought to what we could do in order to do a better job. Frankly, the judge failed to meet the present standard required by the statute.

I want to say to the Senator from South Carolina that he did read the so-called bill of particulars correctly, and I am certain that anyone who cares to read the rather tedious and lengthy hearing record will be of the opinion that the quotations are taken accurately from the hearings. They are indeed fact.

Apparently, I have not been able to get the message across, and this is not a message that is being conveyed here at the so-called 11th hour. This is a message I have tried to convey every time I have discussed this matter, publicly or privately. I am concerned about the ethical appearance of this whole business and that all the accusations that the Senator quoted were stated and specified and enumerated in that context and only in that context.

I must say that we can either say we are concerned about appearances or we can say we are not. We can say that the Statue of Justice with her eyes blindfolded is giving us a message or it is not. But I am concerned about appearances.

I wonder, too, if anyone else who is concerned about justice had sat in that committee room and had listened to that testimony and had heard the judge talk about his relationships, and then if that person had the opportunity to look at those record books and see that the judge was present at all but one meeting that the corporation had held—only one absence in the whole period of time that the corporation existed—I wonder if that person would not be convinced. If he had looked at the record and had seen that the judge had participated in making motions; if he had heard the judge tell the Senate Judiciary Committee that, "I orally resigned as a vice president when I went on the bench in 1957 and did not realize until 1963 that that resignation had not been recorded"; and if he had then looked at the record books of the corporation and had seen that in each one of those years—1957, 1958, 1959, 1960, 1961, 1962, and 1963; at the annual meeting of the board of directors the judge was listed as present and that a unanimous ballot was cast for Clement Haynsworth, Jr., as vice president, I wonder if the average man on the street who never read a law book would not be a little concerned about the appearance of candor.

Mr. HOLLINGS. Mr. President, a member of my staff has gotten me a copy of S. 2994. I introduced the bill on October 7, 1969, and it was referred to the Committee on the Judiciary. It reads as follows:

S. 2994

A bill to amend section 455 of title 28, United States Code

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 455 of title 28, United States Code, is amended by adding at the end of such section the following: "Ownership by a judge of stock in a corporation which is a party litigant or which owns any interest in a party litigant shall be deemed substantial for the purposes of this section; and a judge shall abstain from participation in any case involving a party litigant in which he has any investment whatever."

That would allude to realty holdings as well as stock and corporation holdings.

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

Mr. HOLLINGS. I yield.

Mr. BAYH. Mr. President, could I ask unanimous consent to be listed as a cosponsor of this measure?

Mr. HOLLINGS. We are making headway. I would ask the Chair rule "without objection" now. We might get this fellow's vote.

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

Mr. BAYH. Mr. President, will the Senator yield further?

Mr. HOLLINGS. I yield.

Mr. BAYH. I do not wish to interrupt the Senator's train of thought, but I say this in all seriousness. I compliment the Senator on this matter. My staff and I have been considering the adequacy of this particular measure. I think it is a step in the right direction. Maybe that is as far as we can go. But in the event that we come to the conclusion there are other things that can be done to set a higher standard I certainly will submit that study to the Senator from South Carolina and would be honored if he would join me in introducing such legislation.

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

Mr. HOLLINGS. I yield.

Mr. HRUSKA. Mr. President, regarding this bill which is before the Judiciary Committee of which I am a member, I wish that the introducer of the bill, as well as his most recently acquired cosponsor, would take note of the fact that if any amendment is proposed to that bill which would make it retroactive to include the case of Judge Haynsworth, I will oppose it.

Mr. HOLLINGS. Mr. President, I think the distinguished Senator from Nebraska makes a very cogent point and that is that now, as Senators, we find an inadequacy in the law and we are introducing a measure to correct that inadequacy, but at the very same time there are those hoping to convict on the inadequacy that has just been dealt with.

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

Mr. HOLLINGS. I yield.

Mr. BAYH. Mr. President, to make absolutely certain there is no misunderstanding of my position, I wish to repeat once again that certainly it is possible for 99 other Members of the Senate to disgree with the Senator in good conscience. But it is my conviction, respectfully differing with my distinguished colleague from South Carolina, that the statute as is, using the words "substantial interest" as interpreted by the fourth circuit, and as interpreted by Tumey against Ohio which was decided in 1927, and which has more recently been put in focus by the Commonwealth Coatings case, sets a standard of conduct, a standard of ethical propriety which is higher than that which has been met by the judge. I say that as clarification, because I think the Senator from South Carolina raises a legitimate point raised earlier by the Senator from Nebraska (Mr. HRUSKA). We have to be careful we do not get involved in an "after the fact" situation, and I would not want to do that.

Mr. HOLLINGS. It is not just the degree to obey the statute, and that the statute does not stand alone. The practice is well settled for random selection of judges, and this woman in the dress of judges, just referred to, is very much respected in the fourth circuit, much more so, perhaps, than in the District of Columbia Circuit Court.

I would not delay the Senate at this late hour if it were not a matter of "either/or" in going higher or having a substantial or no interest, but it was in the law and stated specifically in this fashion, and that is why with all the American Bar Association and all of the Supreme Court and all of the Congresses section 455 of title 28 is still the law of the land. Because there is to be considered the random selection of panels where judges can stand by and say, "My wife has an interest," or "I have a cousin," or "My daughter's boyfriend is driving a truck," or anything to jockey around and say, "Fellows, I better not sit on this."

In the appellate court this is something not understood by the Senate, and it is not understood by too many lawyers. Unless one has handled appellate work he would not understand what I am referring to. The trial lawyer has no concern—everyone is using the word "concern"—if an appellate judge has a share of stock.

If in the case of XYZ Corporation against Jones I am taking the case on appeal and I find a stockholder of the XYZ Corporation, I await my chances; and if I get a judge who is persuaded toward my client, the injured, the working man, I keep my loud mouth shut and let the judge sit. If I get the wrong judge I raise the question.

But it is when the judge himself, with his persuasion, starts jockeying around and says he has an interest in these things and gets in on your case every time and you cannot have a high verdict affirmed in the appellate court. That is what concerns the trial attorney. This is where Judge Haynsworth was the leader—in being sensitive to this matter in the administration of justice, and as the Senator from Maryland (Mr. TYDINGS) said, "Dynamic."

That is exactly the point. It is not just the law. I admit there is concern on the House side. Representative CELLER, who is the chairman of the Judiciary Committee in the other body, has been trying in a single attempt in this direction by saying that you could not be the officer.

However, be that as it may, that is where it is said Judge Haynsworth stepped into trouble. Characterizing it in the closing hours, we have something here beyond the law; we have the ethics and every authority who testified before the Committee on the Judiciary said that he thought the law encompassed ethics.

But we have these higher standards and we are working for higher standards when we want an Associate Justice. I agree we want higher standards. I believe we have the highest standards in Judge Haynsworth and I am firmly convinced of that. That is why I want detail by detail placed in the record and every question answered in the record. That is the point on which I would like to close because I cannot stand by and have a

nebulous record blamed, or have it said that there is some other standard, for Judge Haynsworth has been "dynamic" as the Senator from Maryland said in the hearings.

AUTHORITY FOR COMMITTEES TO FILE REPORTS FOLLOWING THE ADJOURNMENT OF THE SENATE TODAY

Mr. BYRD of West Virginia. As in legislative session, I ask unanimous consent that all committees be authorized to file reports, including minority, supplemental, and individual views, following the adjournment of the Senate today until midnight tonight.

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

ADJOURNMENT TO 11 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in executive session, in accordance with the previous order, that the Senate stand in adjournment until 11 a.m. tomorrow.

The motion was agreed to; and (at 8 o'clock and 20 minutes p.m.) the Senate adjourned until tomorrow, Friday, November 21, 1969, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate November 20, 1969:

IN THE ARMY

The following-named persons for appointment in the Regular Army, by transfer in the grades specified, under the provisions of title 10, United States Code, sections 3283 through 3294:

To be first lieutenant

Divers, Walter A., Jr., 429–80–2963.

To be second lieutenant

O'Hara, Kerry L., 123–36–6442.

The following-named persons for appointment in the Regular Army of the United States, in the grades specified under the provisions of title 10, United States Code, sections 3283 through 3294 and 3311:

To be major

Busdiecker, Carl C., 565–32–0242.
Campbell, Bruce B., 491–32–1346.
Casey, Leonard R., 403–40–4054.
De Moss, James R., 314–30–6771.
Deprospero, Albert A., 191–22–6643.
Jay, James W., 431–50–8492.
Stice, John E., 432–52–8483.

To be captain

Bell, Major H., 265–44–4563.
Birt, Charles J., 261–48–3225.
Capps, Eugene S, 246–46–1464.
Elliott, McPherson G., 428–66–6314.
Gritz, James G., 444–34–1634.
Hankins, James E., Jr., 401–40–2048.
Harrison, Cecil L., 532–32–7097.
Helela, David H., 576–28–2870.
Hoover, James R., 407–34–5832.
Jenkins, Lester F., Jr., 290–26–4543.
Johnson, Rudd H., 358–28–2038.
Ledford, Jerry G., 359–28–0864.
McCall, James F., 189–28–0974.
McVey, Peter M., 153–24–0133.
Mullen, Charles F., 429–62–3301.
Norte, Raul A., 463–48–8022.
Opstad, Edwin A., 533–30–1519.
Pace, Johnny L., 421–42–5589.
Pinckney, Marion, 251–54–1875.
Reese, George W., III, 267–58–8075.
Rodriquez, Joe A., 459–44–8003.
Scooler, Albert G., 527–44–0829.
Thompson, Charles A., 425–72–1714.
Waits, John P., 426–80–1068.
Warnshuis, Roger E., 079–32–7330.
White, John W., Jr., 232–50–7058.
Wilson, Glenn H., 241–46–6578.

To be first lieutenant

Avriett, Robert J., Jr., 247–68–3524.
Battaglioli, Victor J., 020–30–0417.
Bickel, Charles W., 308–38–0862.
Braud, Lawrence L., 438–56–9128.
Cadigan, Peter Y., 007–36–5051.
Cancellare, Joseph A., 567–50–5815.
Carpenter, George A., 121–32–8699.
Clark, Charles T., 371–34–3435.
Clark, Douglas M., 034–30–6890.
Collopy, Eugene A., 096–32–3874.
Comiso, Richard, 158–28–9979.
Crum, John W., 526–52–4945.
Dean, Wallace R., 006–38–0869.
Doyle, James B., 267–70–5685.
Ellis, Benjamin F., Jr., 266–80–5743.
Fesler, Lorenzo E., 165–34–1673.
Fite, Don G., 224–44–5312.
Foley, William J., 137–32–4254.
French, John R., Jr., 045–34–5021.
Garbarino, Lloyd N., 433–56–3088.
Gonzales, Joe C., 525–92–5305.
Graves, Harold G., 467–69–7668.
Hiller, Fredric I., 314–42–9993.
Horner, Ronald G., 345–30–9285.
John, Gerald W., 424–52–2450.
Johnson, Richard A., 389–38–9944.
Kernea, Edward A., 411–68–1137.
Kinzer, Joseph W., 214–36–9403.
Kirkby, Norman O., 844–36–6870.
Krohn, Charles A., 385–40–1697.
Longley, David H., 012–34–9772.
Lyons, Matthew J., Jr., 121–34–3520.
McElwain, Thomas, 232–58–4363.
McGuffie, James T., 206–34–4412.
McLaughlin, Noel R., 467–52–2848.
McSwain, Gregory R., 560–58–2303.
Miller, Charles S., 266–58–4858.
Minetree, James L., Jr., 219–32–7698.
Nataluk, Francis M., 339–32–0548.
Orlofsky, Stephen M., 111–34–6932.
Paine, Charles D., 441–40–0295.
Parish, James H., 431–72–2853.
Pelfrey, Kenneth R., 274–32–0552.
Phelps, Robert H., 549–46–0568.
Plaster, Curtis A., 258–24–0185.
Raduege, Floyd A., 285–36–5443.
Richards, Wynn G., 524–48–7531.
Rickman, Travis R., 440–44–7613.
Robertson, Robin M., 264–72–3191.
Robison, Cecil M., Jr., 230–44–6776.
Salazar, Andres M., 581–90–1206.
Sanford, Dan M., 534–36–7936.
Saunders, John F., 540–44–6678.
Searls, Daniel W., 527–60–5936.
Shaw, Delbert W., III, 460–48–2302.
Sherrer, Carl W., 260–62–4980.
Simmons, Earnest L., 239–60–2706.
Simpson, Edwin W., 456–64–1602.
Sutherland, Garrell E., 517–34–7554.
Thomas, Charles L., 424–54–4168.
Tonsetic, Robert L., 185–34–5426.
Torres, Charles B., 258–62–9921.
Vaughn, David E., 256–62–6683.
Viduya, Robert C., 575–38–1051.
Wade, Patrick C., 384–44–2194.
Waits, Charles M., 425–82–7486.
Waldrop, Richard S., 423–46–3096.
Wells, John T., 079–34–5630.
Welsh, James J., Jr., 214–40–6285.
Williams, James L., 565–60–8803.
Wilson, Harvey L., 272–38–2109.
Wissinger, Dennis O., 220–40–3939.
Wright, James E., Jr., 412–68–5144.
Wright, Paul A., 500–40–4121.
Young, Thurlow D., 519–50–1222.

To be second lieutenant

Britton, Randall T., 260–72–5915.
Burns, Francis P., 298–38–1122.
Fiser, James R., 268–38–8318.
Funkhouser, Preston L., 504–44–9043.
Harbour, David F., 223–56–9674.
Hubbard, James L., 547–56–5357.
Kernan, William F., 458–74–5841.
Latta, Byron F., 512–40–9403.
Patterson, Thomas L., 447–40–2222.
Pilvinsky, Michael J., 210–38–8040.
Poulton, Charles R., II, 444–42–4549.
Tyrone, David E., 430–84–8048.
Withrow, Gene, 411–68–2548.
Zimmerman, Charles W., 487–42–3155.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 20, 1969:

IN THE COAST GUARD

The nominations beginning Walter E. Mason, Jr., to be commander, and ending Jack K. Stice, to be lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 17, 1969.

HOUSE OF REPRESENTATIVES—*Thursday, November 20, 1969*

The House met at 12 o'clock noon.

Rev. Bob Harrington, the chaplain of Bourbon Street, New Orleans, La., offered the following prayer:

Let us pray.

My dear Lord, thank You for loving us so much in spite of our actions in many cases. Help us, O Lord, to learn to love You more and serve You better in these troubled times. May I thank You personally, Lord Jesus, for allowing me to be born the first time in this great Nation under God in order that I might be born again, saved, set free through Your precious salvation for lost sinners. Help each of us this date to be most conscious of our relationship to You and our fellowship through Your love. Lord, as each of us strives to serve mankind, may we do so as You challenge us with your desire that none should perish but all should have everlasting life through faith in You.

May each of us as we raise our heads from this prayer be more like You would have us to be and less like we have been.

In Christ's name I pray. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 11612) entitled "An act making appropriations for the Department of Agriculture and related agencies for the fiscal year ending June 30, 1970, and for other purposes."

The message also announced that the Senate agrees to the amendment of the House to the amendment of the Senate numbered 12 to the foregoing bill.

and impartially investigated at the earliest opportunity.

I ask the support of every Member of Congress in seeking early resolution of these charges.

Mr. President, I ask unanimous consent that the text of my letter of yesterday to the Senate Armed Services Committee be printed in the RECORD.

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

NOVEMBER 20, 1969.

Hon. JOHN C. STENNIS,
Chairman, Senate Armed Services Committee, Washington, D.C.

DEAR MR. CHAIRMAN: On August 13 of this year, Senator Cranston and I spoke out against the mistreatment of American prisoners of war by North Vietnam and the NLF. In a statement in which we were joined by 39 other Senators, we called upon our adversaries in Vietnam to observe certain minimum standards of humanity in the treatment of our prisoners.

If we, as members of Congress, are concerned with the treatment of our fighting men by the enemy, we should be equally concerned that our military forces in Vietnam maintain the standards of a civilized nation at war.

Last week, eye witnesses quoted in the news media reported the alleged massacre of a large number of Vietnamese civilians by American military personnel in an offensive in the Quangnai City area of Vietnam last year.

These eyewitnesses describe instances of premeditated killings of unarmed Vietnamese villagers, mostly women and children, by American soldiers. The estimates of the number killed range from 90 to over 500, the latter figure being cited by Vietnamese survivors.

Even more shocking, these witnesses report that a large part of a company of American troops participated in the shootings; that the killings were committed at the instruction of certain officers and non-commissioned officers; and that at least one of the witnesses was warned by his military superiors not to report the occurrence.

I understand that the Army is currently investigating the incident.

I am equally concerned with the report concerning the operation of the joint U.S.-Saigon "Phoenix" program for assassinating supposed NLF village officials. Saigon radio allegedly reported that by December 31, 1968—one year after its inception—this program had caused the death of 18,393 persons.

In his November 3rd speech, the President expressed his deep concern that a collapse of the South Vietnamese government might result in a "bloodbath"—in slaughter of innocent Vietnamese civilians by Communist forces. He indicated that his apprehension over such a possibility has to a considerable degree influenced his Vietnam policy.

If American policy in Vietnam is so deeply concerned with the possibility of a "bloodbath" perpetrated by Communist forces, it should be equally concerned with preventing the deliberate killing of civilians by our own or South Vietnamese forces.

Such barbarous treatment of Vietnamese civilians can totally destroy any credibility the United States can claim to have for its presence in Vietnam.

I therefore respectfully request that the Senate Armed Services Committee initiate a full-scale investigation concerning alleged killings of South Vietnamese civilians by American troops; and concerning the operation of the "Phoenix" program, I request that your investigation include a review of what steps, if any, have been undertaken by the Department of Defense and the American military command in Vietnam to prevent killings of this nature in the future.

Sincerely,

CHARLES E. GOODELL.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is concluded.

Under the previous order, the Senate is in executive session, with the time equally divided.

SUPREME COURT OF THE UNITED STATES

The Senate, in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. MANSFIELD. Mr. President, on this side, under the unanimous-consent agreement, I yield all the time except one-half minute to the distinguished Senator from Indiana (Mr. BAYH), and that one-half minute I will yield to the distinguished Senator from West Virginia (Mr. BYRD).

Mr. BYRD of West Virginia. Mr. President, in the interest of decorum, I ask that the Chair instruct the Sergeant at Arms that the floor be cleared of all staff personnel and the lobbies be cleared of all staff personnel until the vote on the Haynsworth nomination has been completed, with the exception of those staff personnel who are immediately needed by their respective Senators in connection with the Haynsworth nomination.

The PRESIDING OFFICER. The Sergeant-at-Arms is so instructed.

Mr. BAYH. Mr. President, I yield to the distinguished Senator from Maine (Mr. MUSKIE) such time as he feels he requires to cover the subject he addresses himself to.

Mr. MUSKIE. I thank the Senator from Indiana.

Mr. President, any Presidential nomination subject to the advice and consent of the Senate is a serious matter.

Any President, in the discharge of his constitutional responsibility to make such nominations, is entitled to the consideration of his selections on their merits.

His nominees, whose qualifications are in issue, are entitled to the fair and balanced judgment of the Senate.

The integrity of the political institutions involved—and the confidence of our citizens in their effectiveness and evenhandedness—must also be considered.

In appointments such as those to his Cabinet, the President is rarely denied confirmation of his choices. He is given wide latitude to implement his mandate at the polls by subordinates of his choosing, and his and their performance is subject to the approval or disapproval of the voters at the polls. Moreover, their tenure is limited, and their decisions and official actions are subject to legislative oversight.

Appointments to the Supreme Court of the United States, on the other hand, have been traditionally regarded as imposing a different and more independent kind of responsibility upon the Senate. The Senate, for example, has failed to confirm one-sixth of all nominations to the Court.

Supreme Court Justices are appointed for life. Their tenure may extend over decades, and their decisions and opinions can have a profound impact upon public policy and the direction of our national life for years to come. Their performance is not subject to the approval or disapproval of the electorate. Their decisions and official actions are not subject to legislative oversight.

In the light of these considerations, no Senator, I am sure, has taken lightly the responsibility of casting his vote on the appointment pending before us.

Clearly, men of good will, and integrity, and judgment, in and outside the Senate, have endorsed this appointment. Others, of equal good will, and integrity, and judgment have expressed opposition to it.

They have divided upon three questions:

First. Has the nominee, in the conduct of his personal business and financial affairs, been sufficiently sensitive to their implications relative to his responsibilities as a judge of the U.S. circuit court of appeals?

Second. Has the nominee, in the cases which have come before his court, been sufficiently sensitive to the need for meaningful implementation of the civil rights of all citizens?

Third. Has the nominee, in the cases which have come before his court, been evenhanded in his labor-management decisions?

I am most troubled by the first question. I am not persuaded that Judge Haynsworth is a dishonest man. His actions, however, raise serious questions about his sense of priorities and his sensitivity to judicial ethics which require a judge to avoid even the appearance of private gain through a public action.

From 1950 until March 1964, Judge Haynsworth was a one-seventh owner and a director of Carolina Vend-A-Matic, a lessor of vending machines. He had founded the corporation along with six other individuals, three of whom were his law partners and one of whom was a business associate. He served as its first vice president, and his wife was the corporation's secretary. As late as 1963, Judge Haynsworth remained as a trustee of the company's profit-sharing and retirement plan and attended weekly directors' meetings, for which his annual fee was as high as $2,600.

Since 1958 the company had done a substantial amount of business with mills controlled by the Deering-Milliken Co. Gross annual earnings from Vend-A-Matic's contracts with those mills totaled nearly $50,000 as of June 1963. In August of 1963, new contracts with other such mills increased those gross earnings to $100,000 per year.

Despite those connections, Judge Haynsworth sat, heard, and wrote the opinion in the preliminary phase of major labor litigation involving Deering-

Milliken in 1961. In June of 1963, heard the case on the merits as a member of the court of appeals and joined the 3 to 2 majority ruling in favor of Deering-Milliken. Moreover, the lawyers who argued the case for Deering-Milliken in 1963 were directors in the North Carolina subsidiary of Vend-A-Matic until they resigned on June 12, 1963—the day before the oral argument before Judge Haynsworth's court on June 13, 1963.

Judge Haynsworth not only failed to disqualify himself in the case, he also failed to disclose that one of the litigants was a major customer of a closely held corporation of which he was a founder, director, and officer—a corporation in which he sold his interest in April 1964 for almost $450,000.

In 1968 Judge Haynsworth purchased 1,000 shares of Brunswick Corp. while it was a litigant in a case before him. The Department of Justice has raised only the most questionable defense for this stock purchase: that the case had been decided even though the opinion had yet to be issued. This action raises serious questions about Judge Haynsworth's sense of priorities and his sensitivity to judicial ethics which require a judge to avoid even the appearance of private gain through a public action.

What emerges from the evidence is the picture, not of a dishonest judge, but of a man who has exhibited a marked insensitivity to situations involving conflict of interest risks. Today, public confidence in our institutions requires more than this.

As the Supreme Court said in the Murchison case in 1955:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the *probability* of unfairness.

The Court added:

> To perform its high function in the best way, justice must satisfy the *appearance* of justice.

On this first question, therefore, I regretfully conclude that I cannot vote to confirm the nomination of Judge Haynsworth.

In addition, however, I wish to record my concern over the implications of his opinions in the field of civil rights if his nomination is confirmed.

It has taken us over 100 years to shape public policy so that it moves in the direction of equal rights for all our citizens. In recent years Congress has enacted legislation to halt discrimination in education, public facilities, employment, housing, and voting. The Supreme Court has played an indispensable role in interpreting these acts, in insisting on an end to segregated schooling, and in insuring equal representation of voters. At long last, we stand on the brink of meaningful implementation of these rights.

It is the prerogative of the President, of course, to try to shift the direction and the thrust of the Court's opinions in this field by his appointments to the Court. It is my prerogative and my responsibility to disagree with him when I believe, as I do, that such a change would not be in our country's best interests.

Today, in my judgment, a Supreme Court Justice must be fully sensitive to the efforts of all Americans to participate fully in our society. He must consider, with understanding and compassion, cases which are enmeshed in the most perplexing social problems besetting our Nation.

Judge Haynsworth's record does not evidence the sensitivity and understanding that this task demands.

In 1962 Judge Haynsworth supported—in a dissenting opinion—a plan which avoided all but token changes in the segregated school system. This was a full 8 years after the Brown decision.

In 1963 Judge Haynsworth condoned further procedural delays for the black citizens of Prince Edward County, Va., who had been litigating, since 1951, to obtain education on a nonracial basis. These were the very same citizens whose rights were decided in the Brown case. Yet 9 years later, they found themselves in appellate courts still seeking to enforce that decision.

In 1956 they had defeated the Virginia Legislature's attempt to deny State funds to nonsegregated schools. In 1959 they had found the doors again slammed shut when the county closed all public schools and soon afterward initiated tuition subsidies and tax deductions to support segregated private schools. Finally, they won an injunction against the scheme from the Federal district court.

But on appeal in 1963, Judge Haynsworth reversed this injunction. While black children remained without formal education for their fifth year. Judge Haynsworth ruled that the constitutionality of the whole system depended upon how the State courts would decide subsidiary issues. The plaintiffs, in effect, were told to litigate again in the State courts, a right the Supreme Court had recognized 9 years previously. Fortunately, the Supreme Court overruled Judge Haynsworth and unanimously held the scheme a patently unconstitutional attempt to perpetuate segregated education.

Even in 1967 Judge Haynsworth was allowing perpetuation of segregated school systems by condoning further procedural delays. Again the Supreme Court overruled Judge Haynsworth.

In the complex area of school desegregation, opponents of equal rights have used procedural devices to achieve further delay. Judge Haynsworth, even though bound to follow the Constitution as interpreted by the Supreme Court, has too often sought out such grounds. His addition to the Court would not only have an impact on the Court's future decisions in this area, but would, I am afraid, further encourage those resisting meaningful desegregation.

On the third question which has been raised, there are environments which remain hostile to the rights of workers to organize; there remain significant issues which involve efforts to improve the conditions of the working man or his progress to find a better life.

These questions demand a careful understanding of the problems of labor and management alike. Judge Haynsworth's treatment of these issues does not appear to be consistent with that requirement.

In my consideration of an appointment to the Supreme Court, I do not expect the nominee's philosophical and political views to be carbon copies of my own. I recognize that, in the course of events, in a pluralistic society, the philosophical and political complexion of the Court will and should be responsive to the society which it serves.

And so I have voted to confirm judges, most recently the present Chief Justice of the Supreme Court, whose views appeared to differ from my own.

I am most concerned in the present case with the question of sensitivity to ethical questions and the need to strengthen public confidence in the Court.

Therefore, Mr. President, I shall vote against confirmation.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. Mr. President, on behalf of the minority leader, I announce that the time allocated to him is yielded to the ranking minority member of the Committee on the Judiciary, the Senator from Nebraska (Mr. HRUSKA).

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. HRUSKA. I thank the Senator from Michigan. I yield such time as he may require to the junior Senator from Kentucky (Mr. COOK).

Mr. COOK. Mr. President, the Washington Post, in an editorial published this morning, November 21, 1969, concluded that the nomination of Judge Clement Haynsworth should be confirmed. Even though this newspaper has been unenthusiastic about the appointment it decided, as many of us have, that the only relevant inquiry by the Senate was the question of qualifications.

The Post concluded of the ethical questions which have been raised that:

> We do not find them of so serious a nature as to require the rejection of his nomination by the Senate.

Mr. President, this is a reasonable editorial by an organization which would have preferred another nominee, it has nevertheless reached the proper conclusion in regard to what the decision of the Senate should be on this nomination. That decision should be confirmation. I ask unanimous consent that the editorial be printed in the RECORD at this point.

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

[From the Washington Post, Nov. 21, 1969]

THE VOTE ON JUDGE HAYNSWORTH

The long debate that has swirled around the nomination of Clement F. Haynsworth Jr. to the Supreme Court has taken a heavy toll in terms of the judge's reputation, the President's relations with the Senate, the Attorney General's acumen, and, indeed, the Senate's ability to give a controversial nomination the thoughtful, nonpolitical consideration it deserves. It has also taken a toll in terms of the Supreme Court itself since once the rhetoric is stripped away the fight comes to a political struggle in which the President and his men have trotted out all their weapons on one side and the labor and

civil rights groups have trotted out all theirs on the other.

It is too bad that the nomination has been put through so rough a wringer. We said, when it was made, that it was not one of the President's most brilliant acts. In making it, Mr. Nixon did not meet the standards he had set for himself nor the standards we would like to see Presidents use in selecting men to sit on the Supreme Court. Nor did he choose, as we once suggested, to withdraw the nomination when it became clear that almost half, if not more than half, of the Senate would vote to reject it. Such a withdrawal would have been the best course for Mr. Nixon and for the court. It would have saved the President from having to spend so much of his meager political capital—badly needed for better causes—on a mediocre nominee. It would have saved the court the possible embarrassment of receiving a member repudiated by almost a majority of the Senate.

Setting what might have been aside, however, the issue before the Senate today is whether to confirm or reject the nomination. For conscientious members of the Senate, this would be a difficult question even without the political stakes riding on this one vote. There are three substantive questions, one of ethics, one of political views, and one of general qualifications.

The ethical questions raised about Judge Haynsworth's actions are, as some of his critics have said, matters more of sensitivity than of honesty. We do not find them of so serious a nature as to require the rejection of his nomination by the Senate. If it had not been for the Fortas case, we suspect these questions would not have been raised at all. There is a clear inconsistency in the action of senators who defended their opposition to Mr. Fortas on ethical grounds and who now support Judge Haynsworth. There is also an inconsistency in the actions of those who discounted ethical questions in the Fortas case and now weigh them heavily.

As far as the judge's qualifications and points of view go, honest men can differ. As we have said before, his name is not on our list of the most distinguished and able judges and lawyers in the country. In a perfect world, no doubt, the President would pick and the Senate would confirm for the Supreme Court only men who had demonstrated that they stood at the very peak of their profession. But no President has ever followed such a standard and the Senate has never required that. On the views a nominee holds on controversial issues, we think the standard the Senate should apply is whether his position is so unreasonable as to be doctrinaire. While we do not agree with all the views Judge Haynsworth has expressed from the bench, particularly in the area of civil rights, we do not think his position is that unreasonable, although we recognize that there are many senators and others who honestly do.

There is one last argument to be disposed of. It is whether the failure of Judge Haynsworth to request that his name be withdrawn, or the failure of Mr. Nixon to withdraw it, demonstrates a lack of respect for the court as an institution that is, in itself, disqualifying. We feared that by pressing this nomination to a vote, the President would help make the court even more of a political football in the minds of the public than it was. That damage has already occurred, whether or not Judge Haynsworth is confirmed. The politics that has been played and the intensive lobbying that has taken place on both sides has made the political nature of this vote perfectly clear.

And so, it is not a happy choice. Still, reluctantly, we think the Senate should confirm the nomination. There are many other men whose names we would prefer to see go before the Senate today, conservatives as well as liberals. But the right to put a name in nomination is given by the Constitution to the President. The Senate should not be in the position of asking whether the President could have chosen more wisely than he did but whether the man he picked is qualified to serve. Nothing in the record, despite the long weeks of investigation and debate, has convinced us that Haynsworth is not qualified by the standards that have been applied to these nominations in the past. And we can not find justification in the Haynsworth case for an arbitrary change in these standards by the Senate. The change, the upgrading of standards, can more effectively be made where the nominating process begins—with the President.

Mr. COOK. Mr. President, there was some discussion late yesterday that during the debates on this nomination there had been no discussion, or at least very little discussion, in regard to litigants. I question that statement, purely and simply because there has been what I consider a great deal of discussion in that regard.

First of all, there has been much discussion in regard to Judge Haynsworth's position on expanding and modernizing many of the theories with reference to habeas corpus. I suggest that the record shows a very interesting letter written by a professor at Notre Dame University Law School to the Senator from Indiana (Mr. HARTKE), in which the professor—Bernard Ward—said that one of the things that was, to his mind, an outstanding trait of Judge Haynsworth was that he probably spent more time on prisoner petition cases in his court than any other judge in the United States, and that there were more prisoner petition requests filed in the fourth circuit than in any other circuit in the country.

So when we discuss the matter of Judge Haynsworth's attitude toward litigants, I think the record is clear that at least, as Professor Ward put it, one group of people knew they could rely on Judge Haynsworth, and knew they could rely on him as a man who would spend more time in their behalf, apparently, than any other judge in the country. The petitioning prisoners, who had already been convicted and had already served time in prison, and felt that, for some reason or by some stretch of the imagination, through their own efforts their cases should be considered on appeal from their convictions were always heard by Clement Haynsworth.

I make this statement of the record merely because I think it may, in a way, help to clarify the discussions yesterday, wherein it was stated that there had been very little discussion relative to Judge Haynsworth's attitude toward litigants.

I yield the floor.

The PRESIDING OFFICER (Mr. YOUNG of Ohio in the chair). Who yields time?

Mr. HRUSKA. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Chair inquires of the Senator whether he intends that the time for the quorum call be taken out of the proponents' time.

Mr. HRUSKA. Yes.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HRUSKA. Mr. President, I yield 5 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 5 minutes.

Mr. ALLOTT. Mr. President, in these closing hours of the debate on the confirmation of the nomination of Judge Haynsworth to be an Associate Justice of the Supreme Court of the United States, there is no Senator who is not fully cognizant of the responsibilities that rest on us.

I have searched and studied the record. I have paid assiduous attention to the debate on the floor. There are two or three things in these final moments upon which I would like to comment.

In looking at all of the supposed charges that were given such wide distribution through the country even before Judge Haynsworth had an opportunity to appear before the committee, I can find only one very slight area in which he might possibly be criticized. And that area, if we are going to put even the slightest tinge of question relating to his great career, comes in the Brunswick case.

So I think I have to put before the Senate what the actual facts are and put them finally, clearly, and simply so that everyone understands why there not only was no wrong committed, there could not have been anything wrong in that situation.

I suppose that one would have to be a lawyer and conversant with the courts to understand that to a conscientious man who hears two or three and sometimes four appeals a day, the names of the participants become a completely minor and unimportant matter as far as the decision is concerned.

On the day in question, three judges heard three cases. And immediately after hearing the Brunswick case, they made up their minds and decided that the Federal district court judge who heard the case, at the trial level, was correct.

It was a quarrel simply between people who held a conditional sales contract or mortgage upon some equipment and the local man who owned the building in which the equipment was located. It had nothing to do with the broad overall integrity of the Brunswick Co., as such.

From the standpoint of the Brunswick Co., it was a minuscule thing, one which would not have caused the board of directors to have spent any time upon the case or the decision that was rendered.

Some 6 weeks after that time, the stock broker for Judge Haynsworth recommended the Brunswick stock to him and the judge told him to go ahead and buy some of the stock. The significant thing is that all that remained to be done at that time was for the judge who had been assigned the opinion to render the opinion to the chief judge of the court and for the other judges in turn to approve of it, as containing what had previously been agreed upon.

So, what do we have? We have a situation in which a decision was rendered by the court immediately after the case was heard. Six weeks after that time, we find that Judge Haynsworth did buy some

stock in a corporation that had an interest in that case. The decision was made. It was never changed. From 5 or 10 minutes after the court adjourned following its decision until the present day, the opinion was never changed. And what remained after that was strictly an administrative act.

So, technically, perhaps, and only technically, did he participate in or do something which might be construed as being not exactly within the range of propriety, on first flush.

I point out to my friends in the Senate who are going to vote or who declare that they are going to vote against Judge Haynsworth on this basis that they are putting a standard on this man which they have refused to put on themselves and which they have not put on any man who has ever come before the Senate of the United States for confirmation.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HRUSKA. Mr. President, I yield 2 additional minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 2 additional minutes.

Mr. ALLOTT. Mr. President, I will point out one other thing which has been mentioned with reference to the philosophy involved. And then I will be through.

There has been mentioned in the Senate Chamber that some did not approve of his philosophy based upon his attitude toward labor. Others have said they did not approve of his philosophy based upon his attitude toward civil rights. One Senator claims that we should read only the opinions written by Judge Haynsworth. Others claim that we should look at all of them.

When we do look at them all, we do not find any abandonment of a social conscience on the part of Judge Haynsworth.

There is no other U.S. Senator—and I do not care who he is or from what State he comes—who has supported the cause of civil rights more ardently, more fervently, and who has put in more hours and more midnight hours during the debate on the Civil Rights Act of 1957 and on the Civil Rights Act of 1964 than the Senator from Colorado.

No one supports the principles of civil rights more than I do, because I feel it is more than just a matter of appealing to the voters. To me it is a matter of conscience. It is a matter of my religion.

If GORDON ALLOTT can vote for Judge Haynsworth on this basis, there is not any other Senator who cannot also vote for him on the same basis. We have to do justice to this man. And, the Lord willing, we cannot turn down a man against whom no case has been made. The only way we can make a case against him is to strain at a gnat.

No case has been made. And we might tear down his reputation and send him home with his reputation and his life ruined by the decision that will be made here.

So I shall support him wholeheartedly. I sincerely hope that all other Senators will do the same.

Mr. HRUSKA. Mr. President, I yield 15 minutes to the Senator from South Dakota.

The PRESIDING OFFICER. The Senator from South Dakota is recognized for 15 minutes.

Mr. MUNDT. Mr. President, I have followed with great interest in the press and throughout the pages of hearings and the debate on the floor the arguments relating to the nomination of Judge Clement Haynsworth to be an Associate Justice of the Supreme Court of the United States.

Being neither an attorney nor a member of the Judiciary Committee, I have naturally felt inclined to defer on any technical legal points to the judgment of the members of the committee charged with that responsibility.

There is one point, however, that I have not considered impelling in the past when it comes to voting for the confirmation of a Supreme Court nominee and that is also relevant today. I allude to the so-called political philosophy of the nominee. I usually know what it is. I may agree or disagree with him. However, I have not cast my votes on confirmation decisions on that basis. I sincerely hope that by its decision here today, the U.S. Senate is not going to establish a new precedent of an altogether different approach toward confirmation—and that is to base our decisions on whether one might individually agree to the potential decisions to be made by the Associate Justice involved.

Let me add that Judge Haynsworth has been characterized in the press as a conservative. If that means that he could be expected to apply strict construction to the Constitution, I happen to agree with that philosophy.

Furthermore, I believe that men of this caliber are long, long overdue on the Court, to restore some semblance of balance between the loose constructionists and the strict constructionists. But while this may give me a sense of satisfaction as I vote for confirmation of the nomination—and I shall so vote—I would vote for him, nevertheless, if his philosophy were otherwise. I have done so in the past.

On September 25, 1962, I voted for the confirmation of the nomination of Arthur Goldberg. On August 11, 1965, I voted to confirm the nomination of Abe Fortas. On October 30, 1967, I voted to confirm the nomination of Thurgood Marshall. In all three instances, I think it would be fair to say that, on general philosophical terms, I disagreed with the well-known attitudes of these nominees. Surely, their stands on great issues of our time were well known—much more so, in fact, than we know about the potential stand of Judge Haynsworth. As opposed to the present nominees, they were prominent advocates of the so-called liberal viewpoints, who had spent their lives in public or political affairs and not on the bench, picking up valuable judicial experience, which has been the background of Judge Haynsworth. Their philosophy was sired and shaped long before they went to the Supreme Court.

I voted for the confirmation of their nominations even though I disagreed with them, because I can find nothing in the Constitution that indicates the Senate should vote against a nominee for the Supreme Court on philosophical grounds. I voted for confirmation of the three nominations I mentioned, even though I was concerned about the philosophical point of view of each of these nominees.

The President who made those nominations was not a President of my political party, but he was my President. He had won the election, and with it he had won the right to name the nominee of his choice to the Supreme Court of the United States. The Senate confirms or does not confirm on reasons other than political philosophy, because that issue was determined by the election of the President. It was determined by the voice of the people when they voted for that high Office.

Mr. President, there has been some talk in another context, one which I shall discuss shortly, about the use of a double standard on this confirmation. I think there would be such a double standard, if Members of this body vote against Judge Haynsworth on philosophical grounds—and I believe this is the crux of the issue—because in the past many of us have bit the bullet and confirmed the nomination of presidential choices not to our own liking.

For many years, the senior Senator from South Dakota has been among those Senators and other public officials who have been greatly concerned about the tendency and the trend of the Supreme Court to conduct itself as a third house of the legislative branch, to make decisions which are not an adjudication of constitutional principles but are an expression of a social or a political or an economic point of view. I have resented this trend. I have deplored it publicly many times. I joined with the distingulshed Senator from Colorado one time when the Senate even denied an increase in pay to the Justices of the Supreme Court as an expression on the part of the Senate of our resentment of their intrusion into the legislative arena.

I should now like to emphasize a point I have not heard discussed very much on the floor of the Senate. To be consistent, however, it seems to me that every Senator who shares this point of view, who feels that it is not the proper province of the Supreme Court to inject itself into the legislative determinations of the land—I feel that if we share that point of view, we should be bound by a rule that works both ways. If—as I intend to do, and as I have done in the past—I express myself in opposition to that tendency and that trend on the part of the Supreme Court Justices, it seems to me that I and other Senators who hold this conviction should then refrain from any efforts on the part of our legislative branch, to bend the judiciary to its point of view. It seems to me that we should maintain and practice this precious constitutional separation of powers. It seems to me that if it is sauce for the goose, it is sauce for the gander.

I see no logic or consistency in taking the position—which I take—that the

Supreme Court should not try to enter our arena and determine our attitudes and bend our legislative decisions to its will, and then for Senators of the United States to use the power of confirmation to try to coerce the Supreme Court to try to make it bend its decisions toward our position. I do not think we can have the best of both worlds. If we are going to be consistent, the same rule should apply to both branches of Government, and I expect to be consistent. I shall vote for the confirmation of Judge Haynsworth.

I want to say, also, that I do not think the power of confirmation of the Senate should be changed, from what is included in the Constitution, to a whole new concept which I hear argued on the floor of the Senate all the time, that many Senators are now going to vote only for those judges who they think are going to make verdicts with which they will agree. They hope to make the Haynsworth case a precedent by defeating his confirmation. This is as reprehensible—in my opinion—as having the Supreme Court entering the legislative arena to try to coerce us into making legislative decisions in conformity with what the Court desires and demands. To beat back such a revolutionary change in concept, I for one hope, should Judge Haynsworth fail in the ensuing vote that President Nixon will soon send to the Senate the name of a nominee fully or even more conservative than Haynsworth. For that way the basic issue here involved will be clearly drawn and definitely decided by this same Senate membership.

The Constitution is involved in this matter, and I think Senators should reflect very carefully before they help to write a new formula of desideratum to be considered in terms of confirmation of nominees for the Supreme Court. I do not think they should have in this kind of decision the attitude that we are going to vote only for the confirmation of nominees for the Supreme Court that they expect are going to agree with them. Had that been my conviction, I am free to say that I would have voted against Fortas, I would have voted against Marshall, and I would have voted against Goldberg and a great number of other judges whose nominations I have voted to confirm. However, I do not think it is my province as a legislator to try to build a court and coerce a decision with which I am going to be in agreement.

As to the other factors in this discussion, they have been debated ad infinitum, ad nauseam. I should like to address myself briefly to three which I believe still need some discussion. They are the so-called ethics issue, the impact of the controversy on Judge Haynsworth's effectiveness should he be confirmed, and, finally, the differences between the cases of Justice Fortas and the situation that we now confront from the standpoint of Judge Haynsworth.

I have already indicated the attitude of a nonlawyer, nonmember of the Judiciary Committee when it comes to examining technical legal points. It was interesting, therefore, to read the report of the committee on the question of one of the most subjective of these technical points—had Judge Haynsworth behaved ethically according to the stringent rules members of the bar apply to themselves?

There were a total of 17 members on this committee who submitted their various views to this body. Nine Senators approved the majority report, exonerating Judge Haynsworth from any ethical impropriety or violation of the Federal statute pertaining to disqualifications of judges such as would cast any doubt on his fitness to sit as an Associate Justice of the Supreme Court. Three Senators—the junior Senator from Indiana, the junior Senator from Michigan, and the senior Senator from Maryland—filed individual views indicating sufficient reservation about the so-called ethical charges against Judge Haynsworth as to lead them to vote against confirmation. Other Senators on the committee opposed the confirmation on quite different grounds.

Since I wished to place some weight on the committee findings in making my own determination, I found this division of opinion instructive. Although the newspaper accounts indicated, quite correctly, that the committee at the time it voted to send the nomination to the floor with a favorable recommendation did so by a vote of 10 to 7, examination of the actual views filed shows that only 12 of the 17 members addressed themselves to the so-called ethics question, and of those 12, nine found in favor of Judge Haynsworth and three found against him. On this ethics question, then, the committee's views indicate that the division was not at all a close one, and that by a margin of 3 to 1 the committee exonerated Judge Haynsworth of any ethical improprieties.

I have also been impressed by the reputation of Judge Haynsworth in that part of the country in which he once practiced as a lawyer, and has for the past 13 years sat as the chief judge of the highest Federal court of the region. His six fellow circuit judges sent him a telegram, at a time when all of the charges against him and whatever evidence there may have been that was thought to support them had been made public, voicing their "complete and unshaken" confidence in his "integrity and ability." Abraham Lincoln made a famous statement at one time about fooling people:

> You can fool all of the people some of the time and you can fool some of the people all of the time, but you can't fool all of the people all of the time.

Along this same line, it seems to me that it would be very difficult for an appellate judge to "fool or deceive" his six fellow judges, with whom he worked in conference and in hearing cases, and over whom he has presided as chief judge of an appellate court since 1964. If there were something wrong with a man's ethics, or with his standards of propriety, certainly these six fellow jurists would have good reason to know about it. Yet they, in the face of an organized drive to discredit Judge Haynsworth, chose to volunteer their complete and unshaken confidence in his integrity and ability.

Not merely his fellow circuit judges, but all of the district judges in the entire area served by the Court of Appeals for the Fourth Circuit—all of the Federal district judges in Maryland, Virginia, West Virginia, North Carolina, and South Carolina—publicly signified their confidence in Judge Haynsworth, and their support of his confirmation.

I am advised that both as a result of annual judicial conferences, and frequent occasions on which the various district judges are called to sit as members of the Court of Appeals and hearing a case on appeal, there is opportunity for constant contact between the district judges in a circuit and the circuit judges. I have not the slightest doubt that if there was something wrong with Judge Haynsworth's integrity or his ethics, these district judges would have long since known of it. Yet they, too, when all the information dug up by Judge Haynsworth's opponents had been made public, themselves publicly indicated their support of Judge Haynsworth and their confidence in his integrity.

The American Bar Association conducted an elaborate and detailed interviewing program embracing both lawyers and judges who had been associated with Judge Haynsworth. Judge Lawrence Walsh, the chairman of the ABA's Committee on Judicial Selection, said that it was the "unvarying, unequivocal, and emphatic" view of "each judge and lawyer interviewed" that Judge Haynsworth is beyond any reservation a man of impeccable integrity.

There are those who say, in connection with this nomination, that even though the ethical accusations be without substance or merit, nonetheless they cast a "cloud" over the nominee, and that cloud is in itself a ground for rejecting him. But let us think for a moment what sort of a standard we would be setting for future debates over confirmation of judicial nominees if we accept this point of view. In these days of extensive media coverage of any controversial situation, it does not take much in the way of substance to an accusation to make it headline news.

As we all know, the answers and the factual support to show that a charge may be without foundation never quite catches up with the charge, even though the charge be wholly without substance. To adopt this sort of a policy on which to base one's vote on this nomination would be to say to every special interest group in our country that they have it within their power to defeat any future nominee to the Supreme Court, however upstanding he may be and however impeccable his record may be, if they can only dredge up something upon which to base an accusation. The gross unfairness of this course of procedure should be apparent to all.

History tells us, Mr. President, that the Supreme Court has not been without controversial members in the past—members who were vigorously attacked at the time they were nominated, who survived the attack to be confirmed, and who served ably and well in the high office to which the Senate confirmed them.

Roger B. Taney served for 28 years as Chief Justice of the Supreme Court of the United States. Only John Marshall, who served in that high office for 34 years exceeded Taney's tenure in the highest judicial office in our Nation. Taney was

nominated as an Associate Justice of the Supreme Court in 1835 by President Andrew Jackson. President Jackson had named him in 1831 as Attorney General, and in 1833 he had been appointed as Secretary of the Treasury for the purpose of withdrawing the deposits of the U.S. Government from the Bank of the United States, which the previous Secretary had refused to do even at President Jackson's insistence. Taney complied with the President's directive on the deposits, and as a result of this fact he was violently opposed by all of the Bank's supporters in the Senate when his nomination as Associate Justice came before that body. This opposition was sufficient to defeat the nomination through a parliamentary maneuver in the last days of that session of the Senate.

If ever a man was under a "cloud" it was Taney at this point, who had been accused by his opponents of being nothing but a spineless creature of the President in the previous office which he had held. Nonetheless, President Jackson, upon the death of Chief Justice Marshall in 1835, again sent his name to the Senate, this time to be Chief Justice of the United States. And this time, although opposition still continued, Roger Taney was confirmed in that office. His subsequent 28 years of service on the bench are regarded by historians of the Court as having brought distinction and credit to the high office which he held.

When President Wilson nominated Louis D. Brandeis to the Supreme Court in 1916, that nominee also faced a storm of criticism. Historians have concluded that much of the opposition to Brandeis, although couched in terms of ethical insensitivity, was in fact based on opposition to the nominee's philosophical views. I wonder if there may not be some parallel to the Brandeis situation in the case of the nominee now before us. But then, too, the position was taken by some of the opponents that it was sufficient that charges had been made against the nominee, even though they might not have merit. The minority report of the Subcommittee of the Judiciary Committee to which the Brandeis nomination was referred contained this language:

> A man to be appointed to the exalted and responsible position of Justice of the Supreme Court should be free from suspicion and above reproach. Whether suspicion rests upon him unjustly or not, his confirmation would be a mistake.

This position was rejected by the majority of the Senate Judiciary Committee, and by the Senate as a whole, at the time that Justice Brandeis was confirmed. It should be rejected by the Senate now. To suggest that the mere making of charges against a nominee, even though they prove unsubstantiated, is itself ground for refusing to confirm him, gives an open invitation in the case of future nominees to special interest groups who may well act from unworthy as well as from worthy motives. They will he told, in effect, that if they can muddy the waters enough, they can assure the defeat of even the most highly qualified nominee. They did not succeed in the case of Roger Taney, they did not succeed in the case of Louis Brandeis, and they should not succeed in the case of Clement Haynsworth.

They did not succeed, either, in the case of Charles Evans Hughes. Hughes was nominated to be Chief Justice of the Supreme Court by President Hoover in 1930. Hughes was attacked by Senator George W. Norris because, in the words of Hughes' biographer, Merlo Pusey:

> For two single "fundamental reasons" he thought the nomination was unwise. After Hughes had resigned from the Supreme Court to run for the Presidency and after he had amassed a fortune in practice by reason of his former high position, Norris said, the President had returned him to the judicial tribunal which he voluntarily left to engage in politics and the amassing of a fortune. The Senator feared that such a precedent would encourage political activity on the part of Supreme Court judges. In the second place, he said Hughes had represented "untold wealth"; he had associated with Wall Street and lived in luxury. ". . . it is reasonable to expect." Norris concluded, in a sweeping generalization untainted by any relationship to fact, "that these influences have become a part of the man. His viewpoint is clouded. He looks through glasses contaminated by the influence of monopoly as it seeks to get favors by means which are denied to the common, ordinary citizen."

Hughes' biographer goes on to describe the position in which he found himself as the charges were made on the Senate floor:

> While the debate waxed hotter with each passing hour in the Senate, Hughes was in New York in a state of mental agony. Always thin-skinned to criticism in spite of his extraordinary poise in public, he felt that his toil and faithfulness of a lifetime were being smeared over by a sickly smudge that might leave his name tarnished as long as it would be remembered. If he could have foreseen this tirade of abuse, which apparently no one foresaw, he never would have permitted his name to be submitted. Now that the fight was on, however, he would not turn back. Nothing that was said in the Senate gave him the slightest twinge of conscience. His anguish was that of the builder who sees the temple he has erected defiled and hacked by wild, unthinking men in pursuit of what they suppose to be a noble cause.

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. Those who are in the gallery are guests of the Senate, and they must cease all conversation.

The Senator may proceed.

Mr. MUNDT. Mr. President, there is nothing that we in the Senate can do to prevent those who wish to oppose the confirmation of a nominee, whether it be from the noblest or from the basest of motives, from having their day before the Judiciary Committee, on the floor of the Senate, and in the public print with whatever charges they seek to make. Indeed, in a free country no one would desire to prevent them from doing this if they so desire. But it is quite another thing to suggest to the Senate, as some Senators imply because these charges have been made, that it ought to abandon its role of sitting in judgment on the charges, and in effect "wash its hands" of the matter without a decision on the merits.

Charles Evans Hughes was ultimately confirmed by the Senate after a bitter debate on the floor. He joined Louis Brandeis and Roger Taney in the history of the Supreme Court as an outstanding member of that institution. I do not believe it can be said, in the light of these examples from history, that an able man is any the less useful when he reaches the High Court because he has been subjected to violent but unmerited abuse during the confirmation process. And certainly from a point of view of public morality, the nominee is entitled to be vindicated by the Senate if the charges made against him are unsupported, just as surely as he ought to be rejected by the Senate if the charges are true.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HRUSKA. Mr. President, I yield the Senator 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. MUNDT. Mr. President, finally I would like to discuss what some have charged as a double standard of the Senate in regard to this nomination and that of Associate Justice Fortas to be Chief Justice of the Court.

The Fortas "affair" and the current controversy over the nomination of Clement Haynsworth to the Supreme Court are being unfairly and improperly compared. The conduct of these two men is as dissimilar as night is to day.

Some have publicly suggested that the same rules must be applied to Haynsworth that were applied to Fortas and to do otherwise would be a perversion of one's moral standards. As I have previously indicated, I must agree completely. A double standard must not exist. The members of our Nation's judiciary must all meet the same high test and the Members of this body must cast aside any political prejudices and vote on the basis of these tests and these tests only.

This should apply to sitting judges as well as judges who are about to be confirmed. We should not have two classes, first-class and second-class Justices on the Supreme Court, some bounded by one standard of ethics, and some by quite different standards.

When many speak of the Fortas "affair" they forget that in fact Fortas and his outside activities while on the Supreme Court drew public attention on more than one occasion and for more than one reason, including accepting money from a convicted criminal. The first was when President Johnson nominated him for the position to be vacated by Chief Justice Warren. This was just a year ago this fall. Of course, Fortas was then an Associate Justice on the Court and it is to this point that I call the attention of my colleagues and suggest there is no similarity in the debate today and the debate last year.

The concern of the Senate at that time with Mr. Fortas and his elevation on the Bench centered around the charges of cronyism and that he was too deeply involved as a member of the Supreme Court in executive policymaking; thus, transcending the traditional constitutional barrier between the executive and judicial branches of government.

Earlier I mentioned that I had voted to confirm Mr. Fortas as a member of the Supreme Court, even though I believed his philosophy to be alien to mine, and even though it was clear his qualifications for the position lay more in the political field than in the judicial field. I did this because I believed President Johnson had the right, other things being equal, to select his own man with the knowledge that past experience had shown members of the Court once confirmed observed the separation of powers edict so essential to our form of government. Indeed, as prior examples have indicated, they have gone on to be outstanding members of the Court. They did this by forsaking the more heady challenge of executive decisionmaking, while members of the judiciary, for the deliberate recluse of a judge. The same cannot be said for Justice Fortas.

The Judiciary Committee hearing record reflects allegations that while on the Supreme Court, Fortas, first, reviewed legislation for the Johnson administration and put his stamp of approval on it, recorded at page 1349; participated in conferences and White House discussions on the Detroit riots and the Vietnam war, recorded at pages 105–106; promoted candidates for a judgeship and a State Department position, recorded at pages 47 and 48; and, at the request of the President, put pressure on a business associate and friend to quiet criticism of the high cost of the Vietnam war, recorded at page 167.

Fortas was queried about these matters when he appeared before the Judiciary Committee. He categorically denied supporting any candidate for the district court or the Department of State, recorded at page 103.

When confronted with the charges concerning discussions at the White House and reviewing and drafting legislation, Fortas said:

> The President of the United States, since I have been an Associate Justice, has done me the honor, on some occasions, of indicating that he thought that I could be of help to him and to the Nation in a few critical matters, and I have, on occasion, been asked to come to the White House to participate in conferences on critical matters . . . (Recorded at p. 104.)

When confronted with specific charges, Fortas answered:

> Again, Mr. Chairman, I do not want to—I do not think it would be proper to go into specifics . . . (Recorded at p. 104).

After persistent interrogation by members of the committee, he reluctantly conceded that he had participated in the Detroit and Vietnam discussions, recorded at page 106. Several probing questions were answered by raising an intangible claim of confidentiality surrounding conversations with the President, thus frustrating the effort to develop facts relating to the charges.

The entire interrogation was marked by Fortas' reluctance to volunteer information and only when confronted with facts would he address himself to the issue.

For some Senators, these facts and disclosures alone were enough to reject Fortas as Chief Justice. When discussing Fortas' extrajudicial activity, Senator ERVIN stated:

> Justice Fortas has denied some of these charges, and downgraded the importance of others he has admitted. To some he has declined to respond (S. Ex. Rep. No. 8, 90th Cong. 2nd Sess. p. 34)

Senator ERVIN opposed the elevation of Fortas to the Chief Justiceship.

When discussing the legislation which Fortas allegedly drafted for the administration, Senator MCCLELLAN stated at page 29 of the report:

> It caused me, therefore, to speculate during the hearings that if Mr. Justice Fortas was being consulted and advising the White House on such simple legislative issues, then it is quite reasonable and proper to assume that it has been a practice for the White House to consult with him and to seek his advice with respect to legislation that may become quite controversial and the subject of litigation involving vital constitutional questions. This certainly transgresses the correct concept of separation of powers.

Senator MCCLELLAN opposed his elevation to the Chief Justiceship.

All this is a part of the Fortas "affair" and conduct which some would ask you to believe Judge Haynsworth guilty of. Yet, has there been any allegation or evidence that Judge Haynsworth participated in White House conferences and discussions? Has there been any allegation or evidence that Judge Haynsworth has drafted legislation for the administration? Has there been any allegation or evidence that Judge Haynsworth interceded with associates to "take pressure off" the administration? The answer to these questions is obviously "No." There is no evidence and there have been no allegations for the simple reason that Judge Haynsworth did not do any of these things. Thus, the proposed analogy between the two cases is discredited and I need discuss it no further except to add this.

I would apply the same test on separation of powers to Clement Haynsworth if that were the question before us but it is not. The two cases are entirely different.

Mr. President, I have stated in the earlier part of my remarks my reasons for concluding that the charges with respect to Judge Haynsworth's conduct as a judge of the court of appeals are without substance. Having so determined, I shall cast my vote for confirmation, confident that the teachings of history do not suggest that I do otherwise, and that the teachings of morality would not allow me to do otherwise.

The PRESIDING OFFICER. The additional time of the Senator has expired.

Who yields time?

The Chair inquires as to who yields time.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum with the time to be charged to both sides.

The PRESIDING OFFICER. Is there objection?

Mr. HRUSKA. Mr. President, there is objection. I suggested the absence of a quorum awhile ago and charged the time to my side. I suppose the Senator from Indiana is about ready to proceed.

Mr. BAYH. Mr. President, the Senator from Indiana is not ready to proceed. I understand that the Senator from New York is.

The PRESIDING OFFICER. The Chair reports that if no one yields time, then the time now used will be charged to both sides equally.

Mr. MANSFIELD. Mr. President, I think the Senator from Nebraska made a valid point. He said he had put in a quorum call with the time taken from his side.

Mr. BAYH. Mr. President, I suggest the absence of a quorum, the time to be taken out of my side, with the understanding that the time for this quorum call shall not exceed that utilized by the Senator from Nebraska.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BAYH. I yield to the Senator from New York for 5 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. JAVITS. Mr. President, as we come to the last part of this debate on the Haynsworth nomination, I think a summing up is important.

The three grounds for opposing Judge Haynsworth's confirmation which have been referred to in the debate have been one, improper conduct; two, the implication of his civil rights decisions; and, three, his decisions in labor cases.

Mr. President, I have chosen to take my stand on the second ground, that is, the decisions of Judge Haynsworth in the civil rights cases. I must say that it is important to qualify that by saying that although I have decided it on that ground, I think it is not necessary for me to decide the merits of the other objections.

This does not mean that I find the ethical question without merit. The Senator from Kentucky (Mr. COOPER) examined that question last night in a most eloquent way, as did the Senator from Indiana (Mr. BAYH) and the Senator from Michigan (Mr. GRIFFIN) who sat through the hearings. They have made telling arguments. My reason for stating that personally I did not need to reach that conclusion is simply that I have other grounds for my own decision rather than any derogation of the findings which these eminent men have made on this subject.

I would like to say to those of my colleagues who may yet be listening to this debate, and who are also committed to the historic 1954 decision of the Supreme Court in Brown against Board of Education on the desegregation of schools, that if you have any doubt at all about the conflict of interest issue, you need not decide that matter finally against Judge Haynsworth, for you can rest your vote on the basis of Judge Haynsworth's civil rights decisions alone. This nomination, on that ground alone, in my judgment, should not be confirmed.

Now, Mr. President, I have analyzed the opinions on previous occasions.

It is not an analysis, in this instance, requiring endless research, because Judge Haynsworth has written in his own words civil rights opinions in only 17 civil rights cases. These are:

Dillard v. *School Board of Charlottesville*, 308 F. 2d 920 (4th Cir. 1962), *cert. denied*, 374 U.S. 827 (1963); *Bell* v. *School Board of Powhatan County*, 321 F. 2d 494 (4th Cir. 1963); *Simkins* v. *Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (4th Cir. 1963), *cert. denied*, 376 U.S. 938 (1964); *Griffin* v. *Board of Supervisors of Prince Edward County*, 322 F. 2d 332 (4th Cir. 1963), *reversed*, 377 U.S. 218 (1964); *Pettaway* v. *County School Board*, 332 F. 2d 457 (4th Cir. 1964); *Eaton* v. *Grubbs*, 329 F. 2d 710 (4th Cir. 1964); *Bradley* v. *School Board of Richmond, Va.*, 345 F. 2d 310 and *Gilliam* v. *School Board of Hopewell, Va.*, 345 F. 2d 325 (4th Cir. 1965), *both vacated sub nom. Bradley* v. *School Board*, 382 U.S. 103 (1965); *Nesbit* v. *Statesville City Board of Education*, 345 F. 2d 333 (4th Cir. 1965); *Bowditch* v. *Buncombe County Board of Education*, 345 F. 2d 329 (4th Cir. 1965); *Brown* v. *County School Board*, 346 F. 2d 22 (4th Cir. 1965); *Hawkings* v. *North Carolina Dental Society*, 355 F. 2d 718 (4th Cir. 1966); *Bowman* v. *County School Board of Charles County, Va.*, 382 F. 2d 326 (4th Cir. 1967); *Green* v. *County School Board of New Kent County*, 382 F. 2d 338 (4th Cir. 1967), *reversed*, 391 U.S. 430 (1967); *Brewer* v. *School Board of the City of Norfolk*, 397 F. 2d 37 (4th Cir. 1968); *Coppedge* v. *Franklin County Board of Education*, 394 F. 2d 410 (4th Cir. 1968); *Coppedge* v. *Franklin County Board of Education*, 404 F. 2d 1177 (4th Cir. 1968).

I summarize them as follows:

Of the 17 cases in which Judge Haynsworth wrote opinions in his own words, he wrote in opposition to desegregation 13 times, and went with the prevailing constitutional view in the remaining four cases only when there was really no way to decide on any other basis.

Indeed, it is significant to me that in 1964, 10 years after the decision on school desegregation by the Supreme Court, in an open-and-shut case, the so-called Eaton case, 1964, where Judge Haynsworth ruled against the segregated hospital, he ruled and said that he was only doing this, not because he agreed—he disagreed—but, he said he was doing it because this was so clear-cut a case following Supreme Court precedent that he simply could not shut his eyes to it.

That shows sincerity and bears out what the Senator from New Jersey (Mr. CASE) argued—that within the philosophic framework from which Judge Haynsworth came, this was logical and sincere. But that does not mean we have to vote to put him on the Supreme Court.

I find, running through all of the decisions, a record of consistent, unsympathetic response on this issue.

The real, fundamental question is: Is this a proper ground for decision?

I respectfully submit that it is.

I do not believe that all we are entitled to know is name, rank, and serial number when one is being nominated for the Supreme Court, or only that he is a judge, with nothing against his character, giving him the benefit of the doubt on the conflict-of-interest issue, and that being a judge for some time, therefore, he can go on being a judge.

I do not believe that needs to be or should be the basis of our opinion. I point out that Senators like the Senator from South Carolina (Mr. THURMOND) and the Senator from North Carolina (Mr. ERVIN), who support Judge Haynsworth, have said in respect of the hearings on Justice Fortas just that, that they are not obliged to be confined solely to the fact that he is a judge and there is nothing against him in terms of his personal character, assuming that.

The Senator from Mississippi (Mr. STENNIS) also said that on the Senate floor, unequivocally, in 1955.

The PRESIDING OFFICER. The time of the Senator from New York has expired.

Mr. JAVITS. Mr. President, will the Senator from Indiana yield me 1 more minute?

Mr. BAYH. I yield 5 additional minutes to the Senator from New York.

Mr. CASE. He must be one of the big guns.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 additional minutes.

Mr. JAVITS. I thank the Senator from Indiana.

Mr. President, Senators throughout our history, going back to the time of Lincoln and before, have set this as the basis for their decisions.

Now, Mr. President, again, we are not dealing with an official who will go out with the administration, who comes up to testify on a needed appropriation for a department. We are dealing with a judge who will be on the Supreme Court for life, who will materially influence the world in which we and our children live.

Of course, the fundamental issue is the opinions of a nominee on basic constitutional law, where we judge those opinions to be of such a nature as to make Judge Haynsworth, were he to become Justice of the Supreme Court, a constant influence to take the Court back to the separate-but-equal doctrine of the days before 1954. So I feel there is compelling basis to vote against this confirmation.

Mr. President, I have analyzed the cases where he spoke, which is the only way in which we can analyze cases. I realize that the argument is made there are many per curiam opinions which, for one reason or another, a judge might decide he will go along with the majority, or, indeed, generally speaking, to make them unanimous where there is no dissent. But where he spoke, where the case was not open and shut, in 13 out of 17 cases he made it crystal clear that the basic view he held of the Constitution, insofar as it relates to the cases decided in the civil rights field, would be, in my judgment, an influence on the Court which will carry great authority—one out of nine. And each individual Justice has on that Court had such great authority, in so many proceedings, for interim relief.

I feel that the duty to confirm, our right and responsibility in respect of confirmation, requires us to know what the Supreme Court will look like after we put a judge on it.

It is because I deeply feel that the Supreme Court, if Judge Haynsworth is on it, will have introduced into it an element which runs counter to the current of history—not on the issue of liberal or conservative—I supported Judge Burger, and I would have supported a conservative, who would not have to decide my way. But to run against the current of history, 10 or 15 years after that current of history has been determined, decides definitely, for me, that I cannot vote to confirm such a judge for the highest Court in the land for a life term.

Thus, I hope very much that Senators will seriously ponder that proposition, those who may be in some doubt as to the conflict of interest, or on other questions.

I thank the Senator from Indiana very much for yielding to me.

Mr. BAYH. Mr. President, I suggest the absence of a quorum, with the same understanding that I suggested to the distinguished Senator from Nebraska a moment or two ago.

The PRESIDING OFFICER. What is that condition set by the Senator from Nebraska?

Mr. BAYH. That the time be taken out of the time of the Senator from Indiana, to the extent that the time earlier was taken out of the time of the Senator from Nebraska; the time thereafter to be equally divided between the two of us.

Mr. HRUSKA. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Nebraska will state it.

Mr. HRUSKA. How much time is left to each side?

The PRESIDING OFFICER. The Senator from Nebraska has 9 minutes remaining; and the Senator from Indiana has 22 minutes remaining.

Is there objection to the request of the Senator from Indiana? The Chair hears none, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. PERCY. Mr. President, we live in difficult times, and we face great challenges as a people: to cast out ignorance and poverty from our midst; to restore law and order with justice to our society; to provide equality of education for our young and the health and welfare of all our people; to protect the rights of our workers and find jobs for all who are willing and able to work; to fashion a strong and stable economy, to combat the tide of environmental pollution, and to live in a just and peaceful world.

These challenges can be met. But we will need strong institutions to face the task—institutions led by men and women who are responsive to the needs of the people.

The Supreme Court of the United States is such an institution and its leaders must be such men. They must

be above reproach, they must be experienced, and they must be able. But, even more importantly, they must possess the insight, perspective, and sensitivity to deal with the great issues presently before us and the even greater challenges that lie ahead.

It is my constitutional duty to consent to the nomination of a Supreme Court Justice. It is my moral duty to keep these beliefs in mind in casting my vote. Above all, I must vote in accordance with the dictates of my conscience.

I have reviewed the record. I have consulted with my constituents. I have studied the many communications that have reached me regarding the issue before us—communications that have argued the case for or against confirmation, often with great eloquence, passion, and precision. And I have decided—as I alone must do—that I cannot support the nomination of Clement Haynsworth, Jr., of South Carolina, to serve as an Associate Justice of the Supreme Court.

One cannot make such a decision in a vacuum. In our times, we have witnessed a broad attack on the Supreme Court and, indeed, an undermining of confidence in our key political institutions. In such a climate, the question of who shall serve on the Nation's highest tribunal assumes even greater significance. For the one quality in our democracy that must remain inviolate is confidence in our institutions.

I, for one, do not question Judge Haynsworth's ability or his honesty. I recognize that these qualities are necessary to meet the demands of his high office. But I feel that honesty and ability are not enough. The times demand something more.

I fully recognize that a man is being judged to be fit or unfit against a more exacting standard than has previously existed. And yet, with an erosion of confidence spreading before us, can we afford to employ any less of a standard than the most exacting one? Can we any longer afford to cast aside the gravity and intensity of the challenge—and to dismiss the catastrophe that would befall us were these institutions to be further weakened?

In my judgment, in view of all the evidence, Judge Haynsworth does not meet the challenge of our times—a challenge that has placed our system on trial. The question is not whether Judge Haynsworth is qualified to serve in his present position on the Fourth Circuit Court of Appeals. That is not the issue before the Senate. The question is, rather, whether he is the man at this moment in history who should be promoted to serve on the Highest Court in the land—the Supreme Court of the United States.

The question is whether Judge Haynsworth, on the basis of the record, is sufficiently sensitive to the needs of the men with whose fate he would deal.

I do not believe that the record, as I have reviewed it in the school desegregation cases and in labor-relations matters, justified such a conviction on my part.

In every labor-management case and in virtually every important civil rights case in which Judge Haynsworth participated and which was later appealed, the Supreme Court ruled against the position taken by Judge Haynsworth.

Unfortunately, the matter does not rest with that. For we must also weigh an accompanying insensitivity and a seeming indifference to the appearance of impropriety on Judge Haynsworth's part—a record that throws a dark cloud over his quallfications to serve on the Supreme Court.

Judge Haynsworth took evidence and ruled on the Darlington case while at the same time holding a major stock interest in a company doing substantial business with Darlington's sister companies. At issue in the Darlington case was one of the most bitter labor disputes in the modern history of the South, an issue that affected, for better or worse, the fortunes of thousands of workers and the company. It is unreasonable to interpret the Judge's failure to disqualify himself from the case, divest himself of the stock, or, at the very least, to disclose the apparent conflict-of-interest, as in keeping with the spirit of the Canons of Ethics of the American Bar Association.

Unhappily, the Darlington case does not stand alone. A similar failure occurred again in the Brunswick case, an occasion when the Judge held stock in a company that was also a litigant before his court. Judge Haynsworth, it seems to me, had a clear responsibility, at a minimum, to declare his personal interest to the litigating parties and to his fellow jurists.

It is not insignificant that Judge Haynsworth informed the Senate Judiciary Committee in writing after the nomination came before the Senate that he had previously disqualified himself from all cases where he had a personal financial interest or in which he would be directly affected by the outcome of the litigation.

This is not an easy task for me. The events that have reached a climax in this vote have taken their toll. Not the least of those who has suffered is the man whose confirmation has been before us today. Judge Haynsworth has my sympathy. But I cannot, in good conscience, support his nomination.

Mr. CHURCH. Mr. President, on November 14, my distinguished colleague from Idaho (Mr. JORDAN) delivered a speech dealing with the nomination of Judge Clement F. Haynsworth, Jr., to the U.S. Supreme Court.

To my mind, the comments of my colleague represent some of the clearest thinking expressed with regard to this nomination. His sincerity and the depth of his concern for our country and its institutions are quite beyond question. Furthermore, his argument was, to my mind, irrefutable.

I concur with the decision of my colleague. I shall cast my vote against the confirmation of Judge Haynsworth.

Mr. MANSFIELD. Mr. President, the committee's hearings and report on the nomination of Judge Haynsworth have been before the Senate for many days. There has been ample time to study the results of this thorough examination. In majority and individual views, the learned members of the committee have provided highly competent guidance for the rest of the Senate.

On the basis of the committee's work, I am persuaded that the question of confirmation does not involve Judge Haynsworth's views on labor or civil rights. It is by no means conclusive that he is predisposed to other than a judicial approach to any litigation which may come before the Supreme Court in these subjects. Moreover, I do not see that it is a necessary qualification for a judge to make obeissance before any group whatsoever in our society in order to qualify for the Court.

What troubles me has to do with the personal business pursuits which Judge Haynsworth has followed during the period that he has served on the bench. I find it somewhat startling, for example, to note that he felt it necessary to sell Vend-A-Matic stock in 1963 out of a concern lest his participation in its activities become public knowledge. His sitting in the Brunswick Corp. case while a "substantial stockholder" in that corporation reveals a certain casualness in matters involving a question of judicial ethics, which the Senate made clear last year that it wished to prevail in the seating of Justices of the Supreme Court.

The instances of this kind, which are outlined by the Senator from Michigan (Mr. GRIFFIN) and other members of the committee, seem to me to demonstrate a pattern which says that this nominee has not been as concerned as a Judge of the Supereme Court should be lest his private business interests come in conflict with his public repsonsibilities.

Political considerations have not been involved in reaching my conclusion in this matter. I would note, for the record, that I joined with the vast majority of the Senate in supporting the confirmation of the nomination of Chief Justice Burger, President Nixon's first nominee to the Court. In this instance, I will join with two leaders of the Republican Party in the Senate, the Senator from Michigan (Mr. GRIFFIN) and the Senator from Maine (Mrs. SMITH) who have already announced their intention of voting against the confirmation.

I make this statment with deep regret.

Mr. HARRIS. Mr. President, I have previously stated that I did not feel the Senate should advise and consent to the appointment of Judge Clement F. Haynsworth, Jr., to the Supreme Court of the United States.

A great many Members of the Senate have now spoken out against this nomination, either indicating their serious concern about certain canons of ethics matters, or have called into question his sensitivity to the rights of individuals recognized to be within the reach of the law, or both.

It is now clear that a large and impressive number of Senators as well as a large segment of the American people are disturbed about this nomination, and a very important consideration now before the Senate is one of determining what effect confirmation of Judge Haynsworth would have upon confidence in our judicial system.

Diogenes, over 2,000 years ago, is supposed to have spent a lifetime searching for an honest man. His unsuccessful search must have resulted from his own too-rigorous definition of honesty, for

surely there were many men in his time who would have have satisfied the usual requirements of that term.

No one suggests that we should measure the nomination of Judge Haynsworth by the strict test of Diogenes, but I believe that all of us would agree that membership on the U.S. Supreme Court, a position of the highest honor and trust in our Republic, should be conditioned upon standards which are higher than those usually expected in ordinary business and professional life.

I have heard it said that in other years a nomination such as that now before us would not have been so carefully considered and examined by the Senate. If that were ever true, it should not be true now. The responsibility of the Senate to advise and consent is a heavy burden, today more than ever, and each of us individually and as a body must fulfill that responsibility with an exercise of due care.

In our time, we have witnessed the development of new dimensions in the definition of human rights and individual liberties, largely as the result of decisions by the Supreme Court. To some degree, this development is called into question by the pending nomination.

All of us would agree that judicial experience and intellectual excellence are important qualifications for an appointment to the Supreme Court. We may disagree, however, on the extent to which the philosophy of a nominee to the Supreme Court is open to consideration. But in the history of confirmation of Supreme Court Justices, which is traced in the book, "The Advice and Consent of the Senate," by Joseph P. Harris, it is clearly established that in almost all instances of opposition to a Supreme Court nominee since 1900, such opposition was "due to the philosophy and supposed stand of the nominee on social and economic issues rather than to partisan considerations."

As have other Senators, I have studied many of the legal opinions of Judge Haynsworth and I have concluded, as did the distinguished senior Senator from Michigan (Mr. HART), that there is reason to believe that this nominee is "insensitive to the rights of individuals recognized to be within the reach of the law." There is surely a broad area for philosophical divergences that would be acceptable to most fairminded citizens of this country. Just as surely there is a point where a judicial philosophy is not compatible with modern and progressive legal thought.

I fully recognize that there are those who feel the Supreme Court has gone too far in certain decisions. It is important that they, as well as all others, have confidence in our judicial system. But I believe that the President can accomplish this objective by another appointee whose views are within the broad stream of accepted opinion on human rights.

In addition to intellectual and philosophical qualifications, a nominee for the Supreme Court must be above ethical question or reproach, because he is appointed for life to hear final appeals for human justice. This may be a harsh rule to apply to Judge Haynsworth. But the Supreme Court should set a pattern of such honesty and personal integrity that it will serve as an example for every court in this Nation and deserve the faith and confidence of every man in the justness of its decisions.

On this question I am impressed by the statement of the distinguished Senator from Delaware (Mr. WILLIAMS):

> Perhaps no single decision or action of Judge Haynsworth to which the committee report alludes is of such a grave nature as to require a vote against his confirmation, but when all the pertinent matters are viewed collectively one can discern a pattern which indicates that Judge Haynsworth is insensitive to the expected requirements of judicial ethics, especially the rule that requires judges to separate from active business connections and to avoid even the appearance of impropriety.

I must vote against confirming this nomination. I do this not from any personal feeling against Judge Haynsworth, nor believing him other than an honest man, but from a sense of personal responsibility concerning the reputation and future of the Supreme Court.

Mr. WILLIAMS of New Jersey. Mr. President, in October, 1967, the case of Brunswick Corp against Long was assigned to a three-judge panel of the fourth circuit court of appeals. Clement Haynsworth was a member of that panel. The case involved the issue of whether or not a chattel mortgage held by Brunswick on bowling lanes and pinsetters which it had sold to the operator of a bowling alley took precedence over a landlords lien for accrued rent.

The three-judge panel heard oral arguments from the parties on November 10, 1967. Immediately, thereafter they met in conference and orally voted to affirm the judgment of the district court in favor of Brunswick. The actual decision, however, was not made public until February 2, 1968. Between November 10 and February 2 the only individuals having knowledge of the courts pending decision were Judge Haynsworth and the two other members of the panel. Yet, on December 20, 1967 Judge Haynsworth placed an order through his stockbroker to purchase 1,000 shares of Brunswick Corp. stock at $16 per share.

To me, the ethical impropriety of such a transaction is obvious. However, as chairman of the Securities Subcommittee I find that the Brunswick transaction also raises serious questions as to Judge Haynsworth's conduct in view of the provisions of section 10b of the Securities Exchange Act.

One of the primary objectives of the Securities Exchange Act of 1934 was to restore investor confidence in our Nation's securities markets. The loss of such confidence which had been caused by the trading on information available to only a privileged few was recognized by Congress as early as 1934.

The Senate committee report on the Securities Exchange Act, Senate Report No. 1455, 73d Congress, second session 68, clearly and concisely stated:

> The concept of a free and open market for securities necessarily implies that the buyer and seller are acting in the exercise of enlightened judgment as to what constitutes a fair price. Insofar as the judgment is warped by false, inaccurate, or incomplete information regarding the corporation the market price fails to reflect the normal operation of supply and demand.

To achieve these purposes Congress enacted section 10b of the Securities Exchange Act of 1934, 15 U.S.C. section 78j(b).

Over the last 35 years it has been abundantly clear that a free and open market for securities cannot be achieved when one of the parties to a transaction has material information which is unavailable to the other. The most recent expression of this premise was in *SEC* v. *Texas Gulf Sulphur Corp.*, 401 F. 2d 833 (2d Cir. 1968). The court, relying on the SEC's prior decision in *Cady, Roberts & Co.*, 40 SEC 907 (1961) summarized the bans imposed upon the use of "insider" information:

> Thus, anyone in possession of material inside information must either disclose it to the investing public, or, if he is disabled from disclosing it in order to protect a corporate confidence, or he chooses not to do so, must abstain from trading in or recommending the securities concerned while such inside information remains undisclosed.

The law in this area is clear. In 1961 the Securities and Exchange Commission in the matter of Cady, Roberts & Co. found that the obligation to disclose inside information or to refrain from trading on it extended to any person who knowingly possessed such information. There is no exemption from this Statute for Federal judges.

In its 1961 opinion, 40 SEC at 912, the Commission stated:

> Analytically, the obligation rests on two principal elements; first, the existence of a relationship giving access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone, and second, the inherent unfairness involved where a party takes advantage of such information knowing it is unavailable to those with whom he is dealing.

Obviously, Judge Haynsworth, on December 20, 1967, when he purchased 1,000 shares of Brunswick Corp. stock, knew that he had in his possession information which was unavailable to those with whom he was dealing. On December 20, 1967, the only people who knew of the fourth circuit's decision were the three members of the judicial panel.

The only other factor involved in determining whether Judge Haynsworth violated section 10(b) of the Securities Exchange Act is whether the information in his possession concerning Brunswick was material and should therefore be publicly disclosed.

In both the Texas Gulf Sulphur and Cady, Roberts cases, material information was defined as those facts which may affect the desire of reasonable investors to buy, sell, or hold the company's securities. The courts have stated:

> The basic test is whether a reasonable man would attach importance . . . in determining his choice of action in the transaction in question.

This test includes any fact "which in reasonable and objective contemplation might affect the value of the corporation's stock or securities."

Such facts must be disclosed to the investing public prior to the commence-

ment of trading in a corporation's securities. They included not only information disclosing the earnings of a company, but also those facts which affect its probable future. Disclosure must also be made of facts which could affect the desire of investors to buy, sell, or hold the company's stock. In enacting section 10b, congressional intent was to give all investors equal access to corporate information and to subject all members of the investing public to identical market risks.

As the SEC stated in its recent brief in the matter of Investors Management Co., Inc., et al., Administrative Proceeding File No. 3–1680 (1969):

> One of the major factors, indeed perhaps the most determinative in deciding whether a particular fact constitutes material information is the importance attached to the information by those who knew of it. Nothing demonstrates the clearly material nature of the information than the fact that the respondents, after receiving it, sold and sold short.

And what did Judge Haynsworth do, he bought 1,000 shares of Brunswick stock at $16 per share on December 20, 1967, when the court's opinion was not made public until February 2, 1968.

The Justice Department claims that in this case, chattel mortgages on only 10 bowling lanes and pinsetters were involved. And that the question of whether the landlord's lien took precedence over the Brunswick chattel mortgage affected only one bowling establishment in the State of South Carolina. On these facts, it is claimed that the court's ultimate decision was not material and had little if any effect on the price of Brunswick's stock.

However, how many similar cases would have brought if the landlord had prevailed?

How did a fourth circuit opinion affect potential litigation throughout our other judicial districts? We will never know.

Was Judge Haynsworth's knowledge of a pending judicial decision material insider information required to be disclosed under the Securities Exchange Act? That is a question for the SEC or a Federal court to decide.

It is a matter which should not be brushed under the rug or ignored. No matter what we have been told by Judge Haynsworth's supporters, judges are not exempt from the provisions of our Nation's securities acts.

The lament that at the time of his purchase Judge Haynsworth inadvertently forgot that a formal opinion had not been filed hardly seems worthy of discussion. To coin an old axiom: Ignorance of the law is no excuse. But Judge Haynsworth's conduct is even less excusable if we look at the judicial temperament of the time.

During 1966, in the Federal District Court for the Southern District of New York, the Securities and Exchange Commission successfully prosecuted the *Texas Gulf Sulphur Case*, 258 F. Supp. 262 (1966). This case was the most widely publicized and discussed SEC case of our times. It is the landmark judicial decision on the use of inside information.

In September 1966, immediately after the district court's decision, an appeal was filed before the U.S. Court of Appeals for the Second Circuit. Oral argument was held on March 28, 1967. Although a decision upholding the SEC was not published until August 13, 1968, it is inconceivable that the chief judge of the fourth circuit court of appeals was unaware as to the facts of a case which was pending in a neighboring circuit, especially one of such far-reaching importance. In December of 1967, he should have at the very least been fully aware of the pitfalls involved in purchasing Brunswick stock under these most unusual circumstances.

The very fact that Judge Haynsworth purchased Brunswick stock shows a clear lack of judicial temperament and sensitivity. It shows that he is unaware as to the need for propriety in judicial conduct.

As I have previously stated, Judge Haynsworth has also demonstrated some of the most regressive judicial thinking in at least two areas vital to the majority of America—the areas of labor and race relations. However, in these areas, if this is the kind of judge President Nixon wants on the Supreme Court, that is his prerogative as President of the United States.

But, Judge Haynsworth's financial dealings are another matter. His purchase of Brunswick stock in the light of all available facts demonstrates a complete lack of sensitivity, both to the law and to his own sense of ethical propriety. He has, in my opinion, failed to meet the test both in substance and appearance of unimpeachable propriety that the American people have a right to expect in all Judges; certainly in the members of the Supreme Court of the United States.

I shall, therefore, vote against the confirmation of Judge Haynsworth's nomination.

Mr. THURMOND. Mr. President, the U.S. Senate, as we know, in theory and practice constitutes the greatest deliberative body in the history of man. And yet I have often been reminded in the debates here of my practice as an attorney and my service as a circuit judge, for the Senate at such times closely resembles a court of law. The President of the Senate occupies a position comparable to that of a judge, for it is the primary responsibility of both to maintain order and compliance with the rules of procedure. Appearing before him are those who advocate various positions both for and against the issues at hand and then there are those members of this distinguished body who remain uncommitted to either side until the vote is cast, and therefore constitute a group much like the jury.

Today the analogy is particularly appropriate for the President now presides, the proponents and opponents are here and the uncommitted sit, listening and watching as the record is compiled and arguments are made. What makes this analogy particularly apt is that a man stands before us accused.

Mr. President, at the fountainhead of the American system of justice there are certain precepts. One of these rules is that no ex post facto law shall be passed. That is to say that no one will be tried for a crime which did not exist at the time the act took place which forms the basis of the prosecution for such crime. Such a thing is expressly prohibited. It would seem that the tenets of basic fair play would dictate that no man should ever be accused and convicted of crimes that were created for the purpose of finding him guilty of them.

Another canon of our system of jurisprudence is that one is innocent until proven guilty, and that guilt must be based on a foundation of proof, not suspicion or even evidence, but proof.

Mr. President, those who have raised their voices against the nomination of Judge Clement F. Haynsworth, Jr., have disregarded these elementary rules of justice as practiced by free men, and have adopted procedures altogether foreign to those systems of justice, equity, morality, and fair play generally recognized as natural and right.

So the parallel between this body and the court ends. The rules which are urged upon us and the logic which is followed by the opponents of this man are strange and foreign to us, and they change their complexion with each shift in the direction of the winds of opinion. However, those of us who are the proponents of the confirmation of this nomination accept the challenge of those who are on the negative side, and we shall go forward with the burden of proof.

Let us examine the charges that have been so easily leveled by those whose greatest concern may not in fact be with ethics and philosophy, but with the fact that a balance may be achieved on the High Court and that men with analytical minds instead of advocates of emotional "causes" may find their way to the bench. He has been accused of the high crimes of "insensitivity," and "lack of appearance of propriety." Indeed, he has been libeled as a man whose ethical and philosophical predispositions preclude any consideration of his nomination. However, all these charges are systematically and succinctly squelched in the majority opinion reported by the Judiciary Committee, and I shall not reiterate in detail each of these charges and countercharges.

I am surprised that these experts on ethics have not examined, for the sake of comparison if nothing else, the "ethics" and "sensitivity" and "appearance of propriety" of those who now occupy that bench located in that cold stone edifice across the way behind the marble image of blind justice.

The opponents have chosen not to compare the conduct of this man with the conduct of his peers or with the conduct which is prevalent in the judicial community, but have preferred to make unsupported charges and headlines. The theory of the attack apparently being that it is not necessary to pay attention to the rules of justice or evidence or proof or even to give lipservice to concepts such as the ones that support the ex post facto prohibition because all that one has to do to make a statement true is to say it, and to say it long and to say it loud. Yes, apparently that is all that is necessary—to say it long enough and loud enough—

and someone will believe it. How many times have we seen that technique used to blind and poison the minds of men to the truth? How many times must we repeat the mistakes of history?

This allegation of "insensitivity" is a vague notion at best. One of his accusers says "his decisions indicate a consistent insensitivity to the rights of individuals recognized to be within the realm of the law." Another has said "men sensitive to the many ethical problems which often arise" are needed on the Court and it is further alleged that the Court should be provided with "insights and sensitivities that will make the whole Court even greater than its parts." One, in language befitting a bureaucrat, states that the judge's record has been "blemished by a pattern of insensitivity to the appearance of impropriety" and then one other critic, perhaps accidentally, gives us a glimpse of what may be the true basis for the opposition when he states:

> The requirement that a Supreme Court nominee possesses character beyond reproach contemplates not only an absence of actual wrongdoing but also an image of impeccable rectitude and a reputation which is not subject to reasonable doubt.

Politicians and those motivated by political considerations are often concerned with the matter of "image."

Sensitive—yes, sensitive, Mr. President. Webster's Dictionary defines the word sensitive as "receptive to sense impressions; subject to excitation by external agents; exhibiting irritability; highly responsive and susceptible."

Sensitive—do these people want a man or a nerve ending? I would like to point out that it is not a crime to lack any of these so-called "qualities," and nowhere has the prosecution produced one shred of evidence that this man is "insensitive." They just said he is. They have yet to show that he is. Of course, never has any nominee to the Supreme Court of the United States been required to fit within the definition of sensitivity. And so this charge constitutes nothing more than smoke—smoke designed for camouflage and deception.

Mr. President, I might point out at this time that amoebas and parameciums are "sensitive." If you prod them with an electrical current or pin they will respond, and perhaps this is the ideal of those who oppose Judge Haynsworth. Perhaps they just want someone on the Bench who will jump everytime some pressure group turns on the current.

These are the charges, none of which are punishable under the laws of God or man or which constitute an offense against any code of ethics, conduct, or morals by which the nominee is to be judged, and are as meaningless as the insensitivity allegations.

They say that this man lacks "the appearance of propriety." What a fine cloud of smoke and meaningless doubletalk that is. This charge should be given as much credence as the charge that he parts his hair on the wrong side of his head.

Propriety, Mr. President, is defined as "the quality or state of being proper," and proper means being marked by suitability, likeness, or appropriateness. Judge Haynsworth certainly is a man suitable for the position for which he has been nominated. His record as an attorney and as a judge bear this out and directly challenges and refutes the allegation that he is not qualified and suitable for this high office.

Judge Haynsworth was born in Greenville, S.C., in 1912. He attended the schools there. He graduated from Furman University in 1933 summa cum laude, with highest honors. He graduated from Harvard Law School in 1936. From 1936 to 1953, he practiced with the firm of Haynsworth & Haynsworth; a firm established by his forefathers and he is of the fifth generation of distinguished and illustrious lawyers who bear that name. Two years of that time he served in the U.S. Navy during World War II. For 2 additional years he served with the Regional Wage Stabilization Board. From 1953 to 1957 he practiced with the firm of Haynsworth, Perry, Bryant, Marion & Johnstone.

Judge Haynsworth's firm expanded and became the largest law firm in South Carolina. It was known over the Nation as one of the most reliable, one of the most capable, and one of the best.

In 1957, Judge Haynsworth was appointed to the circuit court of appeals. He is now its chief judge. His record speaks for itself. He has made an able and a scholarly judge. He has handed down decisions which no fair and just and honorable man should oppose. The decisions of Judge Haynsworth during his term on the court demonstrate that he is a jurist whose judicial mind does not reside at either extreme of the spectrum but his treatment of various issues of law presented before him have been balanced. Let us be reminded at this point that the scales of justice are balanced and are not artificially weighed in favor of either the right or the left but are even and balanced. So we find Judge Haynsworth's decisions and his judicial philosophy to be balanced and even.

Upon the basis of my personal knowledge of this gentleman—and I know personally firsthand of his great abillty as a lawyer and as a judge for when I was a circuit judge he tried cases before me—I can say that he is one of the finest lawyers in the country. He is a gentleman. He is a scholar. He has been a distinguished chief judge and a member of the fourth circuit court of appeals. His has certainly been a distinguished career and at no time has anyone cast aspersions upon his character, reputation, and ability until the attack against him was launched last September.

Why are these charges made? Ostensibly, they are made because this man committed certain unethical acts—acts which, until this man was nominated, were not unethical and which have risen to the ranks of major felonies, if one is to believe the newspapers.

A great harangue has been heard in the land that centers around several cases in which Judge Haynsworth appeared to have an interest. This matter has been disposed of in the majority report, and I call your attention to that discussion—a discussion that carefully marshals the arguments and concludes on the basis of statutory and case law, the canons of ethics, and the testimony of experts that no behavior deserving of reproach can be affixed to Judge Haynsworth's activities on the bench. In fact, the report shows clearly that he did in each case what was right and what he was required under law to do. If the law said he was to sit on a case, he followed the dictates of it, and he sat and heard the case. One of the greatest sins a man can commit, I think, in public life is to give a man a job and then accuse him of doing it.

Judge Haynsworth did his job—he sat when he should have and he decided his cases as a fair-minded man who believed in the law and the Constitution and who followed the ideal that a judge should be responsible and not radical, and that he should base his decisions on the law and not on some whim or fancy, a man who should accept his duty to adjudicate and not litigate.

The issue of Judge Haynsworth's judicial philosophy has been raised.

The controversy centered around two areas of decision: civil rights and labor.

Mr. President, this part is dealt with in the report and treatment there is more than adequate. However, I would like to point out that the essence of the allegation in the civil rights area is that Judge Haynsworth is unsympathetic to minorities and dedicated to continuous segregation of public facilities. Anybody who is familiar with Judge Haynsworth's decisions on the bench know that is not true. A handful of cases have been chosen by the proponents of this position and it is claimed that on the basis of these cases one is to conclude that the judge is a bigot. Compared with the 16 cases cited in the majority report in which Judge Haynsworth ruled for those claiming a denial of their rights, the charges pale and fade away, leaving only a specter of smoke.

During the hearings before the committee, I was struck by the fact that the proceedings seemingly were divided into two parts. The first part being the presentation of objective and well reasoned analysis of the conduct and decisions of Judge Haynsworth and the second part resembled a bargaining session. During the second phase, witness after witness came and talked and talked. They all said the same thing, I presume, on the theory that the more often they repeated the same thing and the longer they said it, the more smoke they could generate then perhaps the more people they could convince they were right just by the fact that they were saying it. During this part the AFL–CIO loudly and pompously voiced their objections to the nominee. A handful of labor cases were dragged out and dissected. They did not bother to mention the 43 or so cases in which the nominee ruled in favor of labor. These cases are listed in the report, and they offer mute but compelling witness to the lack of support in fact of the position of Mr. Meany and his entourage of associates. As a matter of fact, the AFL–CIO counsel Thomas Harris admitted that he had not even attempted to look at all of Judge Haynsworth's labor decisions, and yet they would dare to insult the integrity, intelligence, and competence of

the committee to see through their arguments and discover them to be without foundation.

Perhaps these elements are to be reminded that when you appear as an advocate for a cause and you are arguing the law, it is your ethical responsibility to argue the full case, giving both sides of the law and showing wherein lies the rightness of your case. You are not to hide cases which may go against your particular opinion. This reminds me of another rule of law, Mr. President, that rule in equity which says that those who seek equity must come into the court with clean hands.

All these charges which have appeared in the testimony and the so-called bill of particulars and in the newspapers have been dissected and destroyed, so nothing is left but smoke. Of course there are those who would say, and have in effect said, that where there is smoke there is fire, and therefore we should convict on the basis of what may be, or what might have been, and not on the basis of what is.

This is indeed strange logic, when men argue that you should believe what they say and not what you see.

Mr. President, is there any man here who is so unacquainted with the law, that he would actually undertake to go into any court of law in this land with a case as flimsy as the one against Judge Haynsworth, After all, how could he? There is no cause of action.

Mr. President, let me pose another rhetorical question. Is there any man in this body who actually believes that the real issue here is one of ethics? If ethics is really the question that troubles the opponents why have they not carefully examined the ethics of every man on the Supreme Court today? Why have they not explored the records of every man on the Federal bench in this country? Why? Why have they not?

They may counter this question by saying that the Federal judiciary system is not on trial, but is it not on trial? Of course it is.

In a letter to Senator EASTLAND of September 3 of this year concerning the question of possible conflicts of interest when a judge had an interest in a third party which in turn had business relations with a party in the case, after saying that such a judge was not "disqualified" for interest Prof. John P. Frank said that any contrary result would lead to impossible consequences.

This was a prophetic remark, for impossible consequences are asked here by those who argue contrary to the law in this area. If you subscribe to the logic of those who argue contrary to Professor Frank and the law, then you must try the entire judiclary here and now. You cannot pick out one candidate and hang him—you must apply the new logic and the new rules to all, albeit, ex post facto. This has not been done, and that belies the fact that the real issue is not ethics.

The issue is clear and simple. The issue is who shall determine the policy of this Nation? Shall it be the U.S. Congress, or should it be the labor bosses? Who decides, the people, or those who lust for power? Mr. President, it was 40 years ago that the same type coalition that now fights Judge Haynsworth denied a seat on the bench to an eminently qualified man, Judge John J. Parker. That was a mistake, and labor later admitted that it was a mistake. It will be a tragic mistake if it happens again, for never again shall the President be able to exercise the freedom of choice that he has exercised throughout the Nation's history in selecting nominees for the Supreme Court.

Let it be known that the Senate decides whether consent shall be given a nominee, and not any pressure group.

Mr. President, let us not get ourselves in the situation where the President's nominees shall be sent through a clearinghouse of labor and minorities. We need no unofficial "second senate."

Regardless, Mr. President, of which way this historic vote goes, those of us in this Nation who still believe in the Constitution and in the wisdom of our forefathers and the basic natural rightness of our system of justice shall still be here. We will not be defeated. We will be disgusted, yes, but not defeated; disappointed, but not destroyed.

In this day of strife and turmoil, terror, and tension, there are still those who seek a government of law, not men, a government based on reason and rationality and not radicalism or rebellion.

Mr. President, there are millions of Americans who are watching silently while we debate—watching silently, but not deafly nor blindly. They warned us in 1968 that a vast majority of the people in this country were tired of the so-called "liberalism." They said it at the ballot box, and they said it loudly and clearly, although wordlessly. Mr. President, we must heed that message. There is a mob in the streets, a mass of mindless, screaming militants. We have a choice, and that choice is here now before us today. We can listen to the silent majority, or we can listen to those who would have us abide by the rule of force—the rule of force that dictates he who screams the loudest is right. The argument has actually been proferred that just because certain issues of ethics and philosophy and propriety and sensitivity have been raised and because these points have been loudly and forcefully made, that fact alone dictates that this man must be voted down.

When one decides in favor of those who scream the loudest, or who use the greatest force, one is subject to mob rule, which means that all reason has been tossed to the wind.

Here in this Nation we regrettably are called upon to determine the policy of this country on the basis of the screams and shouts of the mobs in the streets; on the basis of groups who threaten to blow up buildings, and in fact, do; on the basis of screams of the advocates of anarchy. They endeavor to make a mockery of our courtrooms and our system of justice. We are called upon to advocate the causes of those who throw down the flag of this country in favor of that of our enemies.

Mr. President, let us now allow this same philosophy to permeate this debate. Let us not participate in the destruction of our Constitution through our courts.

We do not have to go back far in history to recall that there were those in this country who for various reasons sought to change the structure of our Nation. They attempted to do that through the Congress but that venerable body would not yield up the truths of our founders easily and so they turned their eyes to the Court. They knew, of course, that the judicial system is the backbone of this American system of government for it is there that the citizen seeks to redress his grievances and enforce his rights. They were successful in their efforts. They put men on the bench who were more concerned with legislation than litigation and with being advocates than advisers. Thereby, the whole structure of our system was threatened. When the spine of this democratic Republic was weakened the body politic was visibly weakened and sagged sadly. The criminal was turned loose and crime ran rampant in the streets. They were more concerned for the criminal than the citizen; the internal security of this Nation was threatened when aid and comfort was given to the agents of our enemies. The foundation of the Federal Republic was eroded when the sovereignty of the States was stricken in favor of what they call "democracy."

We do not wish to put advocates of a cause on the bench. We want men who will give a balanced and even treatment to each and every case which comes before them, and this is why we favor this man.

Mr. President, I have a number of letters from various people which I wish to read at this time. These letters graphically demonstrate the essence of the feeling of the silent majority across this land who stand and watch this deliberation. They watch and wait to judge us, as we judge.

Mr. President, it is very impressive to receive letters from people from a man's hometown who have known him all of his life, who have known his reputation, his character, and his family.

I received a letter last October from a man who lives in Greenville, S.C., the hometown of Judge Haynsworth. He took it upon himself to write a number of Senators concerning this nomination and to give the Senate the benefit of his thoughts.

I realize that many Senators, Mr. President, have received a great amount of mail on this nomination along with the regular bulk of mail that they receive in their office each day and perhaps they did not get to read this communication. Since I think that it is important that we have the benefit of the ideas of people from Judge Haynsworth's hometown, I would like at this time to read parts of this letter:

Haynsworth won't characterize his philosophy, but I will attempt it. He believes that all men are the creation of God and, therefore, special, and he believes that the United States Constitution is the closest approximation of a guaranty that all men are so treated and that the Constitution was intended to be properly amended by the people, not twisted by the Supreme Court. He listens equally to the big and the rich as he listens to the small and the poor, but only equally.

Make no mistake about it, if Haynsworth is seated, you and I will both be on the small

end of some of his decisions—when our position runs counter to the Constitution.

Mr. President, I have received a letter from a gentleman in Connecticut. He bases his opinion and support of Judge Haynsworth on the fact that he feels that the judge is a man of high caliber, a loyal American, a discerning individual, and a gentleman. How true this statement is. There are so many adjectives and phrases that can be used in the praise of Judge Haynsworth and unfortunately some of them have been grounded during the great melee that has been swelled up over this nomination but the people, the people across the country, have been able to see through the smoke and the haze that has been created by the opponents of Judge Haynsworth by innunedo and inference as this letter so clearly indicates.

Mr. President, I am going to read this letter. I think it is indicative of the kind of support we can find from our friends in the great State of Connecticut:

September 9, 1969.

Hon. STROM THURMOND,
U.S. Senate.

DEAR SENATOR THURMOND: In regard to the appointment of Judge Clement F. Haynsworth, Jr., to our Supreme Court, Judge Haynsworth is a man of high caliber, a loyal American, discerning, and a gentleman.

Mrs. Seward and I would like to see Judge Haynsworth appointed to the Supreme Court. We hope you will favor and vote for his appointment.

Best regards.

Sincerely,

EDWARD SEWARD.

P.S.—I have an idea you recommended this to President Nixon. Thank you.

As we move across the country looking at these letters from virtually every State in the Union, I find a handwritten one from a gentleman who lives in Chicago.

This man is concerned with patriotism and he is concerned with the Constitution of the United States. There are many citizens, Mr. President, who are concerned with our Constitution and who stand up for it and who feel that we must preserve it in order to maintain this great Republic which is so unique in the history of mankind.

There are many people in this country who believe that Judge Haynsworth is a man of great integrity and intelligence and one who believes in the Constitution of the United States and this citizen is one of them. He urges us to support this confirmation.

Mr. President, I would like to read the letter of this citizen from Chicago:

CHICAGO, ILL.,
November 7, 1969.

DEAR SENATOR THURMOND: God Bless you for your many patriotic stands in the Senate of the United States.

I am for Haynsworth because of his intelligence and integrity and his belief in the U.S. Constitution.

God help us if the smears of Bayh and his ilk have their way.

Thank you again,

Sincerely,

PRESTON H. WALTERS.

Mr. President, not long ago I received a letter from a gentleman who is a retired naval officer who operates a company here in Washington. Along with his letter he sent a copy of an article sent out by Mr. Thurman Sensing, executive vice president, Southern States Industrial Council.

Mr. Sensing's article gives us his viewpoint of this matter and apparently the viewpoint of the members of his organization. I would like to read into the RECORD at this time for it may be beneficial for the Members of the Senate to hear Mr. Sensing's thoughts.

THE BRETWALDA CORP.,
Washington, D.C., October 9, 1969.

Hon. STROM THURMOND,
Senate of the United States,
Washington, D.C.

DEAR SENATOR THURMOND: I have the honour of attaching herewith an article "The Ordeal of a Judge" written by Thurman Sensing, Executive Vice President, Southern States Industrial Council.

It occurred to me that this excellent article would interest you and that you might be able to insert it in the CONGRESSIONAL RECORD, Senate Appendix.

The Bretwalda Corporation has the honour of being a member of The Southern States Industrial Council.

Very truly yours,

HOMER BRETT, JR.,
Commander, USNR, Ret.

THE ORDEAL OF A JUDGE

It is the right and duty of the U.S. Senate to give careful scrutiny to nominations for the federal bench, especially in view of past disclosures concerning the activities and associations of former Supreme Court Justice Abe Fortas. But there is a difference between careful scrutiny and an unconscionable smear, and the latter is the treatment that Senate liberals reserved for Justice Clement F. Haynsworth, Jr., President Nixon's second appointee to the U.S. Supreme Court.

Judge Haynsworth, who has been on the Fourth U.S. Circuit of Appeals for 12 years, is noted for his integrity and dignity. He proved the former and displayed the latter during the long and often ugly hearings in which be was abused.

The abuse directed at Judge Haynsworth was only partly directed at the man himself. As the judge no doubt understood, his critics in and out of the Senate were really trying to hit at the region where he was raised and, beyond that, at the type of distinguished, fair-minded, successful man he is.

Judge Haynsworth is a model of the type of American who has built up and maintained the traditions of the American judiciary at its best. He is a man of manners and good breeding, calm and restrained in his judgments, an accomplished lawyer, a success in private business—in short, respectable, dignified and not given to participating in rough and tumble political crusades. This is the type of man good citizens should want on the Supreme Court of the United States. This is the type of man who hasn't been favored in recent years.

The opponents of Judge Haynsworth were enraged because they weren't getting another rigid-minded political partisan to succeed Abe Fortas.

The union leaders and militants have had their way for years. They saw the Warren Court packed with men who were personally committed to political dogmas and specific protest organizations. Big Unionism and the advocates of social revolution don't want judges on the Supreme Court; they want advocates of liberal causes. For too long they have had their way.

The unions got their man on the court when Arthur Goldberg, former special counsel of the AFL–CIO, was appointed to the Supreme Court. The NAACP got its political reward when Thurgood Marshall, its general counsel, received a place on the nation's highest judicial body.

The activist judges brought the Supreme Court into disrepute. Americans as a whole saw in the Warren Court a political arm of those forces attempting a massive political reconstruction of the United States. Thus President Nixon sought out men who would serve on the Supreme Court as judges, not partisans. The liberals weren't happy with the President's nomination of Judge Warren Burger as Chief Justice, but they didn't feel themselves strong enough to attack him.

In the case of Judge Haynsworth, the liberals decided they could hang him with his regional background—the fact that he was a Southerner. It seems that a liberal can forgive someone for almost anything except being a Southerner who hasn't turned his back on the South and on the U.S. Constitution as written.

The liberals further concluded that they could use against the judge the fact that he was a man who had shown ability in his personal business dealings, as though success were a crime and not a sign of achievement.

The people in this country who are out to destroy free enterprise and constitutional government hate the Haynsworths of the land, the men who have real achievements to their credit and who have made a mark in life.

It is not hard to imagine what kind of country we would have if all judges in future were men drawn from the ranks of political propagandists and militant agitation groups—and men of proven competence and personal substance were excluded from the judiciary. The free enterprise system would meet a sudden death in the courts. And that, of course is one of the chief goals of the New Left agitators and their liberal sympathizers in the Congress and the liberal news media.

What really lies behind the attacks on Judge Haynsworth is hatred of the capitalist system and of the constitutional system that nourishes it for the benefit of future generations. Judge Haynsworth is simply a convenient target for those who are determined to prevent the federal courts from returning to the strict impartiality that the founding fathers intended the courts would uphold and practice.

Mr. President, last Monday there appeared in the Evening Star, which is, as you know, a newspaper published here in Washington, a number of letters concerning Judge Haynsworth.

The authors of these letters reside in different States and their communications to this newspaper bears witness to the allegation that I have made that this man's nomination enjoys widespread support. It is for this reason and for the wisdom of their thoughts that I ask unanimous consent to have the letters printed in the RECORD.

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

[From the Washington Evening Star,
Nov. 17, 1969]

SIR: After reading all the pros and cons regarding the Haynsworth nomination, I draw the following conclusions:

(a) The liberals are out to "get" Haynsworth in retaliation for Fortas;

(b) Judge Haynsworth's biggest sin was to be successful as a first-rate capitalist. He had an excellent stock broker or his judgment in the stock market was excellent.

Since when is it a sin under the American system of so-called free enterprise, to make money in the stock market on intelligent investments. In my book, this would doubly qualify him as a man having the most discerning judgment.

The liberals want to tear down the house because they can't run it.

ALICE DEISROTH.

SIR: Every American must be clear as to what is at stake in this vote.

It is not the ethics of the justices of the Supreme Court. Everyone in Washington knows that is a smokescreen. The clearest proof lies in the fact that most of those who are leading the fight against Haynsworth were perfectly willing to accept Abe Fortas as Chief Justice only one year ago. They were willing to swallow the camel, Fortas, and they choke on the gnats that * * * labor union researchers have been able to dig out after the most thorough and painstaking search of Judge Haynsworth's financial records. They did not even ask to see the records of Justice Fortas!

The fact is that compared with Fortas and at least one of the Justices, now sitting on the High Court, Judge Haynsworth is as clean as the proverbial hound's tooth.

What is at stake is whether or not the President will be able to carry out his promises to correct the ills gnawing at America's vitals. Will he be allowed to place on the Supreme Court men who will make it possible to effectively fight crime? Will he be allowed to name as justices men who will find that the American Constitution does not require that we give unlimited license to pornography merchants? Will he be able to put on the court men who will permit the Justice Department to take effective action against the foreign-inspired and foreign-financed subversive conspiracies that are becoming a serious threat to the continued existence of a free and democratic society in this land of ours?

WILSON C. LUCOM.

SIR: Our senators are a fine bunch to throw stones at Haynsworth. They are not so clean themselves. The judge is lilly white compared to some of them.

MARK J. BENNETT.

ARVADA, COLO.

SIR: Who is it in public service, be it mayor, governor, congressman, senator, Supreme Court justice, cabinet member, the President of the United States, that can lay claim to a spotless record when it comes to the charge of conflict of interest in their personal financial transactions?

Jesus said: "Judge not that ye be not judged—For with what judgment ye judge, ye shall be judged."

SARA S. WOLFE.

KENSINGTON, MD.

SIR: By what authority does the National Education Association have the right to "come out" against Judge Haynsworth? I am a member of NEA. I was not polled—nor was anyone I know—concerning our opinion of Judge Haynsworth. I feel that the NEA is not speaking for the membership at large, but speaking and expressing the opinions of those in the inner sanctum of NEA. I, personally, support Judge Haynsworth's nomination.

RUTH C. WEST.

SIR: How many of our honorable Senators, voting yea or nay on the Supreme Court nominee would submit to an interrogation and examination of their personal and financial affairs and affiliations as the nominee has been subjected to?

RICHARD S. DOVE.

ALEXANDRIA, VA.

SIR: I think that failure to confirm Judge Haynsworth would be the most atrocious act of men supposed to be brainy I have ever heard of.

V. M.

SIR: One can often estimate a man's character and ability by taking a good look at his opponents. Apart from their obvious attempt to embarrass the President, there are several of this coterie who aptly fit the description which that great Democrat, Jim Farley, applied to another Democrat, who at that time, strangely enough, was a Democratic presidential candidate. Farley called him an "over-educated, over-polished version of Don Quixote, Rip van Winkle, and Pagliacci." Too many of our so-called liberals viewing the world from the intellectual heights of their ivory towers, don't know what the score is.

JAMES S. HOLMES.

SIR: It is with great disgust that we the people watch the shenanigans of our Congress in the case of Judge Haynsworth's appointment to the Supreme Court. The malice aforethought shown by those working against him, is worse than anything he could have done.

ESTHER POTEET.

LOS ANGELES, CALIF.

Mr. THURMOND. Mr. President, I have another letter from a lawyer who practices in New York.

He has written a well-reasoned and succinctly worded letter which points out various matters which would be well for the Members of this body to consider. He bases his opinion on a series of points, the first of which is that a most careful study of the judge's record fails to reveal any action on his part that might cast a question on his integrity. He also points out that it would be good to have diversity on the bench and thirdly that it would be beneficial for the country in general if this nomination of the President went through for it would have a cohesive effect.

This is a well-written letter certainly worth our consideration here, Mr. President, and I would like to read it in its entirety to the Senate:

NEW YORK, N.Y., *November 4, 1969.*

Senator STROM THURMOND,
Post Office Box 981,
Aiken, S.C.

DEAR SENATOR THURMOND: I am writing to request your continued support in favor of the nomination of Judge Clement Haynsworth for the presently vacant seat on the Supreme Court.

There are three reasons why I suggest this course. First, a most careful study of the Judge's record fails to reveal any action on his part that casts serious question on his integrity. Second, the interest of the country would seem best served by having a diversity of men on the bench. This principle has already been recognized by the position of other justices who represent the major racial and religious groups who make up the whole of our country. The fact that Justice Haynsworth faces attack primarily because of his alleged political views seems no less discriminatory in nature than would be the case if it occurred for reasons of race or religion. Third, we now have a President in the country who is doing a simply herculean job of trying to heal wounds and to correct problems caused by serious errors made by his predecessors. To be effective in his major efforts of behalf of the country he needs and deserves the support of all citizens.

Sincerely hoping that your efforts on behalf of Judge Haynsworth will be rewarded and that our paths will cross often in South Carolina, I am

Yours very truly,

L. W. SNELL, Jr.

There are a number of lawyers and Senators and historians who are familiar, Mr. President, with the fight just a few decades ago concerning the nomination of Judge John J. Parker to the Supreme Court. As you will recall, this nomination was defeated by one vote.

Lawyers who have practiced law at that time will particularly recall the record that Judge Parker wrote for himself both before and after his nomination and the fact that he was honored throughout the Nation as a leading legal mind.

I have a letter from a lawyer from Richmond, Va., who is apparently a student of this earlier nomination and he has taken his time to write and compare the two nominations.

He points out that in the campaign against Judge Haynsworth and in the Parker matter the opposition used misinformation and misinterpretation.

He also points out that there are many opposing Senators who regretted their action, but it was too late to do anything about it.

I would like to read this letter in order that we might call to mind that earlier mistake by the Senate and trust that we shall learn the lessons of history and not repeat that mistake here:

RICHMOND, VA.,
November 10, 1969.

Hon. STROM THURMOND,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: Just a few decades ago, Judge John J. Parker's nomination to the Supreme Court was defeated by one vote.

Like the pending campaign against Judge Haynsworth, the opposition campaign was based largely upon misinformation and misinterpretation.

During the year following the adverse Senate vote rejecting Judge Parker, many of the opposing Senators ruefully regretted their action, but it was then too late.

I am a staunch Democrat, but if I were in the Senate, I would strongly support confirmation of Judge Haynsworth.

Sincerely,

JOHN J. WICKER, JR.

P.S.: I have been actively practicing law for more than half a century. If desired, biographical information about me can be found in "Who's Who in America"; and political information can be obtained from Senator Harry F. Byrd, Jr., and my Congressman, Dave E. Satterfield III.

Mr. President, I have read letters from many parts of the country and I have one here from the State of California.

I am delighted that this letter was written. This gentleman, in fact, wrote the President of the United States and expressed to him his opinion that it was the faith of the President to appoint men such as Clement Haynsworth to the High Bench and cause them to elect Mr. Nixon to the Presidency in 1968.

Mr. President, there is certainly wisdom expressed in this thought.

I would like to read this letter, a copy of which I received in my office which was addressed to the President for I think it is illuminating:

SAN FRANCISCO, CALIF.,
August 18, 1969.

Hon. RICHARD M. NIXON,
President of the United States,
San Clemente, Calif.

DEAR MR. PRESIDENT: Your choice of the Honorable Clement F. Haynsworth, Jr. as an associate justice to the Supreme Court is most commendable and does much to bring this August Body back to the reality of our times.

It was this kind of wisdom and vision that the people expected from you when you

were elected to the presidency against overwhelming odds, at least in the eyes of those that had not kept abreast of the mood of the general public at large.

Hoping that you will continue to demonstrate this excellent quality of leadership in the future in these troubled times so badly in need of one with your abilities and courage, I remain

Respectfully,

GEORGE MEDINA.

Mr. President, a gentleman from Ashland, Oreg., wrote the latter part of September expressing his support for Judge Haynsworth. This man used the word "honorable" in his letter and certainly that word and its definition is befitting of this fine and able man.

That is a word often used for this man, Mr. President, and he is certainly deserving of the epitaph.

I give you, at this time, the benefit of the thoughts of this gentleman from the great State of Oregon:

HON. STROM THURMOND,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: I have been following with much interest the hearings being conducted on the confirmation of Judge Clement Haynsworth to the Supreme Court. I hope you will use every means at your command to get this Honorable South Carolinian elevated to the Highest Court in the land. After all I think that many able Jurists of the South have long failed to gain the recognition in their chosen field due perhaps to prejudice of many counterfeit politicians.

Wishing you success in your efforts and may you continue to be a credit to the Republican Party and the Nation.

Respectfully yours,

THOMAS R. LOGGANS.

A lawyer from Savannah, Ga., has written me and he indicates that he has talked with a good number of people including judges, doctors, lawyers, teachers, and other people, and the consensus of their opinions overwhelmingly favor Judge Haynsworth with no dissent.

I am very much grateful that this man took his time to write, Mr. President, and he has written this letter on behalf of citizens of Chatham County, Ga., which is a highly populous county in that State, and so this letter forms another link in the long chain of letters that have been received by my office and by many other Senators expressing the support of the great mass of people in this country for this man:

SAVANNAH, GA.,
October 3, 1969.

HON. STROM THURMOND,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR THURMOND: This letter is merely a memorandum from an interested citizen supporting you and your colleagues in the appointment of the Honorable Clement F. Haynsworth to Associate Justice of the Supreme Court of the United States.

In the last few days, I have made an effort to talk with a number of our citizens, including judges, doctors, lawyers, teachers and other non-professionals. The consensus of their opinion is overwhelmingly in favor of Judge Haynsworth with no dissent and furthermore, it is our feeling that he is the victim of a witch hunt. A hunt which has led to nothing that would in any way mar his integrity or the professional esteem reserved for him by our community.

We in the free state of Chatham endorse you in the position you have maintained in regard to the war in Viet Nam and supported President Nixon in the last election and we sincerely hope that the South and our country will be allowed the honor of having Judge Haynsworth serve on the Supreme Court bench.

Sincerely,

JOHN WRIGHT JONES.

Mr. President, one of our friends wrote from Florida expressing the hope that we would support Judge Haynsworth and his nomination.

He was of the opinion that these charges were frivolous and unworthy of consideration in view of his many years of service as federal judge.

Certainly this letter expresses an opinion which if listened to would bring any man to the realization that this nomination is in the best interest of this country and its oppositon is clearly not based upon substantial fact or evidence:

WINTER GARDEN, FLA.
October 8, 1969.

Senator STROM THURMOND,
Senate Office Building,
Washington, D.C.

DEAR SENATOR THURMOND: I hope that you will give your firm support and vote for the nomination of Clement F. Haynsworth to the U.S. Supreme Court. In my opinion the "charges" brought against Judge Haynsworth are frivolous and unworthy of consideration in view of his many years of service as a federal judge.

The real opposition to Judge Haynsworth's nomination probably results from the fact that he is considered a conservative, and his record shows proper judicial restraint with a high regard for the majority welfare in his court decisions. These qualities are desperately needed in our Supreme Court today.

Yours sincerely,

HARLEY TOMPKINS.

Mr. President, I have read letters from lawyers from various parts of the country and now we have another one from an attorney from the State of New York. This man bases his opinion of Judge Haynsworth on the basis of the man's legal and judicial career. As an attorney, he undoubtedly reviewed the arguments both pro and con on this matter and concluded that it would be in the best interest of this Nation and certainly in the best interests of future generations which may live in this Nation for this man to be placed on the bench. Lawyers are very much concerned about the wearing away of the Constitution and we should be for many of the decisions that have been rendered by the Supreme Court are not in keeping with the dictates of that document.

This is another example of another citizen from another State who has expressed himself to the issue and urged that this Senate confirm this nomination.

I am grateful that this lawyer from the great State of New York took his time from his busy law practice to address me and urge my support of Judge Haynsworth.

I would like to read it to you at this time:

NEW YORK, N.Y.,
November 13, 1969.

HON. STROM THURMOND,
Senate Judiciary Committee,
Washington, D.C.

SIR: The purpose of this letter is to respectfully urge that you vote in favor of Judge Haynsworth nomination as Justice of the Supreme Court of the United States. I firmly believe that his outstanding legal and judicial career warrants this favorable action.

Thank you for your consideration in this matter.

Very truly yours,

JOHN J. WILL.

Mr. President, it is pleasing for a Senator to receive mail from his friends at home and it is good to get letters from other States. This tells you how the people are thinking and often gives you some good ideas for legislation.

Many of these people are busy and have only enough time to write a few brief lines, but they do care enough to say what is on their mind. I often receive letters from our friends in the medical profession. You know, doctors cover a wide spectrum of society for they are professional people, they are also business people with an interest in the economy and they meet and talk with a great number of average citizens each week. These men are able to give a good judgment of an issue and it is helpful for them to give their views.

Recently, I received a letter from a doctor in Texas. I would like to read it to the Senate:

With the delay and hassle over the confirmation of Mr. Haynsworth there has never been an argument proving that he is anything but a patriotic, loyal and honest qualified American. We are fortunate to have the opportunity of the service of this rare breed!

I have a letter from a man in Staten Island, N.Y., who has expressed his opinion in favor of Judge Haynsworth.

As you will note as I read these letters, I have received a number of letters from New York as well as from other parts of the country supporting this nomination and I trust that the voice of these people will not be ignored by those who are casting their vote for this nomination.

I would like to read this letter to you, Mr. President, for I think that it clearly expresses, along with the others, the position that our friends in the Empire State have concerning this matter and I am sure that there are many many others across this land who have the same opinion:

STATEN ISLAND, N.Y.
September 13, 1969.

HON. STROM THURMOND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: President Nixon recently announced his choice of Clement Haynsworth to fill the vacancy in the Supreme Court. His decision took much consideration of the possible men available for this important position.

In this session of the Senate, it will be up to the senators to vote for Mr. Haynsworth's confirmation. It is my firm conviction that the President's appointee is the best choice for the job. His views on important issues are similar to those of Americans who feel the Court should help them, not defeat them.

In these past few years, the Supreme Court has made decisions that were not in the best interests of the country. It is time to reverse this trend. The purpose of this related letter is to let you know, personally, the feelings of many people. I sincerely hope you give this subject much consideration and thought.

With every good wish,

Yours truly,

GEORGE P. VIEGELMAN.

Mr. President, I should also like to read portions of a letter which was written to

me by Francis F. Brooks of Millburn, N.J. Mr. Brooks writes:

The American Bar Association has found the case against him flimsy and lacking in real substance; and, on the contrary, has found him highly qualified on his twelve-year record as a federal judge.

Mr. Brooks also points out:

Certainly, to strengthen the public mandate, the political logic would favor a conservative appointment to the Court, since it has been stacked of late years on the liberal side.

Mr. President, this letter did not come from South Carolina nor from Georgia or Mississippi. This letter was from the State of New Jersey and is but another indication of the broad support Judge Haynsworth's nomination is receiving from all over our Nation.

I have also received a letter from Mrs. Oscar Grabeel of Eubank, Ky. Mrs. Grabeel writes:

Even though I am *not* a South Carolinian I *am* an admirer of the stand you have taken on many important issues in the last few years. The latest of these and of great importance to our entire nation is the confirmation of Judge Haynsworth.

Keep the banner waving high! May God bless you.

Sincerely,

MRS. OSCAR GRABEEL.

Mr. President, I have never been to Eubank, Ky.; and although Kentucky may be considered a Southern State by some, it is more accurately a border State and has many interests in common with the Midwest. I have received mail from all over the entire Nation on behalf of this nomination, and I believe this shows the importance of this nomination to many ordinary citizens across this great land.

Another person who has written me about this nomination is Mrs. Bryan W. Steffe of Canton, Ohio. Mrs. Steffe writes:

For some time I have wanted to write you concerning the appointment of Judge Clement F. Haynsworth. Our President could not have made a wiser or better choice for a judge to serve on our Supreme Court. Judge Clement F. Haynsworth is a very fine gentleman.

It is awfully upsetting to hear the unkind and the unfair remarks that many Senators and others are saying about Judge Haynsworth. I believe if they knew him better they would weigh more carefully their accusations.

Surely President Nixon will stand firm in his appointment of Judge Haynsworth. We need a man of his caliber so badly to serve on our Supreme Court.

Mr. President, I have also been written by Mr. W. L. Robinson, who is president of the Fulton County Board of Education in Atlanta, Ga. Mr. Robinson writes:

All phases of our life . . . will be immeasurably benefited by having capable constitutional lawyers on the Supreme Court Bench.

Mr. President, Mr. Robinson, with whom I am not personally acquainted, is obviously a leader in education and is necessarily respected in his community. The support of Judge Haynsworth shows the extent to which responsible citizens all over our Nation are heartened by this nomination by the President.

I received the following letter from Mr. William M. Hagood III, of Greenville, S.C., who is a practicing attorney and who had the good fortune to serve as a law clerk to Judge Haynsworth. This letter was written to me in May, urging that I recommend to President Nixon that Judge Haynsworth be appointed. While it is important that the Senate have the benefit of the views of those persons who are in no position to be biased in favor of the nominee, I believe it is also important that one who has had the opportunity to work closely with Judge Haynsworth thinks so highly of him that he has written me the letter that I now read to you.

LOVE, THORNTON, ARNOLD & THOMASON,
Greenville, S.C., May 29, 1969.

Senator STROM THURMOND,
Senate Office Building,
Washington, D.C.

DEAR SENATOR THURMOND: I would like to request that you consider recommending to President Nixon that he name Judge Clement F. Haynsworth, Jr., to the United States Supreme Court.

You are probably as familiar with Judge Haynsworth's qualifications as I am, although I have had the good fortune to work as his law clerk for one year following my graduation from law school in June 1963. During that time I developed a deep respect for his ability as a judge as well as a deep respect for him as a person.

I have followed with interest articles in various newspapers in which you suggest various attributes that you want to see in the Supreme Court Justice appointed by the President, and Judge Haynsworth has all of these attributes. His integrity is beyond reproach and a review of the decisions written by him, in matters where the Supreme Court had not already decided the precise issue in question, reveals that he believes in the strict construction of the Constitution. One only has to read a few of his decisions, which, incidentally, are written by him and not by his law clerks, before realizing that he is exactly the type of person needed for this high position.

Very truly yours,

WILLIAM M. HAGOOD III.

I should also like to read a letter which I received from the president of the chamber of commerce of the State of Louisiana. This man does not write merely as an individual but on the basis of the unanimous support of the board of directors of the Louisiana State Chamber of Commerce. Mr. Singletary's letter represents the thinking of responsible citizens and deserves our careful attention and consideration.

LOUISIANA STATE CHAMBER
OF COMMERCE,
November 12, 1969.

HON. STROM THURMOND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: At a recent meeting of our Board of Directors, the continuing debate on confirmation of Judge Clement F. Haynsworth as a member of the U.S. Supreme Court came up for discussion.

Upon reviewing some factual information on Judge Haynsworth's background, it appears that much of the publicity opposing his nomination has been exaggerated.

The Board unanimously authorized me to communicate with you and other members of the U.S. Senate and respectfully urge that the nomination of Judge Haynsworth be approved.

Sincerely,

ARCHIE F. SINGLETARY, JR.,
President.

Mr. President, I also have a number of editorials and newspaper articles which have been written concerning this nomination. I feel that it is important for us to be aware of the thoughts of those men who make their living by observing the political events that take place in this Nation for they often give us insights and viewpoints which are helpful in showing us what are the facts.

The Columbia Record, one of the leading afternoon dailies in South Carolina, has published two editorials on the subject of Judge Haynsworth and the charges against him.

The first, published on Friday, October 10, and entitled "The Liberals' Revenge," discussed the highly prejudiced treatment of the matter by Howard K. Smith, the ABC television commentator. It also points out that the attempt to draw a comparison between Judge Haynsworth and the case of Justice Fortas is totally fallacious.

I read it:

THE LIBERALS' REVENGE

While liberals conducted a campaign of what Vice President Spiro Agnew called "character assassination" against Judge Clement Haynsworth, Howard K. Smith reported in gleeful tones on his ABC television broadcast that conservatives of the country were about to get their comeuppance.

Blaming conservatives for the uproar that brought about the resignation of Justice Abe Fortas, President Johnson's choice for Chief Justice, Smith said that Fortas had done nothing wrong. He said that Fortas, by advising the President on Executive matters, had merely given the appearance of impropriety

And now the conservatives' attack on Fortas on that basis had come back to haunt them, with liberals using the same type of ammunition to defeat the appointment of Judge Haynsworth to the vacancy on the U.S. Supreme Court.

The liberals have not uncovered any scandal on Haynsworth. They have found no conflict of interest in his decisions except in their own far-fetched interpretations of his stock portfolio. They have gone to such extremes as finding a sinister association because Bobby Baker and Haynsworth among many others, once bought shares in a large tract of land.

Smith conveniently omitted the principal charges against Fortas. He overlooked the fact that they resulted from a story in liberal *Life* magazine, not from a conservative expose. He did not say that Fortas accepted a $15,000 fee, raised under questionable circumstances, to lecture to a handful of college students. He did not say that Fortas accepted the first installment on a guarantee of $20,000 a year for life from the Wolfson Foundation while Louis E. Wolfson was facing an unsuccessful fight in the courts to avoid serving a jail term for illegal stock transactions. Fortas returned the money only after the payoff was exposed.

Smith was dealing in half-truths, which are also the deadliest and most indefensible weapons in any vicious campaign of character assassination.

On October 11, the Columbia Record again discussed Judge Haynsworth and pointed out that rejection of this nomination would be a repeat of one of history's darker moments. This editorial discusses a parallel between the situation facing the Senate today and that in which a very honorable man, Judge John Parker of North Carolina, was rejected by the Senate.

The editorial also points out that President Nixon has firmly stood with Judge

Haynsworth and has made clear to the American public and to the Senate the importance the President places on the confirmation of Judge Haynsworth. It reads as follows:

HAYNSWORTH'S FOUL CRITICS

Clement Haynsworth, South Carolinian, may never sit on the Supreme Court as President Nixon wanted him to. He may. The outcome of a senate vote is, at this moment, unknown and perilously close.

Should Haynsworth be rejected by the Senate, he will be the only nominee for Associate Justice to be turned down in this century, with one exception—Judge John Parker of North Carolina. Thus, the only rejectees would be Southerners.

If Haynsworth loses, he will be the victim of character assassination and a totally unfair, intellectually indefensible linkage with Abe Fortas. In an editorial which called upon Judge Haynsworth to withdraw to protect the good name of the Supreme Court, the liberal *Washington Post* called the shots quite honestly.

"For Judge Haynsworth," said the Post, "the situation must be distressing. As far as the general public is concerned, his integrity and honesty have been questioned and he has been labeled an all-out segregationist and foe of labor. Few of the charges made against him, in our judgment, are valid. He has become the focus of a bitter fight, involving partisan politics as well as ideology and ethics, that is not of his own making. Some of the opposition to him is based on honest philosphical differences or sincere concern over ethics. But some of it, while cloaked in these terms, is based on a rather more primitive impulse to humiliate the President.

"Too many unfair questions have been raised and too much politics has been played," the *Post* says. We quite agree, although we do not—under any circumstances—share the Post's overly-easy parallelism with the Fortas affair.

We know not what Judge Haynsworth's final fortune may be. We hope he is confirmed; we are pleased that President Nixon nominated him and has stuck by him, despite the malicious politicking. Whatever be Haynsworth's destiny, we shall not disremember those members of the U.S. Senate who crudely misused truth as a weapon to further their own selfish interests.

Honor and courage are attributes to be admired, in all Americans, including judges and Senators. Honesty and fair play are commendable, ethical guides—abandoned by some of Haynsworth's callous foes. Those members of the Senate will not be allowed to forget that the Senate, itself, has struggled with an ethical code of its own.

One of the outstanding weekly papers in South Carolina, the Chester Reporter, published an excellent editorial on October 22, concerning Judge Haynsworth, the unfounded attacks against him, and the strong stand taken by the President on behalf of Judge Haynsworth.

The editorial points out a most unfortunate aspect of this debate and that is that much of the opposition to Judge Haynsworth appears to be related to his southern origin, a sad state of affairs in this day and age.

The editorial reads as follows:

OFF THE RECORD

Judge Haynsworth: The outcome may still be in doubt but no one can charge that President Nixon has been half-hearted in support of his nomination of Judge Haynsworth to the U.S. Supreme Court. He made this perfectly clear, to borrow one of the President's favorite phrases, when he held a surprise news briefing Monday at the White House.

"I find Judge Haynsworth an honest man, a lawyer's lawyer and a judge's judge," said the President. "I think he will be a credit to the Supreme Court and I intend to stand behind him until he is confirmed."

He called the attacks against Haynsworth, who is chief judge of the Fourth U.S. Circuit of Court of Appeals, a vicious attempt at character assassination and said he would not withdraw the nomination even if requested to do so by Haynsworth himself.

The objections to Haynsworth in the U.S. Senate boil down to the fact that he is wealthy and that he is a native South Carolinian. There is a strong feeling among liberals and organized labor that no one from the conservative South should be elevated to the Supreme Court.

This feeling has found expression in the picayune conflict-of-interest charges made against him by those who professed to be horrified that Haynsworth owned shares in companies involved in litigation of one sort or another.

None of these charges had any real substance. That leaves only the objection to Haynsworth as a South Carolinian and a conservative. But it is enough to cast doubt over the action the Senate will take on his nomination.

Mr. President, the theme that Judge Haynsworth is the victim of prejudice due to his background as a South Carolinian is also discussed in an excellent editorial which appeared in the Charleston News and Courier on Friday, October 24. This editorial points out that Judge Haynsworth should be judged on his record and his ability, not upon his place of birth. I read the editorial:

REGIONAL PREJUDICE

In times past, members of minority groups have faced a wall of resistance in obtaining posts of honor and public responsibility. Louis Brandeis was opposed for the Supreme Court because of his Jewish faith. For decades, it seemed unlikely that the U.S. would have a Catholic as President. Negro citizens encountered severe obstacles.

All that has changed in recent years. Many Southern cities—Charleston is one of them—have Negro citizens as judge and alderman. A black man sits on the U.S. Supreme Court. Other minorities are well represented at all levels of government.

Members of a minority still discriminated against in government are Southerners. They often are treated as outcasts.

President Nixon brought this prejudice into the open in his news conference Tuesday dealing with the nomination of Judge Clement F. Haynsworth of Greenville for the U.S. Supreme Court. The President touched on the real bias behind the campaign to deny Judge Haynsworth a place on the court.

"It is not proper," the President said, "to turn down a man because he is a Southerner, because he is a Jew, because he is a Negro or because of his philosophy. The question is what kind of lawyer is he? What is his attitude toward the Constitution?"

Mr. Nixon thus focused attention on the fact that Judge Haynsworth is being opposed because he is a Southerner.

It is shocking and tragic that at this point in American history sectional prejudice is directed against the South, and that a man of demonstrated ability should be opposed because he hails from a Southern state. We can't imagine South Carolinians opposing a Supreme Court nomination on the ground that the nominee was born in New York, Michigan or California. That kind of biased attitude simply doesn't exist in this region.

As U.S. citizens, Southerners have a right to expect that ancient prejudice against this section will be laid aside in this supposedly enlightened era.

The Senate can prove its freedom from regional prejudice by confirming Judge Haynsworth as an Associate Justice of the Supreme Court.

I have thus far read four editorials on behalf of Judge Haynsworth—all published in my home State of South Carolina; however, editorial acclaim for Judge Haynsworth has by no means been limited to his home State. The following is an editorial from the Daily Oklahoman, which is published in Oklahoma City, Okla.

This editorial points out the importance of creating a balance in the Supreme Court and that much of the fight over this nomination must be related to the opposition of those who favor an "activist" Court. The editorial also points out that Lawrence E. Walsh, chairman of the American Bar Association's Committee on the Federal Judiciary has strongly endorsed Judge Haynsworth and refused to be swayed by the flimsy charges of insensitivity which have been made against the Judge. I read the editorial:

PREJUDGING JUDGE CLEMENT F. HAYNSWORTH

(EDITOR'S NOTE.—The following is an editorial from The Daily Oklahoman published in Oklahoma City).

Judge Clement F. Haynsworth Jr., continues to enjoy the expressed confidence of the persons best qualified to weigh the arguments against him.

The American Bar Association's Committee on the Federal Judiciary reaffirms its support of him after the Senate Judiciary Committee advances to the Senate floor his nomination to the U.S. Supreme Court.

Chairman Lawrence E. Walsh of the bar committee said matters that had come to its attention since its original endorsement of Haynsworth "did not warrant a change in that report." The Senate Judiciary Committee was similarly unimpressed with the conflict-of-interest allegations made by Sen. Birch Bayh and other Senate liberals who have been examining the judge's financial past.

The greater significance of this uproad is not what it testifies concerning the judge's qualifications but what it testifies concerning government of men that has supplanted this country's former vaunted government of laws.

For the overriding concern of the Senate liberals isn't the suggested conflict of interest they aren't able to demonstrate but their fear that Judge Haynsworth's elevation to the Supreme Court will give it a conservative majority.

In short, he is being prejudged on his supposed philosophy. His record as a member of the 4th U.S. Circuit Court of Appeals has brought him into disfavor with the labor unions and the black civil rights leaders, as well as their liberal friends in the Senate.

Oklahoma's Sen. Henry Bellmon notes this aspect, saying that "there has never been a case where the Senate has refused to confirm a man because of his philosophy, and I don't think it should be done now."

Haynsworth, like the new chief justice, Warren Earl Burger, has a reputation as a "strict constructionist" who adheres to settled law. As such, he wouldn't be expected to read more into the constitution than it contained or to bend it to conform to his own personal predilections.

Under the "activist" doctrine of the former Warren Court, the constitution was made to mean just about anything a majority of the justices chose for it to mean.

Thus it became the cited authority for turning the operation of the public schools

over to the federal judiciary. It became the cited authority for giving communists the run of defense plants, for making the confessions of criminals almost impossible to use, for banning prayers, or the reading of the Bible in public classrooms, for holding that a college professor may not be dismissed for teaching or advocating the "abstract doctrine" of forcible overthrow, and for fuzzing up the definition of obscenity to the point where the nation now is being engulfed by a flood of printed and filmed filth that would have been inconceivable a few years ago.

In his often-quoted letter to Jefferson's biographer, H. S. Randall, Lord Macaulay said in 1857 that the U.S. Constitution was "all sail and no anchor." Certainly it has become that if it can be construed to mean one thing to one court and something altogether different to another court.

The present din affecting Haynsworth's appointment reflects liberal fears that a court composed largely of "strict constructionists" would set sail in a different direction.

On Friday, September 5, the Chicago Tribune published an editorial entitled "The Defamation of Judge Haynsworth." This editorial, published not in the South but in one of the Nation's leading dailies located in the State of Illinois, quotes John P. Roche of Brandeis University and former chairman of the ADA as follows:

Haynsworth's record . . . was examined with a microscope and, as far as any critic could discover, he has never called for the restoration of slavery, for legalization of torture, or for the abolition of the Federal Government.

The editorial reads as follows:

THE DEFAMATION OF JUDGE HAYNSWORTH

Professional "civil rights" agitators, labor leaders, and "liberal" columnists have launched a massive propaganda campaign against confirmation by the Senate of President Nixon's nomination of Judge Clement F. Haynsworth Jr., of South Carolina, to be a justice of the United States Supreme court.

Judge Haynsworth is opposed mainly by the same forces that defeated Senate confirmation of President Hoover's nomination of Judge John J. Parker, of North Carolina, for the Supreme court in 1930. Judge Parker was chief judge of the United States Court of Appeals for the 4th circuit, of which Judge Haynsworth has been chief judge since 1964. The National Association for the Advancement of Colored People, the labor unions, and other "liberal" elements attacked Judge Parker as a "reactionary," but some liberal senators who voted against him, notably Borah of Idaho, Wheeler of Montana, and La Follette of Wisconsin, praised him in later years.

Judge Haynsworth has been called a "hard core segregationist" by Joseph L. Rauh Jr., vice chairman of Americans for Democratic Action and prime mover of the Leadership Conference on Civil Rights. Roy Wilkins, executive director of the N. A. A. C. P., has issued a manifesto charging that the judge "has been reversed four times by the United States Supreme court in civil rights cases" and is a "partisan of racially segregated public education."

These pillars of the liberal establishment looked pretty silly when John P. Roche of Brandeis University, former White House intellectual in residence and former national chairman of the A.D.A., came to Judge Haynsworth's defense. Roche remarked that Haynsworth "hardly looks like a red-neck segregationist from the piney woods" and added: "Haynsworth's record . . . was examined with a microscope and, as far as any critic could discover, he has never called for the restoration of slavery, for legalization of torture, or for the abolition of the federal government."

George Meany, president of the AFL–CIO, and some of the liberal columnists are attacking Judge Haynsworth solely on the basis of an alleged "conflict of interest" in a case decided by his court. The judge owned 15 per cent of the stock of the Carolina Vend-A-Matic company, of which he also was an officer and a director. While grossing about $3,000,000 a year, this company received $50,000 a year for the use of its vending machines in the plants of the Deering-Milliken company, a large textile manufacturer.

In August, 1963, on the basis of competitive bidding, Deering-Milliken awarded Vend-A-Matic a second $50,000-a-year contract but turned down two other Vend-A-Matic bids. In February, Judge Haynsworth's court began considering an unfair labor practice charge against the Darlington Manufacturing company, a Deering-Milliken subsidiary, and in November, 1963, Judge Haynsworth wrote the court's opinion in a 2 to 1 decision in favor of Darlington.

Thus the only question is whether 15 per cent ownership of a company that received less than 2 per cent of its gross income from a company which had a subsidiary involved in the litigation amounted to a conflict of interest.

In 1964, when Carolina Vend-A-Matic was purchased by ARA Services, Inc., Judge Haynsworth promptly sold the ARA stock he received for his interest in Vend-A-Matic. He said it might be all right for a judge to hold an interest in a small, local company but not in a national company doing business all over the country. Altho he received $450,000 for his ARA stock in 1964, it is worth more than $1,400,000 today.

The truth, it appears, is that the liberals are against Judge Haynsworth because he is a "strict constructionist" who applies the Constitution as it is written. The liberals believe the Constitution is made of rubber and can be stretched to accommodate their vision of a socialist welfare state.

Mr. President, the Times-Dispatch of Richmond, Va., published an excellent editorial entitled "Haynsworth Critics Err." This editorial points out how Judge Haynsworth's critics have been highly selective in attempting to create the impression that Judge Haynsworth is anti-labor and a segregationist. They have pointed to the cases which fit their criticisms but have totally ignored those cases which run counter to their theories.

I read the editorial as follows:

HAYNSWORTH CRITICS ERR

Judge Clement Haynsworth may not be a saint. But in their efforts to depict him as a sinner, his critics have been bending over backward to convict him on the flimsiest of evidence.

In their continuing campaign to show that Haynsworth has been guilty of a serious "conflict of interest," his critics recently offered a "bill of particulars"—charging that the judge had a substantial financial interest in five companies involved in litigation before his court.

The bill of particulars was completely in error on two of the five cases; Haynsworth had no financial interest whatsoever in the companies. In one of the cases he had owned a single share of stock worth $21, and on which he had received a total dividend of 15 cents—but, he sold the stock four years before the company was involved in litigation before his court.

In only two of the cases did Haynsworth own any stock in the companies at the time that they were involved in litigation before him. Actually, he bought stock in one of the companies after its case had been decided in his court, but before the decision was formally announced—an action which he admits was a mistake, though hardly a monumental one.

For that decision, if it had any effect at all on Haynsworth's financial interest in the company, would have resulted in a potential profit of no more than $4.92 for the judge. In the second of these two cases, the effect of the decision may have amounted to a potential personal loss of 48 cents.

This is hardly the stuff which makes for a serious conflict of interest. At best, the charges are petty, if not utterly absurd.

The conflict of interest attack against Haynsworth—and the rather vicious attempt to link him with Bobby Baker because the two of them, unbeknownst to each other, happened to have invested in what apparently was a perfectly legitimate business venture some years ago—appears to be pretty much of a smoke screen which his critics have been using to cover their real motives for opposing his appointment to the Supreme Court.

Their basic reason for opposing Haynsworth seems to be his relatively conservative judicial philosophy and his record as a "strict constructionist." But even here, some of his critics have badly distorted the picture.

Carefully picking and choosing, they have cited a handful of cases in which he ruled against labor unions to hang an "anti-labor" tag around his neck. But the complete record shows that in roughly three out of four labor-management cases he has sided with the unions.

Again being highly selective, some critics have attempted to depict Haynsworth as a "segregationist." But even the Washington Post has dismissed this charge as ridiculous, pointing out that while he hasn't broken any new ground in civil rights cases, he has never failed to uphold integration once Congress or the Supreme Court wrote a law or set a precedent.

"It is true that Judge Haynsworth has not been a crusader," Sen. Harry F. Byrd said last week in announcing that he will vote to confirm the nomination. "But to my way of thinking crusading is not a proper judicial function."

That is one of the main reasons why President Nixon nominated Haynsworth in the first place. And in view of the flimsy and distorted campaign which has been waged against the appointment, the President was well advised to reiterate on Monday that he has no intention of withdrawing the nomination.

Unless his critics can produce more substantial evidence than they already have to justify rejecting him, Haynsworth's appointment should be confirmed by the Senate.

A number of well-known national columnists have spoken out strongly on behalf of the confirmation of Judge Haynsworth. Their arguments reflect a great deal of careful analysis of this matter, and I believe deserve the attention of this body. One of these columnists, William F. Buckley, has discussed several aspects of this case with his customary ability to draw the distinctions which separate fact from fancy. Mr. Buckley draws his attention first to the lack of comparison of this situation with that of Justice Fortas. Second, to the ridiculous charge concerning the Greenville Hotel case; third, to the Maryland Casualty Co.; next to the Brunswick matter; and last, the alleged "association" with Bobby Baker. I believe my fellow Senators would find portions of Mr. Buckley's column interesting, and I should like to share them with you:

HAYNSWORTH DEFENDED

(By William F. Buckley, Jr.)

I defended Judge Fortas at the time, not knowing that his activities were—as the American Bar Association said—"clearly contrary" to the canons of judicial ethics. Fortas of course protested any investigation, but he did not invite any quasi-judicial examination of his records, so that he gave the public appearance of slinking away from scrutiny.

NOT LIKE FORTAS

Haynsworth, by contrast, dumped his meticulous files with the ABA and with the Senate committee, and the wonder of it is why he isn't confirmed immediately. An example of the kind of thing * * * against Judge Haynsworth is the so-called Greenville Hotel case. It is the * * * contention that Judge Haynsworth was clearly involved in a conflict of interest when he ruled on a case in which the Greenville Hotel was a litigant.

Investigation reveals that a) at the time Judge Haynsworth ruled on Greenville, he had no interest in the corporation whatsoever; b) six years earlier, when he was a practicing lawyer, he had consented to serve as a director of the corporation but, in order to qualify, he had to be a shareholder. Accordingly, he was sent one share of stock. Value, $21. Shortly after he became a judge, he received a dividend check for 15 cents and (would you believe?) Haynsworth even took the pains to list it on his income tax. The share of stock he gave back to the issuer years before he ruled on Greenville.

In the famous matter of the Maryland Casualty Company, it turns out that it is the subsidiary of American General Insurance, in which Judge Haynsworth had an interest. After examining the structure of the company, the nature of the case, and the interest of Judge Haynsworth, Sen. Cook, who was himself a judge, reported to his colleagues: "The Judge has only 0.0059 per cent of the 3,279,559 shares of preferred stock and an even smaller 0.0015 per cent of the 4,500,000 shares of common stock." How is that for a substantial interest?

CLOSE TO $5

On the Brunswick matter, Sen. Cook after similar investigation reported that the most that Judge Haynsworth could have benefited from the favorable ruling (made unanimously by the Circuit Court) would have been up close to, but not touching, five dollars.

So it goes, including Judge Haynsworth's "association" with Bobby Baker, whom he last set eyes on in 1958, years before it was known that Bobby Baker was a scoundrel, and with whom he was not engaged in any suspicious enterprise. Richard Nixon pointed out that he had known Baker far better than Haynsworth did, and that, in fact, Mrs. Bobby Baker had been one of his stenographers while he was in the Senate.

Holmes Alexander has also written a column on this subject. Mr. Alexander, who is known for his integrity and his honesty, points out that "every single accusation on conflict of interest has been proved a dud." I believe Mr. Alexander's thoughts on this matter are important, and I should like to read some of them to you:

[From the Greenville (S.C.) News, Oct. 18, 1969]

THE HAYNSWORTH NOMINATION STORY AN UNFUNNY COMEDY OF CONTRADICTIONS

(By Holmes Alexander)

Every single accusation on conflict-of-interest has been proved a dud. The insulting charges that Haynsworth instinctively gives decisions against labor and Negroes have been overwhelmed with citations that show him ruling for civil rights and against business corporations time after time. Authorities on judicial ethics have written and testified to uphold Haynsworth's conduct and intelligence during his years on the Circuit Court. The contradiction of baseless news stories about the President's or the judge's withdrawal of the nomination is a daily occurrence.

The battle is weird because the opposition, having totally failed in damaging facts, has turned to a chemical warfare of poisoning public opinion. The inflow of hate mail attests to this, and the undecided senators are in a crisis of conscience.

They can gain radical votes in their next election by stabbing Judge Haynsworth, but they'll have the blood of an honorable reputation on their hands if they do so.

Mr. President, another columnist who has discussed Judge Haynsworth and the issues involved in this debate most admirably is David Lawrence, distinguished editor of U.S. News & World Report. Mr. Lawrence points out that much of the opposition to Judge Haynsworth must be viewed in terms of the political clout of several of the large organizations which are opposing him rather than the merit of their charges. He also points out that the Senate Judiciary Committee has made an extremely careful investigation of Judge Haynsworth, his views, and his integrity, and has urged the Senate to confirm his nomination. Mr. Lawrence's column entitled "Haynsworth Battle a Political One" appeared on October 6, and I should like to read portions of it for the consideration of the Senate:

HAYNSWORTH BATTLE A POLITICAL ONE

(By David Lawrence)

What's really behind the opposition that has been manifested in the Senate against the confirmation of Clement H. Haysnworth, Jr., as a justice of the Supreme Court?

The answer is to he found in analyzing closely the political game. Those senators, for instance, who are fighting the man who has been serving as chief judge of the Fifth U.S. Circuit Court of Appeals take their cue for the most part from expressions that have come from the leaders of the AFL–CIO and the National Association for the Advancement of Colored People and other Negro organizations. The theory appears to be that the rank and file will be convinced that Judge Haysnworth is anti-labor and anti-Negro.

As for the labor leaders, it is well known that they maintain organizations which do a lot of electioneering in political campaigns and openly boast that they have the backing of a majority in the House of Representatives. They have substantial support in the Senate, too. The AFL–CIO does not hesitate to issue each year a list showing the percentage by which each member has supported the pro-labor side in legislative battles.

On the surface, the main weapon of opposition to Judge Haynsworth is an alleged lack of ethics in sitting on cases which supposedly could affect his financial holdings. Nobody has brought forth any proof of dishonesty or of prejudice related to bis possession of securities. Judge Haynsworth did own some stocks in a company whose principal customer was a defendant in a lawsuit before the Court of Appeals on which he served, but the significance of this has been exaggerated. A smear campaign has been launched in the press in which several senators have participated.

It so happens that these charges were once investigated by the late Attorney General Robert F. Kennedy and were considered as no barrier to continuance on the lower court. The American Bar Association also has found nothing wrong in Judge Haynsworth's behavior. But how is the public to make up its mind when the anti-Haynsworth senators deliberately ignore such findings while making headlines by implying there was dishonesty?

The Senate Judiciary Committee has made a thorough inquiry, and its report will recommend confirmation of Judge Haynsworth. President Nixon has had every fact related to the record of Judge Haynsworth and his personal holdings of securities studied thoroughly and, despite the planted rumors of a withdrawal of the nomination, the White House says that nothing of the sort is contemplated. If the President backed down, he would lose the respect of a huge number of white voters as well as millions of citizens who don't like to see artificially stimulated suspicions and unproved charges of lack of integrity hurt the reputation of an honest man who has been named to be a Supreme Court justice.

It is obviously unfair for critics to base their opposition on political grounds, including attempts to curry favor with labor unions and "civil rights" organizations. Incidentally, a substantial number of senators didn't allow such bias to interfere with the confirmation of Negro lawyer, Thurgood Marshall, or of a former counsel of labor unions, Arthur Goldberg, as associate justices of the Supreme Court just a few years ago.

Mr. Lawrence wrote another column entitled "Ethics Paradox in Haynsworth Case" which appeared on November 10 of this year. A point he makes most effectively is that should Haynsworth be denied confirmation, "the Supreme Court could become a political agency subject to the will of vested interests."

[From the Washington (D.C.) Evening Star, Nov. 10, 1969]

ETHICS PARADOX IN HAYNSWORTH CASE

(By David Lawrence)

One of the biggest paradoxes in American politics is developing. Despite holier-than-thou outcries about "ethics," nothing is being done about the involvement of some members of Congress in a "conflict of interest."

Why are so many senators—both Republicans and Democrats—readily intimidated by the pressures of large labor unions and civil rights organizations? It may well be assumed that some senators who are opposing the nomination of Judge Clement F. Haynsworth to the Supreme Court will receive the help of these organizations, which contribute considerable amounts of money to political campaigns.

No secret is made of the fact that huge sums are spent and support is given for the election of certain members of Congress, irrespective of party, if they do what the labor unions or Negro leaders tell them to do.

What other explanation could there be for the extraordinary opposition lined up against Haynsworth? It is charged that he has not been sufficientiy sensitive on the ethical side, but no convincing case of "conflict of interest" has really been made against him.

Attorney General John N. Mitchell said last week on television that, prior to the nomination, Haynsworth had been thoroughly investigated, including a complete review of his tax returns, his financial statements and his stock holdings. When the attorney general was asked on "Meet the Press" why, therefore, so many senators were opposing the confirmation, he declared: "If the President of the United States had nominated one of the Twelve Apostles, he would have the same problem."

This indicates clearly that the controversy is not related primarily to ethics and that the issue is being used as a kind of cover. The smears and innuendoes that have been made have undoubtedly had their effect on some elements in the electorate. But the truth is that if Haynsworth had not written

any opinions relating to civil rights or to labor union matters, he would not have had the slightest problem in getting confirmed. The "ethics" charge would have been insignificant in its impact.

Unfortunately for Haynsworth, because he comes from the South and, along with other judges, has handed down some rulings on labor matters that the union leaders don't like, an organized effort is being made to block his appointment to the Supreme Court.

American politics has reached one of its lowest points when an honest man—chosen by the President of the United States to serve on the Supreme Court because of his experience and capability as a judge—can be threatened with a denial of the seat because of the fact that, while he was a judge of the U.S. Court of Appeals of the Fourth Circuit, his decisions didn't please the labor politicians and Negro leaders.

Such views can prevent the country in the future from getting impartial and fair-minded judges. The Supreme Court could become a political agency subject to the will of vested interests which have enough money or influence to defeat senators for re-election if they don't vote on judicial confirmations in the way demanded of them by special groups.

Suggestions have been made by some of his opponents that Haynsworth ought to withdraw voluntarily. This, however, is merely a device that would help his critics. For if there were no actually recorded vote, the senators opposing the confirmation would be safe and would not feel at the polls any ill effects of their votes.

What some of the political science students of today ought to do is to make a list of all the senators who have already spoken out against Haynsworth and examine the nature of their constituencies—the number of big cities with a large Negro population or with a heavy labor union vote. In some instances these votes dominate statewide elections and overcome the support an opposing candidate may get in the rural or suburban areas.

What is most important is a record of the vote on the Haynsworth nomination, so that the American people may know which senators have voted against him. This could bring out a resentment vote in the next election, as the people do not like to see their representatives in Congress kowtow to the demands of groups which seek the appointment of judges favorable to their side and without regard to the public interest.

Mr. President, Mr. Kilpatrick wrote another column which was published on August 25 on this nomination, which appraised Judge Haynsworth as a "judge's judge" and "as an able scholar, a hard worker, and a jurist of long experience."

Mr. Kilpatrick also points out the parallel between this case and that of Judge Parker and the tragic rejection of his nomination by the Senate. I urge my colleagues' attention to Mr. Kilpatrick's important views. The article reads as follows:

[From the Columbia (S.C.) State, Aug. 25, 1969]

HAYNSWORTH'S FOES PUTTING UP BAD SHOW—HE IS A JUDGES' JUDGE

(By James J. Kilpatrick)

WASHINGTON.—The civil libertarians of this country are putting up a poor show in the matter of the nomination of Clement Haynsworth to the U.S. Supreme Court. The South Carolinian is highly qualified; he ought to be promptly confirmed when the Senate resumes its sessions next month.

If Joe Rauh and his liberal friends have their way, a Senate clock will be turned back almost 40 years and Haynsworth will not be confirmed at all. In Rauh's view—he is vice chairman of Americans for Democratic Action—"his is the worst possible time to appoint a hard-core segregationist."

The charge is absurd. Judge Haynsworth is a hard-core segregationist in about the same fashion that Rauh is a card-carrying member of the Communist party. The one accusation is no more ridiculous than the other.

Nevertheless, Rauh is rallying the Leadership Conference on Civil Rights, which he serves as general counsel, to throw its full weight against the Haynsworth confirmation. The AFL–CIO doubtless will go along, on the equally flimsy notion that Haynsworth is somehow "anti-labor" or "pro-management."

One is reminded, sadly enough, of Herbert Hoover's nomination of John J. Parker of North Carolina back in 1930. Parker was possessed of one of the most luminous minds and finest intellects ever to adorn the federal bench. Like Haynsworth, he served for many years as chief judge of the Fourth Circuit. But when Hoover nominated Parker to succeed Edward T. Sanford on the high court, organized labor and the NAACP roared into action.

The most grievous charge against Parker was that he had decided against the United Mineworkers in the union's "yellow dog" suit against the Red Jacket Coal Company. It also was charged that Parker once had made a speech, many years earlier, containing some slurring references to Negroes.

Today it would be hard to find a responsible lawyer who would challenge the correctness of Parker's Red Jacket decision in the context of its day; Parker did what he had to do. And far from being "anti-Negro," the North Carolinian established a liberal record, both as a man and a judge, that was far ahead of his time.

Nevertheless, Senators Norris, Borah and LaFollette, the big three liberals of the 71st Congress, so inflamed their colleagues that Parker at last was denied confirmation, 41–39. It was a shameful chapter in Senate history.

It would be grossly wrong to see history repeated in the Haynsworth nomination. This time the most grievous charge is that in passing upon certain cases of school integration, Haynsworth has refused to put the lash on Southern school boards: He has not demanded that they take certain affirmative actions to achieve greater integration.

A further charge is that in the Darlington case of 1963, Haynsworth found no statutory inhibition against a company's closing a profitless mill by reason of union activity.

Doubtless both charges will be thrashed and winnowed before the Judiciary Committee in its hearings on the Haynsworth nomination. It will suffice here to say that a large body of respected constitutional theory supports Haynsworth's view of the Fourteenth Amendment. Like Parker, he concluded that the Fourteenth merely prohibits state-enforced segregation; it does not require state-encouraged integration. In the labor case, reversed by the Supreme Court in March of 1965 (380 U.S. 263), the Haynsworth view was reasoned, objective, and buttressed by an impressive record.

In any event, there is nothing to suggest that Haynsworth has been motivated on the bench by any force but his own integrity. He is not a colorful judge. He surely is no phrase-maker; his opinions often flow like library paste. But he is an able scholar, a hard worker, and a jurist of long experience. His opinions suggest a meticulous mind at work. He is a judges' judge.

When Arthur Goldberg was nominated in 1962, some of us on the conservative side felt it a big much for the general counsel of the AFL–CIO to bring a lifetime of pro-labor advocacy to the Court. When Thurgood Marshall was nominated in 1967, we made a point of his long career as chief lawyer for the NAACP. No such built-in bias can be charged against Haynsworth. His confirmation would bring balance and moderation to a Court that needs these qualities badly.

Another columnist who has written persuasively and effectively in favor of this nomination has been James J. Kilpatrick. In a column entitled "Propagandists' Work of Art" published on October 29, Mr. Kilpatrick describes the case against Haynsworth as "trumped up" and as a "triumph of the propagandist's craft." He further remarks:

It is like John Randolph's dead mackerel in the moonlight, a work of artistry that both shines and stinks.

Mr. Kilpatrick has taken the time and effort to examine the record carefully and I urge the Senate's attention to his unusually perceptive views, as follows:

[From the Columbia (S.C.) State, Oct. 29, 1969]

PROPAGANDISTS' WORK OF ART: CASE AGAINST JUDGE IS BRILLIANT BUT UNFAIR

(By James J. Kilpatrick)

WASHINGTON.—The question is, or will be within the next two or three weeks: Will the Senate advise and consent to the nomination of Clement F. Haynsworth to become an Associate Justice of the Supreme Court of the United States?

It is a pity that members of the Senate already have indicated their intention to vote against confirmation. Once a senator has taken a position publicly, he hates publicly to change his mind. Yet the case against Haynsworth is so flimsy, so specious, so lacking in real substance, that many of these senators might be prompted by a close study of the record to reconsider their opposition.

What we are witnessing, in the trumped-up "case against Haynsworth," is a triumph of the propagandist's craft. Into a smoking pot, the judge's opponents have flung a shrewd mixture of truth, half-truth, whole lies, base insinuations, and old-fashioned politics. By heating up this farrago, they have created great clouds of unfounded doubt; and they have succeeded in making this phony doubt the very basis of their opposition.

On one point I am absolutely satisfied: I am satisfied of Haynsworth's integrity. When the record is seen clearly, and not through a smokescreen, the record discloses not even the appearance of impropriety.

The trouble is that the smokescreen is so thick that busy men—and senators are busy men—cannot conveniently take the time to penetrate the fog. It may be instructive to see how such a smokescreen is contrived.

In his statement of October 8, Indiana's Sen. Birch Bayh charged that in at least five cases, Judge Haynsworth "held a financial interest in one of the litigants substantial enough to require disqualification under 28 USC 455 and to constitute impropriety under the canons of judicial ethics." It is a serious charge; if proved, it would justify Haynsworth's rejection.

But it is not true. One of the five cases listed by the senator was Merck v. Olin Mathieson Chemical Corporation. Judge Haynsworth never held stock in either corporation, Bayh's staff was in error.

Another of the listed cases was Darter v. Greenville Community Hospital. Haynsworth's "substantial" holdings amounted to precisely one share—one pro forma share paying a 15-cent annual dividend—in his home town's hospital.

A third case was Farrow v. Grace Lines. Haynsworth held no stock in Grace Lines. He did hold 300 shares in W. R. Grace & Co., which owned Grace Lines along with 52 other subsidiaries. The Farrow case involved a $50 judgment.

Still another of Senator Bayh's charges was that Judge Haynsworth violated ethical canons by not disqualifying himself in Kent Mfg. Corp. v. Commissioner of Internal Revenue. But it turned out, after the senator's charge had been added to the stew, that Bayh had the wrong Kent Manufacturing Corporation. Sorry 'bout that.

Very well. I do not impugn Bayh's motives, only his staff work. But the damage is done. In a race of this kind, which must be quickly run, truth cannot catch up with falsehood. A senator who might be predisposed to vote against Haynsworth, if only to soothe black and labor interests, is likely to recall vaguely that Bayh listed a whole string of cases in which the judge was a big stockholder in companies before his court. The refutation of these baseless charges will go unnoticed.

Perhaps Nixon himself should not have accused Haynsworth's opposition of engaging in vicious character assassination. Presidents are expected to speak in softer accents. Yet that is exactly what the case against Haynsworth amounts to. It is like John Randolph's dead mackerel in the moonlight, a work of artistry that both shines and stinks.

I have an article that appeared in the National Review magazine on November 18, 1969. This story is concerned with the treatment of the Haynsworth matter, and I think it reveals the hollowness of the attacks in the press that have been leveled.

This article, which was written by the distinguished columnist Ralph de Toledano, is an extremely thorough account of the entire controversy surrounding Judge Haynsworth and the part played in this controversy by the press, more particularly Time magazine:

TIME MARCHES ON HAYNSWORTH

(By Ralph De Toledano)

Once upon a Time, to put it charitably, the deception was brazen but it had style. There was, for example, the famous cover story in the Fifties which made statements running directly counter to the material in the magazine's own research files and in the memoranda of its chief Washington correspondent. But *Time* laughed arrogantly when the hoax was discovered, telling protesting readers that it was all a matter of "opinion."

Those were the good old days for *Time*. But the magazine has grown shabby with the passing of the years, and nervous as the competition begins to nip at its heels. It is no longer the dream of aspiring newspapermen and college sophomores to work in that Matterhorn of glass, steel and gimcrack in Rockefeller Center. The pay is no longer that good, and the real sharp practitioners of journalistic legerdemain have gone elsewhere. But *Time* still has its moments of greatness—and this may bring back the advertising revenue that has been slipping away to *Newsweek* and to television.

I cite as Exhibit A to prove the point *Time's* handling of the Haynsworth case. In this, of course, *Time* had the help of substantial segments of the metropolitan press corps and the electronic media. But *Time's* achievements in this case should not be minimized. The newspaper reporter works under the pressure of a daily deadline—several, for his wire service cousin. Without the procrustean limitations of a news magazine story, he occasionally slips and lets the facts speak for themselves. But *Time* has several days of each week to mull over a story, to study the file, to query its correspondents. The final story is the product of many hands, much revision and the possible *nihil obstat* of experienced editors. An event as important and significant as the public lynching of a man appointed to the Supreme Court by a controversial President gets all of this loving attention and more, since it becomes a policy matter.

Time had a choice in reporting the Haynsworth case. With its tremendous manpower resources, it could have covered the story like a blanket, digging into court records, interviewing participants, scrutinizing and analyzing Chief Judge Clement F. Haynsworth's stock portfolio, determining for his broker just what the nominee's role was in the various transactions now under debate, checking the allegations made about him against the facts, and looking into the motivations of those who have turned what was simply a confirmation routine into what they hope will become *Senate* v. *Haynsworth*.

Or, it could have joined the tar-and-feathers brigade, joyously opening its pages to the full indictment—no holds barred, no pretense at impartiality, a big brother, let us say, to the *New York Post*. But *Time* marched on Haynsworth in its classic style, always lagging slightly behind the pack—superb in its use of innuendo, corrupting the record only with care, magnanimously granting Judge Haynsworth a point here and there, but never impeaching or even questioning the motives of those who were swinging the rope over the tree limb.

Like those most active in the anti-Haynsworth posse, *Time* was aware that the real victim of the attack on a Fourth Circuit Court of Appeals chief judge was not to be Clement Haynsworth but Richard Nixon. The Haynsworth case was to be a chapter in a work in progress fittingly and sadly named by David S. Broder, an earnest reporter, "The Breaking of a President." With luck and voodoo, it could be the key chapter, eliminating moderate conservatism and contributing to the hoped-for polarity of a confrontation with the extremes of Left and Right.

For the sake of clarity, let me rehearse the chronology.

Last August, President Nixon nominated Judge Haynsworth to the seat on the Supreme Court vacated by Justice Abe Fortas—the so-called Jewish seat. This, to those who believe that the high court must be made up of racial representatives rather than sound jurists, was anathema. There were other outrages in the choice of Judge Haynsworth. He was a Southerner who had voted sometimes, though not always, for decisions which the National Association for the Advancement of Colored People found obnoxious. Of greater import was his role in the famous Darlington case in which he once held that an employer running a rapidly deteriorating business should be allowed to shut up shop. This, though Judge Haynsworth later reversed himself, won him the undying enmity of George Meany and the AFL–CIO, operating under the not too unsubstantiated belief that on labor matters the American judicial system should be run by their general counsel's office.

At a high-level meeting at the AFL–CIO's white palace near the White House, it was decided to go all-out against the Haynsworth appointment 1) to put the fear of God into any other independent judges and 2) to teach the Nixon Administration a lesson. The strategy was to mobilize labor's phalanx in the Senate—the men who owed their election to labor money and labor manpower; to put together some sort of alliance with the NAACP, bitter at President Meany for his refusal to crack down on craft unions which discriminate against Negroes; and to dig up some old charges of "conflict of interest" against Judge Haynsworth. (These charges, incidentally, had been withdrawn by the union officials who originally made them and dismissed after investigation by Attorney General Robert F. Kennedy—hardly an antagonist of the AFL–CIO.)

THE CHARGES

To raise the cry against a Supreme Court appointee also has its in-built humor. No one mentioned that most of Arthur Goldberg's legal career had been as a paid advocate of the labor movement, or that Thurgood Marshall, who must cast his vote on civil rights cases, was for years a paid official of the NAACP. Or, for that matter, that Justice William O. Douglas was until recently the president of a foundation financed by gambling money provided by a company whose current difficulties will inevitably end up before the Supreme Court.

That the American Bar Association's committee on ethics twice sustained Judge Haynsworth's integrity, hardily deterred the AFL–CIO or its legislative flunkies. Neither did logic or honesty prompt the anti-Haynsworth forces to accept the fact that the Canon of Ethics bars a judge from sitting on a case only if he has "substantial" interests in the litigations. In one of the instances of "conflict of interest" excitedly alleged against Judge Haynsworth, a multimillionaire, his entire benefit amounted to 48 cents, in another to less than $5.

It should have been of some journalistic interest to *Time* to note and evaluate the charges made by Senator Bayh. In one case, Mr. Bayh got his companies all wrong. In two cases, Judge Haynsworth voted against the companies involved and for the union. In still another case, Judge Haynsworth voted against what were purportedly his interests by allowing a textile mill related to a company which did business with another company in which he held a share to shut down, thereby reducing its business. Repeatedly, Senator Bayh got his facts and his chronology so wrong that it made no sense—except, of course, political sense.

At the start, it was clear that the only case against Judge Haynsworth was his adherence to a strict construction of the Constitution, a deadly sin to the liberal Establishment, and his lack of judicial flair. The statement by Joseph Rauh, the scatter-brained vice chairman of Americans for Democratic Action, that the nominee was a "hardnose segregationist" was even ridiculed by the *Washington Post*. After some days, the rallying cry of his "anti-labor bias" was toned down (by *Time*, incidentally) to an "anti-labor image." Eventually, the charges of conflict were thoroughly demolished by Clark Mollenhoff, a Pultizer-prize-winning investigative reporter now serving as Deputy Counsel to the President. This, to those who do not know Mr. Mollenhoff, might disqualify him as a Nixon Administration partisan. But aside from the documentation of the rebuttal, there is Mr. Mollenhoff's character and reputation. He is a stubborn man of great journalistic rectitude, and had he found anything remotely questionable in the Haynsworth record, he would have resigned rather than issue his devastating statement for the defense.

But how did *Time* tell the story? As they used to say: Read 'em and weep.

THE FACTS

First, let us read what the *Nation*, that bastion of the Old and New Left had to say about Judge Haynsworth when he was named: "No genius of the law . . . no Brandeis or Cardoza [*sic*] surely, but a hard-working lawyer, without pomposity, of consistent judicial temperament. He has biases, but he is aware of them—no small virtue in a judge . . . a genuine conservative amid the host of reactionaries masquerading as conservatives . . . [with] important appellate experience."

And now to *Time*. (All emphases added.)

September 26, 1960: "The most damaging allegations, however, concerned the Appellate Court Judge's failure to remove himself from cases in which he may have had a financial interest. Led by Indiana's Birch Bayh, liberal committee members charged Haynsworth with a conflict of interest for not disqualifying himself from a 1963 trial involving the Textile Workers Union and a firm that did business with a vending ma-

chine company in which he had a one-seventh interest."

The "may" is, of course, the giveaway. Didn't Time researchers know? And didn't they know that in two Textile Workers cases, Judge Haynsworth voted for the union? Or that the vending machine company's dealings with the unnamed firm itself (Darlington) amounted to zero, only 3 per cent of its business coming from the associate Deering Milliken Company, giving Judge Haynsworth roughly .0042 per cent, which is hardly the "substantial interest" demanded by judicial canons?

Of this case, *Time* said: "John P. Frank, liberal Democrat who serves on the Advisory Committee on Civil Procedure of the Judiciary Conference, stated flatly that 'there was no legal ground for disqualification.'" It did not add these words from Mr. Frank: "It is perfectly clear under the authority that there was literally no choice whatsoever for Judge Haynsworth except to participate in that case." Nor did it point out, as noted above, that in ruling on the Darlington case, the judge reduced, rather than increased, the income of the vending machine company, Carolina Vendamatic.

Same story: "The judge, who sat on a 1967 case involving the Brunswick Corporation, bought stock now valued at $18,000 between the time of the argument and the rslease of the decision in favor of the company." The facts: The Circuit Court unanimously agreed on a disposition of the case early in November. Judge Haynsworth bought his stock in December. Secondly, the case was a small one ($90,000) which could have virtually no effect on the value of the stock—one-half cent a share, to be exact.

October 10, 1969: "What brought about the sudden shift in Republican ranks against Haynsworth was the disclosure that he once had a tenuous business connection with Bobby Baker, the former Democratic Senate aide who was convicted of larceny and tax evasion in 1967. Both men invested in a South Carolina real estate deal several years ago although neither apparently knew each other. . . . The real estate deal was apparently innocuous and innocent." The facts: There was no business connection. Both men invested in a cemetary company. They met only on three occasions, briefly, at ceremonial occasions, when Bobby Baker was Lyndon Johnson's protege and doing much more substantial business with many members of the Senate. The real estate investment had nothing to do with Baker's later troubles—something which Time "apparently" did not care to disclose.

Same story: "According to this theory [an "explanation" of why Mr. Nixon has continued to support Judge Haynsworth] Nixon met with South Carolina's Senator Strom Thurmond and other Southern leaders in Atlanta in May of last year . . . Nixon supposedly made certain promises, one of them being a guarantee to Strom Thurmond that he could name a justice to the Supreme Court when the opportunity arose." The facts: (1) No such promise was made. (2) Senator Thurmond's candidate for the Supreme Court seat was passed over by the White House. Judge Haynsworth, though now supported by Mr. Thurmond, was never the Senator's candidate.

COUP DE TIME

October 17, 1969: "Kentucky's freshman GOP Senator Marlow Cook issued a broadside against Bayh's charges . . . Haynsworth, said Cook, was being subjected to 'character assassination.'" The facts: Senator Cook issued a long and detailed analysis of Judge Haynsworth's stock holdings, showing gross errors and falsifications in Mr. Bayh's allegations. This statement was available to *Time*, since it was in the *Congressional Record*, but by simply quoting the "character assassination" phrase, without offering any of the rest of Senator Cook's argument, *Time* reduced it to name calling.

In the same October 17 issue, *Time* devoted almost a page of its section, "The Law," to Haynsworth decisions and concurring votes. Under the subhead of "Civil Rights" it listed all those decisions which legal "activists" would consider gradualist in tendency. It failed to cite the case in which Judge Haynsworth ruled against a dentists' association which barred Negroes. *Time* reviewed all the Haynsworth cases which labor opposed, but failed to mention that on two occasions he ruled in favor of the Textile Workers Union. But *Time's* major masterpiece was its summation of the Darlington Mills case, referred to *passim* in this account.

Said *Time:* "In South Carolina, the Textile Workers Union of America had won an election at a previously non-union mill operated by Darlington Manufacturing Co. *In response,* Darlington closed the mill, laying off five hundred employees. Haynsworth concurred in a majority opinion that the company had a right to close out 'part or all' of its business, whether or not its motive was anti-union. In overturning the decision, the Supreme Court noted unanimously that a partial closing of a business is unfair if the purpose and probable effect are to 'chill unionism' in the employer's remaining plants."

This parody of the Darlington case warrants extended treatment, if only because it was the seed from which all the other charges against Judge Haynsworth grew. The facts were all on the record, in the pleadings before the Circuit Court and the Supreme Court—but *Time* preferred to tell it much in the manner of the *AFL–CIO News,* a handy shortcut.

The facts, then, are these:

Darlington was an old family-owned mill which went into bankruptcy in 1937 and was rescued by an infusion of money from Deering Milliken which took over 69 per cent of its stock. In 1956, Darlington was again in trouble. An engineering efficiency concern was called in to devise a plan to keep the company in business. That plan called for the infusion of considerable sums of money and a reorganization which would increase the productivity of its employees—if Darlington was to survive. At this time, the Textile Workers of America began an organizing drive at Darlington, until then non-union. Union organizers promised that if they won the right to bargain collectively, they would block the reorganization of Darlington. And the union did win, by a six-vote margin. Obviously, Darlington could not survive under these circumstances, and the stockholders voted overwhelmingly to shut down the plant and cut their losses. The machinery was sold forthwith. The Textile Workers Union then filed a complaint with the National Labor Relations Board charging "unfair labor practices."

In April of 1957, the NLRB trial examiner ruled that Darlington's economic plight warranted the shutdown, the unfair labor practice existed only because of the timing of the shutdown, but that Darlington would have gone out of business in short order. The examiner recommended that the NLRB refrain from granting Darlington workers "lost" wages because no manufacturing plant existed. The NLRB postponed any decision on the case but ordered the trial examiner to take evidence to the connection between Darlington and Deering Milliken. After 2,500 pages of additional testimony and four hundred pages of exhibit, the trial examiner ruled that, divested of legal language, Deering Milliken was not a party to the dispute. Two years later, the NLRB returned the case to the trial examiner for further hearings.

Faced by this harassment, Deering Milliken filed suit against the NLRB, asking the Federal District Court in North Carolina to enjoin the trial examiner from reopening the case. The NLRB appealed the Federal District Court injunction to the Fourth Circuit Court of Appeals. Judge Haynsworth, though his ruling states that the NLRB had not done its statutory duty of deciding the case, within a reasonable time, nevertheless modified the district court injunction and allowed the trial examiner to take new testimony as to whether Deering Milliken rather than Darlington was the "single employer" and therefore a party to the suit. The trial examiner's recommendations were as before, specifically that the NLRB and its general counsel had not shown that Deering Milliken was the "single employer." The NLRB thereupon reversed its own trial examiner and ruled that Deering Milliken was the "single employer" and therefore answerable for the shutting of the plant. The Fourth Circuit Court refused to sustain the NLRB in a decision written by a judge other than Haynsworth. This decision was in line with the preponderance of rulings made by other federal courts of appeal.

Enter now the Supreme Court. Having heard argument, it did not reverse the decision in which Judge Haynsworth had concurred. The high court merely said that certain essential information had not been developed so far in the litigation. By steps the case moved back to the trial examiner who said that Darlington had not been closed in order to discourage unionism in Deering Milliken plants. He also dismissed all the charges against Deering Milliken. The NLRB again overruled its own trial examiner and the case moved up to the Fourth Circuit Court which sustained the NLRB, with Judge Haynsworth concurring.

This is the case which *Time* so whimsically characterized in one brief paragraph distinguished by an error in almost every sentence.

It is out of this case that *Time* found the inspiration to march on Judge Haynsworth—a case about a plant which was already dismantled when it reached Judge Haynsworth, who presumably subverted the law to put Vendamatic machines into the ghost premises—or to pick up a couple of extra bucks from Deering Milliken. An aspiring candidate for the Ph.D could come up with some interesting notes on the nature of the news media were he to follow that story from the research files and the memoranda from *Time* correspondents, through the writer's copy, to the hapless checker who must, according to *Times's* rules, find corroboration for every word in a *Time* story.

Was she asleep at the switch, too busy reading the underground press, or—as it happened repeatedly in Whittaker Chamber's day—was the research file simply spirited away by an eager anti-Nixonite, forcing her to rely on the *New York Times*?

It is lamentable, although not surprising, that many of the newspapers, television stations, and other news media have derided Judge Haynsworth. Unfortunately, yellow journalism is not dead and much has been done by the press to smear this man.

I have an article from the November 1 edition of Human Events which gives a breakdown of the charges and replies to those charges that have been made concerning Judge Haynsworth. I would like to read this article for it gives a point-by-point analysis of the situation:

CHARGE

Haynsworth voted with a 3-to-2 majority of the Fourth U.S. Court of Appeals on Nov. 13, 1963, to permit the Deering Milliken textile company to close an affiliated plant in Darlington to avoid unionization there. At the time the judge had a one-seventh ownership interest in Carolina Vend-A-Matic Co., which was then doing $100,000 worth of business a year with Deering Milliken interests.

The judge should have disqualified himself because of that connection.

REPLY

The judge definitely should not have disqualified himself because: (1) Vend-A-Matic was not involved in the case in any way; (2) The Darlington plant did not even use Vend-A-Matic machines; (3) Vend-A-Matic's gross receipts from Deering Milliken interests amounted to only 3 per cent of its total volume of business; (4) The judge, in fact, actually had a *duty* to sit on the case.

Former Federal Judge Lawrence E. Walsh, chairman of the American Bar Association's Committee on Judicial Selection, for instance, testified there was "no conflict of interest in the Darlington case that would have barred Judge Haynsworth from sitting and we also concluded that it was his duty to sit."

John P. Frank, a leading authority on judicial disqualification, stated that "under the standard federal rule Judge Haynsworth had no alternative whatsoever [in the Darlington case]. It is a judge's duty to refuse to sit when he is disqualified, but it is equally his duty to sit when there is no valid reason not to. . . . I do think that it is perfectly clear under the authority that there was literally no choice whatsoever for Judge Haynsworth except to participate in that case."

CHARGE

The judge should have disqualified himself from the Darlington case because it was crucial to the economic health of the entire Southern textile industry, which he had helped develop and which was the source—in 1963—of three-fourths of Vend-A-Matic's business.

REPLY

The court ruling was only one of three decisions involving the Deering Milliken plant's labor situation and the judge ruled *against* the company in the last of these. His role in helping develop the textile industry was confined to normal legal advice given as a private attorney. Vend-A-Matic's business had outlets other than textiles and its overall business reflected a cross-section of companies in the area.

Furthermore, there is no indication whatsoever that the vending machine business would have in any way been adversely affected, even if all the various rulings in which Haynsworth participated had gone against the textile industry.

CHARGE

Since 1957, when the judge was appointed to the bench, Vend-A-Matic's gross sales have risen dramatically from $296,413 in 1956, for instance, to $3,160,665 in 1963, the year Judge Haynsworth ruled on the Darlington case. The judge, he notes, also took an active part in Vend-A-Matic affairs—at least nominally holding office as vice president and director until 1963, attending regular board meetings, receiving director fees as high as $2,600 and having his wife Dorothy serve as secretary for two years. Bayh thus raises the prospect that Haynsworth's name and judicial position were used to promote his business in some improper way.

REPLY

Sen. Bayh makes no charge that Judge Haynsworth performed even one questionable act to solicit business for the food vending firm. He only insinuates that the increased profits of Carolina Vend-A-Matic must have been somehow related to the fact that Haynsworth was a federal judge. There is, however, absolutely no evidence that Judge Haynsworth ever did solicit business for Carolina Vend-A-Matic, a finding that has been corroborated in an impressive manner.

Wade Dennis, who became general manager of Carolina Vend-A-Matic in 1957, states that "Judge Haynsworth did not involve himself in any way in the management or direction of the company, and in no case did he participate directly or indirectly with the solicitation of any business, or intervene in our behalf with any client . . . he would have had no way of knowing what account we served or who we were in the process of trying to sell." Virtually all business was gained "by sales efforts followed by bidding among competing companies."

The Dennis statement is supported by a letter from an official of Carolina Vend-A-Matic's leading competitor. Alex Kiriakides Jr., of Atlas Vending Company, Inc., Greenville, S.C., in a letter to the Senate Judiciary Committee, stressed his concern over what he termed "the slanders which are being circulated in the press about Judge Haynsworth and Carolina Vend-A-Matic."

Kiriakides made these significant points: (1) The food vending business in South Carolina and in the United States has had a phenomenal growth, and "the experience of Carolina Vend-A-Matic was not in the least unique to it"; (2) His own business, Atlas Vending, experienced comparable growth, as did other similar businesses in the area; (3) He competed with Carolina Vend-A-Matic for locations in textile plants and other industrial plants and the practice in the area was to make the awards on the basis of open bidding; (4) Carolina Vend-A-Matic was not developed on the basis of anyone using anyone's influence on anybody.

"I know that Judge Haynsworth's name was never used in an attempt to influence anybody," Kiriakides said. "As a very active competitor, I knew what was going on in the business, and I would have heard of it if it had been." "Carolina Vend-A-Matic, under the direction of Mr. Wade Dennis," stated Kiriakides, "operated in an honest and honorable fashion."

Furthermore, Simon Sobeloff, chief judge of the Fourth Circuit Court in 1963, conducted an investigation that year to determine the validity of an illegation that Judge Haynsworth had favored Deering Milliken in the Darlington case because Deering Milliken personnel had promised to throw additional business to Carolina Vend-A-Matic.

Judge Sobeloff concluded that this was emphatically not the case, forcing an apology from the counsel of the Textile Workers Union who had originally asked Sobeloff to investigate the charge. Judge Sobeloff, moreover, stressed that he was "assured that Judge Haynsworth has had no active participation in the affairs of Carolina Vend-A-Matic, has never sought business for it or discussed procurement of locations for it with the officials or employes of any other company."

CHARGE

The judge had a conflict of interest when he participated in a 1959 ruling favorable to Homelite Co., which did a total volume of business of $16,000 with Vend-A-Matic that year.

REPLY

Just as in the Darlington case, Vend-A-Matic was not at issue, and the judge voted in favor of Homelite only because the other litigant had committed fraud. Judging from the testimony given by ABA official Lawrence Walsh and ethics expert John Frank, furthermore, the conclusion is inescapable that Judge Haynsworth had an equal duty to sit on this case involving customers of Vend-A-Matic as he did in the Darlington Corp. case.

CHARGE

The judge had a conflict of interest when he participated in 1959 and 1961 cases involving Cone Mills Corp. Vend-A-Matic sales to Cone Mills and its subsidiaries totalled $97,367 in 1959 and $174,314 in 1961.

REPLY

Vend-A-Matic was not involved in either court case. The judge, moreover, voted *against* Cone in both cases. Again, the Walsh and Frank testimony suggests that Haynsworth would have been required to sit on these cases.

CHARGE

The judge had a conflict of interest when he participated in 1962 and 1963 cases involving Deering Milliken Research Corp. Vend-A-Matic sales to Deering Milliken totalled $50,000 in 1962 and $100,000 in 1963.

REPLY

Vend-A-Matic was not involved in either court case. Each case involved only procedural questions, not necessarily favorable or unfavorable to Deering Milliken Research Corp. The Walsh and Frank testimony would also apply here.

CHARGE

Sen. Bayh accused Haynsworth of having a conflict of interest when he participated in a 1961 case involving Kent Manufacturing Co. In that year, Vend-A-Matic had sales of $21,322 to a Kent subsidiary named Runnymeade.

REPLY

There is no connection between Kent Manufacturing, a Maryland corporation which makes fireworks and was the litigant mentioned by Sen. Bayh, and the Kent Manufacturing Co. in Pennsylvania which operated the Runnymead plant in Pickens, S.C. Bayh even withdrew his charge after Haynsworth backers revealed the error.

CHARGE

In the last five cases Judge Haynsworth "held a financial interest in one of the litigants substantial enough to require disqualification under 28 USC 455 and to constitute impropriety under the canons of judicial ethics."

REPLY

The accusation is absolutely false. One of the five cases was the Brunswick case. The Fourth Circuit Court unanimously agreed to the disposition of the case on all issues on Nov. 10, 1967, more than one month before Haynsworth purchased $16,000 worth of Brunswick stock. Judge Harrison Winter, who wrote the opinion, maintained that Haynsworth had broken no judicial code in purchasing the stock, even though Haynsworth himself acknowledges that he had been careless in purchasing the stock before the written opinion had been actually released. Whether Brunswick won or lost the case, however, could not possibly have made any material difference to its stockholders, since the amount involved was minimal. Asked bluntly by Sen. Strom Thurmond whether Haynsworth's purchase of the stock should disqualify him from the Supreme Court, Judge Winter replied: "I don't consider it the slightest disqualification."

Another of the five cases listed was *Merck vs. Olin Mathieson Chemical Corp.* Judge Haynsworth, it turns out, never owned any Merck stock and never owned any Olin Mathieson stock. Bayh now says his staff researchers misread a business transaction and that this charge "is an error."

Two more of the "big five" cases involved Grace Lines and Maryland Casualty Co. Haynsworth, it develops, also owns no stock in either of these companies, but Bayh contends he should have disqualified himself because he owns stock in the parent corporations. Yet the canons of judicial ethics do not forbid a judge to own stock in a subsidiary or parent corporation of a litigant. And court cases strongly suggest a judge is not required to disqualify himself unless he owns stock in the litigant itself. Furthermore, Judge Haynsworth's rulings involving both Grace Lines and Maryland Casualty would have had virtually no impact on the value of the stock of the mammoth parent corporations. Using Bayh's reasoning, it is contended, a judge could not rule on, let us say, General Motors, if he owned a mutual fund which, in turn, owned shares of General

motors, for he might somehow "benefit" from the decision.

The last of the big five cases—*Darter vs. Greenville Community Hospital*—was decided in 1962. This case, according to President Nixon's deputy counsel, Clark Mollenhoff, "demonstrates the absurdity of Sen. Bayh's allegations that Judge Haynsworth was involved in conflicts of interest because of a substantial interest in corporations that had business before his court."

Judge Haynsworth had absolutely no interest in the Greenville Community Hotel Corp. or in any company having any interest in that corporation in 1962. On April 26, 1956, before Haynsworth was on the court, one share of Greenville Community Hotel Corp. stock worth only $21 was transferred to him so he could be a director of that corporation. He held that position until he went on the bench in 1957.

A short time later, Jan. 1, 1958, Judge Haynsworth did receive a check for 15 cents, the 1957 dividend on his one share. Judge Haynsworth, thinking he no longer owned that one share, sent the check to Alester G. Furman Jr., who had transferred the one share of stock to him two years earlier. Furman then returned the 15-cent check to Judge Haynsworth and Judge Haynsworth listed that 15-cent check as income on his tax return. The one share was later transferred to Furman, who sold it on Aug. 1, 1959, for $21.

CHARGE

The judge was involved, along with others, in a South Carolina cemetery venture with Robert G. "Bobby" Baker, the discredited former Senate Democratic secretary who resigned under criticism for his business dealings.

REPLY

There were 25 individuals and business firms involved in the venture, which Haynsworth entered purely on the advice of others. He did not see or communicate with Baker in connection with the investment. He has had only three conversations with Baker, the last in 1958, years before Baker got into trouble with the Senate. Sen. John Williams (R.-Del.), who took a leading part in exposing the questionable activities of Baker, says he has looked over his files and "can find no reference which would connect Mr. Haynsworth with Bobby Baker in an improper manner." He has also warned his colleagues to beware of discrediting Haynsworth on the basis of "guilt by association."

CHARGE

The judge has an anti-labor record in his judicial performance. He has sat on 10 cases which were reviewed by the Suprsme Court, and in all 10 his posliton was reversed by the Supreme Court.

REPLY

None of the Supreme Court reversals suggested that the decisions being overturned were "anti-labor." Two of the 10 cases were not even labor-management cases. Besides the cases that went to the Supreme Court, Haynsworth has written eight pro-labor opinions and joined in 37 other pro-labor rulings.

CHARGE

The judge is an opponent of civil rights.

REPLY

There is absolutely no pattern that would establish bias. As in his labor decisions, some decisions were in favor of the party claiming an infringement of civil rights and some decisions were not. Prof. G. W. Foster, Jr., a strong civil rights advocate, has appraised Judge Haynsworth's record in these words: "I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent and open-minded man, with a practical knack for seeking workable answers to hard questions."

CHARGE

There is no difference between the Abe Fortas case and the Haynsworth case.

REPLY

There is all the difference in the world.

Last May, the American Bar Association, in a letter to Sen. John Williams, stated: "The conduct of Mr. Fortas while a Supreme Court justice, described in his statement of the facts, was clearly contrary to the canons of judicial ethics even if he did not and never intended to intercede or take part in any legal administrative or judicial matters affecting Mr. (Louis E.) Wolfson."

Fortas resigned without ever making a public disclosure of all the facts in question.

By contrast, the ABA has supported the Haynsworth nomination. His handling of the Darlington case has also been defended by the ABA and other leading authorities on judicial conflict of interest.

Unlike Fortas, Judge Haynsworth has revealed his financial holdings in a detail that has few if any parallels in the history of judicial confirmations.

Mr. President, those best situated to judge this man both as an individual and as a member of the Federal Judiciary are those who serve with him on the circuit court bench.

On October 9 all six of the judges who have served with Judge Haynsworth on the Fourth Circuit Court of Appeals sent a telegram expressing their confidence in Judge Haynsworth.

This telegram was signed by Judge Simon E. Sobeloff of Maryland, Herbert S. Borman of West Virginia, Albert V. Bryan of Virginia, Harrison L. Winter of Maryland, J. Brackson Craven, Jr., of North Carolina, and John D. Buckzner of Virginia.

Certainly these men are better qualified perhaps than anyone else to judge this man and determine his accreditability as a judge and as a man of character and honor.

This telegram read:

Despite certain objections that have been voiced to your confirmation, we express to you our complete and unshaken confidence in your integrity and ability.

Judge Harrison L. Winter appeared before the committee during the hearings and testified in behalf of Judge Haynsworth and it is well that we be reminded of his remarks for he certainly is in a unique position to determine whether or not Judge Haynsworth is competent and creditable.

On November 10 another eminent jurist, former Associate Justice Charles Whitaker, who served on the Supreme Court from 1957 to 1962 issued a statement setting forth his views on Judge Haynsworth's nomination.

Mr. President, as you know, 16 past members of the American Bar Association have endorsed Judge Haynsworth. These men are leaders in their profession and their endorsement is not a case of a group of men simply wishing fellow practitioner well. These individuals are fully capable of considering all the factors in a given matter and reaching a just and proper conclusion. They have endorsed Judge Haynsworth unreservedly.

This endorsement surely must be given great weight for it emanates from a very distinguished group of gentlemen.

It is interesting to note the places of residence of these men for it indicates that people throughout the United States support this very important nomination. The members are Harold J. Gallagher, New York; Cody Fowler, Florida; Robert G. Storey, Texas; Lloyd Wright, California; E. Smythe Gambrell, Georgia; David F. Maxwell, Pennsylvania; Charles S. Rhyne, Washington, D.C.; Ross L. Malone, New Mexico—General Motors, New York; John D. Randall, Iowa; Whitney North Seymour, New York; John C. Satterfield, Mississippi; Sylvester C. Smith, Jr., New Jersey; Lewis F. Powell, Jr., Virginia; Edward W. Kuhn, Tennessee; Orison S. Marden, New York, and Earl F. Morris, Ohio.

Mr. President, is not the real crime that this man has committed three-fold? First, he is a constitutionalist; second, a capitalist; third, he came from the wrong part of the country.

Mr. President, since it appears that no evidence has been presented by the prosecution and since the accused has clearly demonstrated his innocence, I ask that the verdict of the uncommitted be not guilty as charged.

I ask that those distinguished Members of this body who are now undecided, the jury if you please, base their decision as to how they shall cast their lot on the tenets of justice and equity and not on the basis of political expediency.

To deny the President his choice, to deny to the people of this Nation their choice, a choice dictated by the results of the balloting in the 1968 election, is to break faith with the precepts of this system of government.

Mr. President, I urge that the Senate consent to the nomination of Clement F. Haynsworth, Jr., to be Associate Justice of the Supreme Court of tthe United States.

Judge Haynsworth's character, intelligence, legal knowledge, judicial temperament, and the exemplary manner in which he has filled the duties of the position of chief judge of the Fourth Judicial Circuit qualify him to become a Justice of the Supreme Court of the United States.

Mr. BIBLE. Mr. President, I want to make a brief statement concerning my vote on the Haynsworth nomination.

I am glad to be able to say that throughout my deliberations on this extremely difficult matter I was free of any undue pressures. There was, of course, active interest by the people of my State of Nevada. I received a good cross-section of correspondence, but neither side dominated the other. There was an unusually close division of views, and I am grateful to all who took the time to write.

The constitutional responsibility of the Senate to advise and consent to nominations to the Nation's highest court is heavy at best. It takes on an added dimension in times such as these when—for whatever reason—the Court is the object of concern or uneasiness on the part of too many of our citizens.

I think this is a time for shoring up public confidence in the Supreme Court. This is a time for emphatic reemphasis of the exacting ethical standards demanded of those who serve or aspire to serve as justices of the Nation's highest tribunal.

In the final analysis, the strength of the Supreme Court—the sanctity of the Court as an institution indispensable to our balanced system of government—depends upon the respect and confidence of the people. And this, in turn, depends on the public's respect for individual Justices.

This is no time to dilute the well recognized standards. To do so would be to further damage an already troubled court. Supreme Court nominees must be above reproach. They must be devoted to the Canons of Judicial Ethics. They must demonstrate a refined sensitivity to the ethical standards established to assure not only propriety itself but the appearance of propriety.

Canon 4 commands that—

A judge's official conduct should be free from impropriety and the appearance of impropriety. * * *

Canon 29 provided:

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. * * *

And canon 34 cautions every judge that "in every particular his conduct should be above reproach."

I have read and reread the record generated by this nomination. I cannot in good conscience conclude that Judge Haynsworth meets the high standards, which it is the Senate's solemn obligation to demand.

Last June, Judge Haynsworth testified before a committee of the Senate that when he went on the bench he "resigned from all such business associations I had, directorships and things of that sort." The record makes clear his continuous and active association with Carolina Vend-A-Matic until October, 1963. In view of the Judge's very substantial interest in that firm, I am hard-pressed to believe his words denoted a lapse of memory.

I am also disturbed by the nominee's participation in the Brunswick and other cases.

Judge Haynsworth had a concededly substantial interest in the Brunswick Corp., a litigant before his court—contrary to Federal statute, canon 29, and an explicit holding of the ABA's Committee on Professional Ethics that a judge should not act in a cause in which one of the parties is a corporation in which he is a stockholder.

In addition, the nominee participated in at least five other cases in which he had a stock interest. Between 1958 and 1963 he sat on at least six cases involving customers of the vending machine company he helped organize, which he served as an officer and director, and in which he held high financial stakes. And the hearing record contains testimony that he sat in at least 12 cases involving clients of his former law firm.

It may well be true that no one of these cases provides a sufficient basis for denial of this appointment. I feel, however, that the record as a whole raises substantial and serious questions concerning Judge Haynsworth's sensitivity to the exacting ethical standards we must expect of those who would assume lifetime tenure on the Supreme Court.

I have deemed it my duty to do what I can to preserve the integrity of the Supreme Court, and to resolve these doubts against the nominee. I have done so reluctantly and with a heavy heart, for I have no desire to cast reflections on any man. Judge Haynsworth is an able jurist. This has been for him a regrettable ordeal. For the Nation, and the Senate it has sparked deep divisions, which only time can heal. In his inaugural address the President spoke of the need to surmount what divides us and cement what unites us. I would have preferred that this nomination be withdrawn, and the Nation spared this ordeal.

Mr. GRIFFIN. Mr. President, the vote about to be taken will bring the Senate to a moment of truth to another moment of history.

As the debate on the nomination of Justice Abe Fortas was drawing to a close, I said:

After today, the Senate will stand taller in the scheme of Government. We make it clear that we not only claim, but intend once again to exercise with care and diligence, the Constitutional power of advise and consent.

Regardless of the outcome today, it can be said that the Senate has endeavored with great care and diligence to fulfill its constitutional responsibility with respect to the pending nomination.

The past several months have been a very trying period—for Judge Haynsworth—and for every Member of the Senate.

It has been a trying period because under the circumstances many people may misconstrue or fail to understand the role of the Senate with respect to such a nomination.

Unfortunately, some may believe that the Senate will decide today whether the nominee is honest. No such decision will be made.

No one in this body, to my knowledge, has challenged the honesty of the nominee—and the record on that point should be absolutely clear.

Even with respect to the question of ethics, the Senate will not decide today whether the nominee did—or did not—observe the Code of Judicial Ethics. Our decision will not affect his eligibility to sit as a judge on the Fourth Circuit Court of Appeals.

The single and only question before the Senate is this: Does the Senate believe the nominee should be promoted to the Supreme Court of the United States?

Justice Samuel F. Miller, who was named to the Supreme Court in 1862 by President Lincoln and who was one of the Court's greatest members, once said:

The judicial branch of the government is, of all others, the weakest branch. It has no army; it has no navy; it has no press; it has no officers except its marshals. . . . So far as the ordinary forms of power are concerned, (it is) by far the feeblest branch or department of the government. . . . *The Judiciary (must) . . . rely on the confidence and respect of the public for (its) weight and influence in the government.*

Because that is true, the Senate need not find a nominee guilty of anything. But it is important that the Senate should resolve reasonable doubts against any nominee—and in favor of preserving and promoting public confidence in the Supreme Court.

At no time in history has this principle been more important.

If the nominee should be confirmed by the vote today, he will have my sincere best wishes as he serves in a new role as Justice of the Court.

On the other hand, if the vote should go against him—it will decide nothing more than that the Senate does not wish to consent to this nomination.

Mr. GURNEY. Mr. President, I ask unanimous consent to insert into the RECORD a very penetrating editorial which appeared in the Tampa Tribune on Monday, November 17, 1969. The editorial concerns the nomination of Judge Haynsworth to the Supreme Court and is entitled, "A Victory for Pressure, Defeat for Fairness."

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

VICTORY FOR PRESSURE, DEFEAT FOR FAIRNESS

When the Senate votes this week on the nomination of Judge Clement F. Haynsworth to the Supreme Court, it will come face to face with this issue:

Are organized labor and civil rights groups to hold a veto over Supreme Court appointments?

No matter what may be said in debate, that is the underlying question.

Much has been made of "conflicts of interest" in Judge Haynsworth's service on the Fourth Circuit Court of Appeals.

But the "conflicts" occurring in Judge Haynsworth's various stock holdings are so technical that they constitute an excuse, not a reason, for Senators to vote against him.

Consider the two principal complaints that have been raised against Judge Haynsworth.

That he cast the deciding vote in a 1963 decision permitting a textile firm to close one of its plants, in a labor dispute, although he owned an interest in a vending machine company doing business with the textile firm. Judge Haynsworth's personal stake in the profits from the vending contracts with the textile firm was estimated at $390; his role in the case was cleared by the Justice Department.

That he bought stock in the Brunswick company while a law suit by the company was pending before his court. The facts are that the case, involving foreclosure proceedings against a bowling alley, had been unanimously decided in the company's favor before the stock was purchased, although the decision had not been published. Judge Haynsworth admits the purchase was a mistake—but inasmuch as the benefit to his stock interest from the foreclosure suit amounted to a total of $4.96, he could hardly be suspected of venal intent.

No reasonable person, examining the whole record of Judge Haynsworth's conduct, could reach any conclusion other than that he is an honorable man.

It is pure hypocrisy for Senators who never uttered a word in criticism of Justice Douglas' $12,000-a-year handout from a gambling-financed foundation to express concern about Judge Haynsworth's "conflicts."

Some are honest enough to say, as Senator Jacob Javits of New York did last week that they oppose Haynsworth because of his philosophy.

Javits joins the NAACP and other civil rights groups in interpreting Haynsworth's philosophy as being "relentlessly opposed" to the Supreme Court's integration decisions.

We do not so interpret it. We think Judge Haynsworth's opinions show that he has attempted to apply the principle laid down by the Supreme Court in a manner fair to both

races; he has *not* adopted the extreme view that it is the duty of the court to remake the social system rather than simply forbid compulsory segregation.

In the same way, we think Judge Haynsworth has attempted to render balanced judgments in labor-management disputes.

But balance is not what labor bosses or civil rights zealots want in a judge. They want bias—in their favor. They want a judge who proceeds on the theory that unions and minorities enter the courtroom clothed in a presumption of right.

Thus we find, one by one, Senators who are dependent on labor and Negro support lined up against Haynsworth. One of his chief critics, Senator Birch Bayh of Indiana, is said to have received $70,000 in campaign funds from labor unions in his last election.

The Senate vote will be close and the present outlook is that Judge Haynsworth will lose.

If so, we cannot say that the Supreme Court would be deprived of another John Marshall or Oliver Wendell Holmes. But a rejection of Judge Haynsworth would be a victory for organized pressure groups and a defeat for fairness—and the cause of justice would be the ultimate loser.

Mr. BAYH. Mr. President, I think we are on the verge of concluding what could be accurately called one of the most heated and hectic debates that I have witnessed during my 7-years in the Senate.

There have been charges and countercharges. There have been charges of pressure from this side and charges of pressure from that, and very frankly I think it would be rather naive not to recognize that some of those charges have a basis in truth, as to both sides. But I think it is also fair to say that pressure is not unfamiliar to the Members of this body. This is not the first experience of pressure on any one of us. I think most of us have conditioned ourselves to it. We have lived with it, and we expect it. This is the democratic process, and it is natural for our constituents and the various voices in the field to express themselves. In the final analysis, when this roll is called, we are going to do what we think is right, however intensely this proposition may have been argued over the past weeks.

I became involved in this controversy, of course, as a member of the Committee on the Judiciary. That committee has the obligation to screen the nominees to the judicial branch as part of the important advise-and-consent procedure.

Being only human, I suppose I shall have to confess to my colleagues in the Senate that I have not relished certain aspects of this matter. The barbs of criticism have been thrown at me; but I suppose when you get involved in something like this, you should expect to be criticized.

I have been deeply concerned by the criticism which has been leveled by some of my colleagues, who apparently have concluded that it is impossible for me to arrive at an honest and sincere conclusion on the matter. I say I am concerned about that because I value my relationship with each Member of this body. When one becomes involved in a controversy which damages the very credibility one shares with his colleagues, the damage cannot easily be repaired.

To those who might be concerned about the sincerity of the Senator from Indiana, let me suggest that some of the matters which I have felt compelled to raise have also been raised by others. Just last evening, the distinguished senior Senator from Kentucky (Mr. COOPER) came to the floor with a handwritten speech in which he said in part:

> It may be said that the standards on which I base my decision should not apply to this nominee as they are standards which did not prevail at the time the cases to which I have referred were before him. I answer by saying that the standards were applicable at the time.
>
> What is at issue is whether judges will observe them, and I am confident that the overwhelming majority do; and what is at issue is whether the Senate will apply strictly the standards of the statute and the canons.

So speaks the Senator from Kentucky.

Earlier the Senator from Delaware (Mr. WILLIAMS) had spoken with equal eloquence of his concern that this nominee had not adhered to the standards which were generally accepted throughout this country, and which he personally felt the Senate of the United States should require of a prospective Supreme Court justice.

The distinguished minority whip has been one of the more eloquent spokesmen in expressing concern. If there was ever a Member of this body who was in a difficult position, it had to be our distinguished colleague from Michigan. Yet he spoke eloquently about his desire that we reach for a higher standard than that which had been set by the nominee.

Our distinguished colleague from Idaho (Mr. JORDAN), in what I am sure was also a difficult decision, said:

> However, after carefully studying the Judiciary Committee hearings on the nomination, grave doubts arose in my mind as to the wisdom of elevating Judge Haynsworth to the Supreme Court. These doubts are based on my belief in the importance of maintaining public confidence in our judiciary, and my judgment that Judge Haynsworth has failed to appreciate how easily this confidence can be undermined by even the appearance of impropriety on the part of our judges.

Mr. President, it has been suggested by some that the Senator from Indiana has maligned the character of this jurist. Certain very illustrious citizens of this country have called me a character assassin. Certain Members of this body have suggested that I have accused the judge of trying to feather his own nest by deciding cases in a manner that would be to his own best interest.

If one examined everything I have said—not a sentence here, a part of a sentence there, or an inference here or there—I do not see how such a conclusion could be reached. I have said repeatedly that I do not believe that Judge Haynsworth is the type of man who would calculatedly make his decision in a case dependent upon whether or not the decision was in his financial interest.

What concerns me is whether or not this judge has established that degree of sensitivity that is absolutely indispensable if we want to insure the confidence of the people of this country in the courts. Has he, indeed, avoided the appearance of impropriety, as defined in the Canons of Ethics?

It has been suggested that we should not consider the Canons of Ethics. This, of course, is a determination each Senator must make for himself. But this Senator is concerned about what the Canons of Ethics say about the appearance of impropriety.

I think, to put the issue in proper perspective, I might refer briefly to the facts as I see them. It seems to me that the facts are almost indisputable, though Senators can look at them from different standpoints. The question is not what the facts are, but whether the individual Members of this body, in looking at those facts, believe that they constitute a breach of the standards that they set for themselves, and that they want to see set for the Supreme Court.

The Brunswick case has been discussed with some degree of particularity. It involves a thousand shares of Brunswick stock which were purchased before a final determination had been reached by the judge and his colleagues.

I have talked with a number of appellate court judges, and they have suggested that on numerous occasions an opinion has been changed after the informal decision had been reached in the courtroom. There seems to be unanimous feeling among them that a decision is not final until after it has been published and the motions for new trial and the various legal petitions have been denied. Those who have studied the record have to recognize the fact that Judge Haynsworth himself said that he felt he had a substantial interest in the Brunswick case, that he had made a mistake, and that if he had that to do over again, he would not do it.

The Grace Lines case involved an interest of $13,875 in the parent corporation of a subsidiary that was before the judge. The Maryland Casualty cases—there were two of them—involved a $10,700 investment in the parent of a subsidiary corporation that was before the judge.

The Carolina Vend-A-Matic case is a different type of case, in which the interest was one step removed. The judge was an original founder of a company. His holdings were worth $450,000. He was a director; he was the vice president; his wife was secretary for 2 years. This corporation was doing $100,000 of business with Deering-Milliken, at the time the Darlington case was decided. The Darlington Mills case, as has been described by our distinguished colleague from North Carolina, was a landmark case in textile law.

Given this involvement with Carolina Vend-A-Matic, given the fact that the Judge had significant stockholdings in three or four textile firms, given the fact that Carolina Vend-A-Matic was doing $2 million worth of business with textile firms, it seems to me that there was a matter which breached the standard of ethics which were set for the courts long ago.

Mr. BYRD of West Virginia. Mr. President, may we have order?

The VICE PRESIDENT. The Senate will be in order.

Mr. BAYH. Mr. President, in looking at

this issue, we have studied the rather succinct statements of Professor Mellinkoff from UCLA, the statement of Dean Lewis Pollock of the Yale Law School, and the opinion of 19 law professors from five different universities. They all suggest that the judge violated the necessary standards of ethics.

I think we have determined that section 455 of title 28, United States Code, has been breached. I refer to three Supreme Court decisions which have defined substantial interest. These are: the Commonwealth Coatings decision, the Murchison decision, and the Tumey decision. I am particularly interested in one passage from the Commonwealth Coatings case. In examining a financial relationship, which amounted to 1 percent of an arbitrator's income and which was not a current relationship, the court suggested:

> We have no doubt that if a litigant could show that a foreman of a jury or a judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would be subject to challenge.

Mr. President, my time has about expired but I would like to make one final observation. Perhaps the matter of deepest concern from the opening day of the hearing until this, the final hour of debate, has been the effect that this controversy and indeed my personal participation in it would have on the future of Judge Haynsworth. Only the most naive among us would refuse to recognize that our opposition must have some impact on the nominee. This fact has made the burden of my opposition greater. I sincerely hope that the personal impact upon Judge Haynsworth will be minimal. I hope he will continue serving on the fourth circuit. In fact, I hope that he will take advantage of this opportunity to prove that those of us who have opposed him have been erroneous in our judgment.

But in this body each of us has the obligation to do what he must—to do what he thinks is right. In my judgment, the personal impact on Clement Haynsworth, the personal impact on the prestige and reputation of the President and, indeed, the personal impact on the Senator from Indiana should not be significant factors in our decisions. Our obligation is to the Senate and to this country. And I trust that each of us will cast his vote yea or nay with that sole thought in mind.

The VICE PRESIDENT. All the time allotted to the Senator from Indiana has expired.

The Senator from Nebraska has 7 minutes remaining.

Mr. HRUSKA. Mr. President, at this late hour in the debate which has consumed weeks and weeks, not much could be said which would be new. It would not be possible for any ordinary mortal to say anything that would change the minds of Members of the Senate.

A good part of the debate has been centered on the matter of disqualification of a judge—when should it occur and when should it not occur?

The record clearly shows—and we have some of the most eminent authorities testifying on this point—that there are two points of view. One is the so-called soft approach, and the other is the hard approach.

The soft approach is described by Professor Frank as follows:

> A judge, even though blessed with all of the virtues any judge ever possessed, should not be permitted to exercise judicial power to determine the fact of his own disqualification . . . and it is better that the Courts shall maintain the confidence of the people than that the rights of the judges and the litigant in a particular case be served.

This is a viewpoint that has been urged by the opponents of the confirmation. But it is not the rational policy that has been in effect since the beginning of the Federal courts. The proof of this is found in section 455 of chapter 28 of the United States Code. And Professor Frank explained the policy in this way:

> Due consideration should be given by him (the judge) to the fact that the Administration of Justice should be beyond the appearance of unfairness. But . . . there is, on the one side, an important issue at stake; that is, that causes may not be unfairly prejudiced, unduly delayed, or discontent created through unfounded charges of prejudice or unfairness made against the Judge in the trial of a cause.

Professor Frank concludes by saying:

> But these two systems exist side by side in the United States and what we need to know, because it is. . . .

Mr. BYRD of West Virginia. Mr. President, may we have order?

The VICE PRESIDENT. There will be order in the Senate.

Mr. HRUSKA. Professor Frank stated:

> But these two systems exist side by side in the United States and that we need to know, because it is rather controlling for the judgment which you Senators are now making, is that the Federal government from the beginning has taken the so-called. . .

The VICE PRESIDENT. Please, may we have order in the Senate. The galleries will be quiet.

Mr. HRUSKA. Mr. President, Professor Frank stated:

> But these two systems exist side by side in the United States and what we need to know, because it is rather controlling for the judgment which you Senators are now making, is that the Federal government from the beginning has taken the so-called hard qualification view, and has added to that point of view the position which really is the most controlling single matter in the case before you, and that is that unless the Judge is disqualified in the strict sense, he has an absolute duty to sit.

Mr. President, one of the characteristics and, in fact, the essence of law, whatever form law takes—whether it is statute or court rule or a court decision or a canon of ethics—is that it must be sufficiently definite to enable one who is governed by that law to be able to determine what conduct is required of him and what conduct is denied to him in order to comply with that law.

It was rather distressing during the course of the debate to hear the statement: "Well, it is true that there was no violation of title 28, United States Code, section 455, but the principle of the statute has been violated."

Mr. President, what is the principle of a statute to one man is not the principle to another man. And the reason we have printed words to reflect the meaning of a statute is to be able to understand and comply with that standard that we must have in all law.

The same thing is true of canons of ethics. How can it be said that no canon has been violated exactly, but that the appearance of evil has been created, and Judge Haynsworth had put himself into a position of reproach?

What appearance will mean to one man, is different than it will mean to another man. Judging by "appearance" means making the rules as we go along. It is too highly subjective.

Mr. President, very distinguished authorities, impartial observers, and liberal observers have found Judge Haynsworth to be qualified by virtue of his decisions to sit upon the highest court of the land.

There is one final proposition that I would like to suggest. Where do we go from here, if there is a rejection of the nominee? It will amount to a rejection of the President's plan to make appointments to the Supreme Court which will restore balance.

It is what the President wants. It is what the Nation wants. And it just seems to me that the rejection of this man would be a rejection of a popular approach and that another nominee will be forthcoming.

If there is a rejection of this nominee, what will the test of the next nominee be? Will there be an application once again of these indefinite and subjective rules? If these rules are applied again, there conceivably will be a total immobilization of the power and the capability of the Senate to advise and to consent.

If we consider this alternative together with the outstanding record and the constructive assessment of this nominee a man of integrity and honesty, there is every reason why we should confirm the nomination. The reasons have been more fully expressed in the majority report of the Judiciary Committee which was approved by a vote of 10 to 7.

PROGRAM

Mr. SCOTT. Mr. President, as in legislative session, I rise to ask the distinguished majority leader what the order of business is for today following the vote and for next week.

Mr. MANSFIELD. It is my understanding that conversations are now going on concerning H.R. 7491, an act to clarify the liability of national banks for certain taxes. A decision on that should be ready after the pending nomination is disposed of.

Then it is the intention to lay before the Senate the tax relief and tax reform bill, and to start debate on that Monday.

There is a very strong likelihood that on Monday, Tuesday, and Wednesday of next week there will be amendments to the tax reform-tax relief bill, and I set that out for the information of Senators, so that the Senate will be fully informed.

Mr. SCOTT. I thank the Senator.

SUPREME COURT OF THE UNITED STATES

The Senate in executive session resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

The VICE PRESIDENT. All time on the nomination has expired.

The question is, Will the Senate advise and consent to the nomination of Clement Haynsworth, Jr., to be an Associate Justice of the Supreme Court of the United States?

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The VICE PRESIDENT. The clerk will call the roll.

The VICE PRESIDENT. The Chair wishes to caution the gallery that there will be no outbursts at the announcement of this vote.

The legislative clerk called the roll.

The result was announced—yeas 45, nays 55, as follows:

[No. 154 Ex.]

YEAS—45

Aiken	Ellender	Mundt
Allen	Ervin	Murphy
Allott	Fannin	Pearson
Baker	Fong	Prouty
Bellmon	Fulbright	Randolph
Bennett	Goldwater	Russell
Boggs	Gravel	Smith, Ill.
Byrd, Va.	Gurney	Sparkman
Byrd, W. Va.	Hansen	Spong
Cook	Holland	Stennis
Cotton	Hollings	Stevens
Curtis	Hruska	Talmadge
Dole	Jordan, N.C.	Thurmond
Dominick	Long	Tower
Eastland	McClellan	Young, N. Dak.

NAYS—55

Anderson	Hughes	Nelson
Bayh	Inouye	Packwood
Bible	Jackson	Pastore
Brooke	Javits	Pell
Burdick	Jordan, Idaho	Percy
Cannon	Kennedy	Proxmire
Case	Magnuson	Ribicoff
Church	Mansfield	Saxbe
Cooper	Mathias	Schweiker
Cranston	McCarthy	Scott
Dodd	McGee	Smith, Maine
Eagleton	McGovern	Symington
Goodell	McIntyre	Tydings
Gore	Metcalf	Williams, N.J.
Griffin	Miller	Williams, Del.
Harris	Mondale	Yarborough
Hart	Montoya	Young, Ohio
Hartke	Moss	
Hatfield	Muskie	

So the nomination was rejected.

Mr. ALLOTT. Mr. President, we have just had a vote on a very important question, and of course there is no useful purpose in trying to reargue the questions on that matter. However, there is one discrepancy which has occurred in this whole matter to which I feel it my obligation to call very serious attention.

In Newsweek there appeared an article on the Haynsworth matter in which the junior Senator from Kentucky (Mr. COOK) was quoted, and which I am informed is not the truth. The article takes the President's counsel, Clark Mollenhoff, to task very severely.

While no man, of course, makes points by losing his temper—and I believe Mr. Mollenhoff did on that occasion—I want to call the attention of the Senate to the alleged facts which were contained in the Mankiewicz-Braden article, which were in issue in Mr. Mollenhoff's television appearance and then compare them with the facts with respect to the situation as it existed. In issue was the transfer of certain property which Judge Haynsworth bought from Furman University, from which he graduated.

The Mankiewciz-Braden article is so slanted with little words that the only conclusion anyone can draw from it is that Judge Haynsworth was indulging in a lot of hanky-panky to deprive the Internal Revenue Service of tax dollars it justly deserved. In fact, the article says that.

Mr. President, for many, many years, gifts made by people to educational institutions have been a valid legal deduction under our income tax system. This article points out that if it can be demonstrated that it was not done by prior arrangement, it was perfectly legal.

What happened was that in 1958 Senator and Mrs. Charles Daniel started the construction of a home, and then conveyed their home in 2 years, half each year, to Furman University at a price of $115,000. Some time after that, as a matter of fact, 11 days after they received the deed, or the deed had been recorded, Judge Haynsworth purchased that house from Furman University, and in return gave his own house plus $65,000 in cash to Furman University.

The Mankiewicz-Braden article is so slanted as to be classified completely irresponsible, if not a purposeful attempt to mislead the American people. At one place it reads:

> The process of transfer was arranged over a five-year period, during each of which years Haynsworth donated a one-fifth interest, stating the total value of the property still at $115,000. He claimed a charitable deduction in each of the five years.

If one takes that statement on the face of it, there still is nothing wrong with anything Judge Haynsworth did, but it does not state the truth. If I had been in the position of Mr. Mollenhoff on that newscast with those two particular columnists who had written such things, I think I would have felt the same indignation, the same righteous anger—and it was righteous anger—that he felt at that time.

The article goes on to say:

> On April 1, 1968, Haynsworth completed the transaction with a deed of the entire property, as a part of which he and Mrs. Haynsworth retained a life estate—the right to live in the residence as long as either is alive.

When you look at these two paragraphs, it is apparent that the plain and obvious attempt of this misleading article is to make people believe that Judge Haynsworth somehow trimmed the taxpayers of this country in the transaction. The truth is that Judge Haynsworth did have a house, which he traded to the university. After he bought the former Daniel house, he and his wife invested $10,000 in it, in air conditioning and other improvements, and he still, when he sold the house, valued it at $115,000. Anyone knows that Judge Haynsworth bent over backward to be more than fair in his evaluation.

The point of it is that out of these two transactions, Furman University got $115,000 twice—once from the Daniel family—the house—and once from the Haynsworth family, in cash and other tangibles. Judge Haynsworth bought the house, improved it and then turned around and gave it back to the one who had sold it to him. There is an implication here that his home might not have been worth $115,000 but the facts are that the university got $65,000 in cash, and they got $50,000 for the home which Judge Haynsworth gave them in addition to that. It is unarguable that Judge Haynsworth traded off a home which, at that time, in market value, was worth perhaps as much as $150,000. They had paid $115,000 for it in cash, and they put in $10,000 or more in improvements.

Referring back to the first paragraph I read, he said he claimed a charitable deduction, and this is wholly in the context of $115,000 over the 5 years.

This article is what Mr. Mollenhoff called a fraud. It is a fraud on the public, because actually Judge Haynsworth did not take a deduction for a charitable contribution of $115,000, but rather he only took a charitable deduction of $52,673.44, which is the $115,000 diminished by the amount that the life estate involved. So his charitable deduction was less than 50 percent of the actual amount that the university did receive by reason of the contribution. We could not fault him if he had claimed the entire $115,000 but, contrary to the Braden-Mankiewicz report to which I have referred, he actually made allowance for the life estate he and Mrs. Haynsworth retained. A life estate, of course, is a right of use during their lifetime, and Judge Haynsworth therefore discounted the $115,000 by an amount calculated on the basis of the life expectancy of he and his wife, regardless of how long they really might use it. Braden and Mankiewicz did not mention this, however in giving the public the "true facts."

I think the actual facts should be made clear at this point, Mr. President. I think a great injustice has been done to Mr. Mollenhoff, a Pulitzer Prize winner, a man who had researched this matter to be sure that Judge Haynsworth had not done anything improper, and who knew the facts, which obviously Mr. Braden and Mr. Mankiewicz did not know, even though they purported to.

Therefore, Mr. President, I ask unanimous consent to have printed in the RECORD at this point, first, the article published in Newsweek magazine entitled "The Judge Come to Judgment," calling particular attention to the last four paragraphs of it, in which Mr. Mollenhoff is referred to. Second, to have printed, the Frank Mankiewicz-Tom Braden column of November 9, 1969, which is entitled "The Strange Case of Haynsworth's House"; and third, an absolutely factual analysis of what did actually occur. If any American can read these three items without becoming fully convinced that it was the desire and the purpose of Mankiewicz and Braden to downgrade and degrade Judge Haynsworth, and that in doing so they have distorted the facts unmercifully, then I