will cause considerable debate. Then, there is the nomination of a Supreme Court Justice that will be before the Senate sometime this month or next. And there are a great many other matters that must be disposed of. So it appears to me that we have a schedule that could well take us into the Christmas holiday season.

If we do not reach some agreement on time limitations after reasonable debate—and certainly there has been reasonable debate on this legislation—we will go into next year with some legislation which should have been disposed of this year.

I agree with the Senator.

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

Mr. STENNIS. Mr. President, I am glad to yield to the distinguished Senator from Pennsylvania, the acting minority leader.

Mr. SCOTT. Mr. President, I listened with some foreboding to the "jingle bell" sound of the majority leader's prediction, but I certainly do join in what he said and what the distinguished Senator from Mississippi said about the importance of bringing consideration of this bill to an early end. We have been debating the pending bill since long before the recess.

Some of our fears are becoming justified that if we recessed before we finished this matter it might serve to extend it further. It is my hope also that Senators will regard seriously the admonitions here expressed with respect to the importance of being available and prepared for a number of votes next week.

I w'sh to address this question to the distinguished majority leader. I assume it is not expected that there will be any votes tomorrow, nor will we be diverting from this bill to consider other major legislation. Am I correct on that?

Mr. MANSFIELD. The acting minority leader is correct. If there is any noncontroversial legislation, which is not objected to by either side, we would try to clear that from the calendar.

It is hoped that those Senators who are not able to speak during the time limitation on Monday will take advantage of the session tomorrow to make their views known, pro and con.

I do disagree most respectfully with the distinguished acting minority leader concerning his comment about the recess. I think this recess has proved its value, even though some Members have not returned. I know that the younger Members and some of the others who are older appreciate the respite, and those who had the opportunity enjoyed being with their families.

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

Mr. MANSFIELD. I yield.

Mr. SCOTT. Mr. President, I would not want to be so insincere as to indicate I was not grateful for the recess. I was hopeful that we could have finished the bill by staying in session a day or two longer. Now, we may be a week or two longer on the bill. The distinguished majority leader and I have the same objective: to get the bill disposed of as quickly as possible.

The PRESIDING OFFICER. The Chair would like to have a clarification from the Senator from Montana. Would the 1-hour limitation apply to motions on the possible amendments, excluding a motion to table?

Mr. MANSFIELD. Yes; indeed.

The unanimous-consent agreement later reduced to writing is as follows:

Ordered, That effective on Monday September 8, 1969, at 12 o'clock noon, further debate on the pending amendment (No. 108) by the Senator from Wisconsin (Mr. PROXMIRE) be limited to 3 hours to be equally divided and controlled by the Senator from Wisconsin (Mr. PROXMIRE) and the Senator from Mississippi (Mr. STENNIS). *Ordered Further*, That debate on any amendment to amendment No. 108 or motion, except a motion to table, shall be limited to 1 hour to be equally divided and controlled by the mover of the amendment and the Senator from Wisconsin (Mr. PROXMIRE). *Provided*, however, That in the event the Senator from Wisconsin (Mr. PROXMIRE) favors such amendment or motion, the time in opposition shall be controlled by the Senator from Mississippi (Mr. STENNIS).

Mr. STENNIS. Mr. President, I wish to add the following point. With regard to those who wish to reduce the amount of money expended by the Department of Defense as to all programs existing now, we are continuing to pass continuing resolutions for authorizations and appropriations automatically at the same level as last year. So those who wish to reduce the money being spent, the quicker this bill becomes law, the better. Until then, it is going on at the old rate of last year.

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

Mr. STENNIS. I yield.

Mr. SCOTT. Mr. President, I would like to make another observation. I believe some 60 Senators at one time or another have signed one resolution or another to bring the boys home from Vietnam, according to the different terminal dates in the resolutions.

If they are that anxious—and I accept the fact that they are—to find a way to bring the soldiers home they should seriously consider the importance of the amendment now being discussed because if they want to bring the boys home there must be vehicles in which to bring them home, and the C–5A is the largest available vehicle. Therefore, if they want to bring the Armed Forces back the means had better be provided and this proposal would contribute to the accomplishment of that purpose.

Mr. STENNIS. I thank the Senator. I have the names of quite a few Senators who wish to speak, some on this amendment and some on other amendments. There is no controlled time today or tomorrow, but there will be enough time for everyone to wait until Monday to speak. I would be glad to cooperate with them, even though the time is not controlled, in lining up speakers and seeing that Senators are recognized near the time they wish to speak.

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

Mr. STENNIS. I am happy to yield to the Senator from Wisconsin, or I could yield the floor.

Mr. PROXMIRE. No, that is not necessary. While no one can speak for Senators offering amendments to the bill, I have had a chance to speak with a number of Senators who are doing so.

I am convinced that they, also, are very anxious to cooperate and bring the bill to a conclusion and vote. I think that, beginning next Monday, we should have a series of votes with every hope that within a relatively short time after next Monday we can bring the bill to final passage.

Mr. STENNIS. The Senator's remarks are quite encouraging, indeed. I certainly appreciate them, as I know many others in this body do.

Mr. President, I yield the floor.

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

PRESIDENT NIXON'S NOMINATION OF JUDGE CLEMENT F. HAYNSWORTH TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. FANNIN. Mr. President, on the day when the White House announced President Nixon's nomination of Judge Clement F. Haynsworth for the post of Associate Justice of the Supreme Court, I said:

Once again the President has nominated a man of proven ability and qualifications to sit on the bench of the Nation's 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.

Mr. President, I am still of the same opinion, even though there have been some scurrilous attacks and halfhearted innuendoes cast forth in an irresponsible manner. I am sure, Mr. President, that Judge Haynsworth will be able to properly respond to the Judiciary Committee in the hearings which are presently set for September 9. My concern is simply that the reputation of a distinguished jurist, and more importantly the integrity of the Court, not be tarnished by those who, without thought, are scatter gunning their charges and thus besmirching the Court.

First, I would remind those vociferous critics of the enjoinder voiced last year by some of my colleagues on the Judiciary Committee to the effect that we should not take a man's ethnic background or geographical origination, or friends and associates into account, but consider, rather, if he is a distinguished lawyer with the intellectual capacity to effectively serve on the Supreme Court.

It is my opinion, and one which is obviously shared by the President, that Judge Haynsworth is such a man.

It is my understanding that the ABA, the NAACP, the AFL–CIO, and other similar organizations have voiced their public intention to oppose the President's nomination. That is certainly their prerogative. However, it should be noted that former attorneys for all these organizations have been proposed, and incidentally confirmed, for seats on the Supreme Court. Opposition to those appointments, where it developed, was not primarily concerned with their supposed ideological alinement, or the views of their former clients. It is at least unbecoming of these organizations to apply a different standard of conduct to their own actions—actions which they do not tolerate in others.

Mr. President, it is notable that the AFL–CIO has given credence to a charge put forth by a pair of Washington columnists involving an alleged conflict of interest on the part of Judge Haynsworth.

It is perhaps understandable why they should be concerned since a member union has been before Judge Haynsworth and the Fourth Circuit Court several times. But it is difficult to understand why such charges are credited by those in possession of the facts, particularly when the charges originated with a columnist who was formerly an aide, the press secretary, of one of the principals involved.

Mr. President, I think it is important that some of the facts that bear on these so-called conflict-of-interest charges be brought to wider attention. I ask unanimous consent that an article from the AFL–CIO News, August 30, be printed in the RECORD at the end of my remarks, followed by an article from Human Events, September 6, as exhibits 1 and 2. A reading of both of the articles should acquaint one with the major points seemingly at issue here.

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

(See exhibits 1 and 2.)

Mr. FANNIN. Mr. President, the allegation has been raised that Judge Haynsworth violated canon 26 of the Code of Judicial Ethics.

I think these facts should be noted:

First. Judge Haynsworth became a one-seventh partner in the company in question—Carolina Vend-A-Matic—while still an attorney—some 7 years before coming on the Federal bench.

Second. He disposed of his directorships in publicly held companies well in advance of the issuance of canon 26. Furthermore, he disposed of this noncontrolling, one-seventh stock partnership, to use the words of the canon, "disposing of them without serious losses," namely when the entire company was sold to another company. He took the stock in the new publicly held company and then sold it at the prevailing market price.

Third. The company in which the judge was a one-seventh partner was not before his court; the company which was before the court—Darlington Manufacturing Co.—did not do business with the company in which the judge held an interest. The closest connection was that Vend-A-Matic—the company in which Judge Haynsworth held a one-seventh interest—was doing less than 3 percent of its gross business with two plants in which there was some portions of common ownership with the Darlington Manufacturing Co. That seems to me to be a pretty far removed interest which was completely cleared by the then Chief Judge Simon Sobeloff—who is well known for his liberal views—and the then Attorney General Robert F. Kennedy, now deceased, who was even better known.

Fourth. Finally, all the comment about Judge Haynsworth and his supposed conflict of interest with the Darlington interests, completely ignores the fact that Darlington finally lost the case before the Fourth Circuit Court at the time Judge Haynsworth was chief judge, and furthermore that he voted with the majority against Darlington in that decision.

Once again, Mr. President, I commend President Nixon for what I believe to be a fine choice and I am sure his judgment will be vindicated by the Senate.

EXHIBIT 1

[From the AFL–CIO News, Aug. 30, 1969]

HIGH COURT NOMINEE HIT BY CHARGES

A serious conflict of interest charge added new fuel to the controversy over Pres. Nixon's nomination of Appeals Court Judge Clement F. Haynsworth, Jr., to fill a Supreme Court vacancy.

Haynsworth confirmed a newspaper report that he was a major stockholder in a vending machine firm doing substantial business with the Deering Milliken textile chain at the time he cast a tie-breaking vote upholding Deering Milliken in a landmark labor case.

During part of the time the case was before the court, Haynsworth was an officer of the firm, which was then bidding for additional Deering Milliken contracts.

"But I did not recognize then or now, any impropriety," Haynsworth told reporters.

The 3–2 decision in which Haynsworth participated upheld tbe right of Deering Milliken to shut down its Darlington, S.C., textile mill after workers had voted for union representation.

A unanimous Supreme Court ruling later reversed the key part of the decision, thus enabling some 500 fired workers and the Textile Workers Union of America to pursue claims for back pay and jobs at other Deering Milliken mills.

Even before the conflict of interest issue surfaced, the nomination of Haynsworth had come under fire from the AFL–CIO and civil rights groups.

The conservative South Carolina jurist had been frequently reversed by the Supreme Court on decisions upholding management in labor relations cases and allowing a foot-dragging approach to school desegregation and civil rights enforcement.

It was the White House which first publicized the issue of Haynsworth's involvement in the Deering Milliken case by releasing excerpts from correspondence that seemed to indicate that Haynsworth had been completely absolved of impropriety and that the Textile Workers had apologized for questioning his impartiality.

TWUA Pres. William Pollock then released the entire file of correspondence of late 1963 and 1964 to correct what he termed "misleading characterizations" of the case by White House Press Sec. Ronald Zeigler.

The correspondence revealed that in December 1963, after the Darlington decision, the TWUA had received a call informing them that Haynsworth was first vice president of the Carolina Vend-A-Matic Co., and that Deering Milliken had cancelled contracts with other vending machine firms and was throwing its business to Haynsworth's firm.

The union's attorney reported the allegation to the chief judge of the 4th Circuit Court of Appeals, asking an investigation and noting that the union had no way of obtaining the full facts in the case

The investigation disclosed that Carolina Vend-A-Matic had obtained one additional Deering Milliken contract while the case was before the court—doubling its business with the textile chain to about $100,000 a year—through legitimate competitive bidding. It had also failed to obtain two other contracts at other Deering Milliken plants

Therefore the union concluded that there was no deliberate attempt to reward Haynsworth's firm and the union attorney expressed regret for any trouble caused

But, Pollock stressed, the episode did not go into the conflict of interest principle as to whether Haynsworth should have disqualified himself because of his close connection with a company doing business with a party to the case

He said the TWUA did not pursue that aspect at the time because the more serious charge had been proven false. "It was evident that the judges were not pleased with the union; and the union would inevitably be a litigant before those judges for years to come."

Federal law leaves it up to a judge to decide whether to disqualify himself—and Pollock observed that Arthur J. Goldberg, then on the Supreme Court, had disqualified himself when the case came before the high court for review because he had represented th TWUA some years earlier when he was in private practice.

Pollock noted that a New York Times story on Aug. 19 reported that Haynsworth declined to answer when asked by a reporter whether he had owned shares in the Vend-A-Matic firm at the time of the Darlington decision.

"We believe that the country and the United States Senate are entitled to an answer," Pollock said.

A story by William J. Eaton of the Washington bureau of the Chicago Daily News, provided the answer based on a check of Securities & Exchange Commission records.

It showed that the Carolina company, started by Haynsworth and other businessmen in 1950 with an "authorized capital" of $30,000, had been acquired by the Automatic Retailers of America, Inc., in April of 1964, more than six months after the Deering Milliken decision. At the time, records disclosed Haynsworth received 14,173 shares of ARA stock in exchange for his interest in the Carolina firm.

Haynsworth then sold the stock for about $450,000.

Syndicated columnists Frank Mankiewicz and Tom Braden, commenting on the failure of Haynsworth to disqualify himself in the case and his silence on his business ties during its consideration, termed the judge's action "a clear violation of the canons of ethics" of the American Bar Association.

They quoted Canon 26, which reads: "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."

Haynsworth, they noted, retained his directorship and heavy stock holdings in the vending firm for more than seven years after becoming a judge.

They noted that it was conflict of interest allegations which led to the resignation of Justice Abe Fortas—creating the Supreme Court vacancy for which Haynsworth was nominated.

In a television interview on a network news program, AFL–CIO Associate General

Counsel Thomas E. Harris gave this summary of Haynsworth's labor decisions:

"He has sat on five labor cases that went to the Supreme Court. In all five, he voted against the union. All five cases were reversed by the Supreme Court and only one Supreme Court judge in one case voted the way that Judge Haynsworth did in these cases."

Earlier, NAACP Executive Dir. Roy Wilkins charged that Haynsworth "voted for racial segregation" in four cases involving schools.

A statement by I. W. Abel, president of the Steelworkers and of the AFL–CIO Industrial Union Dept., called for Senate rejection of the nomination.

"Nomination to the nation's highest court," Abel said, "should be the climax of a distinguished legal career during which the nominee has served justice by protecting and advancing the rights of those seeking justice."

Pres. Paul Jennings of the Electrical, Radio & Machine Workers, termed Haynsworth "a poor choice" whose record is one of opposition to "civil rights progress and the rights of working people."

The Senate Judiciary Committee will hold hearings on the nomination. Mississippi Sen. James O. Eastland, chairman of the committee, has already praised the appointment.

EXHIBIT 2

[From Human Events, Sept. 6, 1969]

HAYNSWORTH AND VEND-A-MATIC

Stung by President Nixon's firm decision to weed out the Warrens and the Fortases from the Supreme Court and replace them with conservatives and "strict constructionists," the liberal apparatus has decided to try to torpedo the nomination of Clement F. Haynsworth Jr., chief judge of the U.S. Court of Appeals for the Fourth Circuit, to fill the Fortas vacancy.

Americans for Democratic Action Vice-Chairman Joseph Rauh, who insists Haynsworth is a "hard-core segregationist" (a statement denied by even the *New Republic*), is spearheading a liberal assault on the South Carolinian, while AFL–CIO chieftain George Meany has been rounding up "labor" senators to oppose the Haynsworth nomination.

Rauh and Meany are frantically appealing to such lawmakers as Senators Joseph Tydings (D.-Md.) and Philip Hart (D.-Mich.)—both members of the powerful Judiciary Committee which will consider Haynsworth's nomination—to oppose the judge on ideological grounds, though in the past Tydings and Hart have decried efforts to block liberal justices because of their philosophical persuasions.

Since ideology and "strict constructionist" rulings are weak issues on which to hang Haynsworth, his opponents are now hurling, with more heat than light, a deadlier charge: "conflict of interest."

Syndicated columnists Frank Mankiewicz and Tom Braden, who represent the Kennedy wing of the Democratic party, leveled a heavy broadside at the judge last week for his former connection with Carolina Vend-A-Matic. The headline over their column in the Washington *Post*, the Capital's morning newspaper, read: "Haynsworth Was in Clear Violation of Canons of Ethics for Ten Years." The clear intent of the column was to try to fan Haynsworth's business dealings into another Fortas affair.

Boiled down to essentials, the Mankiewicz-Braden claim is this: Haynsworth helped form the Carolina Vend-A-Matic firm in 1950, took 15 per cent of the stock, was made first vice president and served as a member of the board of directors. Appointed to the Court of Appeals in 1957 by Ike, he kept his stock until April 1964.

In February 1963 Judge Haynsworth's court began considering an unfair labor practice charge against the Darlington Manufacturing Co., a subsidiary of Deering-Milliken, a large Southern company owning several textile mills. Deering-Milliken used Carolina Vend-A-Matic machines in three of its plants. Hence, when Haynsworth, in November 1963, wrote the 3-to-2 decision of the court siding with Darlington, he had, Mankiewicz and Braden smugly asserted, violated the conflict-of-interest code laid down by the American Bar Association—Canon 26 of the Code of Judicial Ethics. Canon 26 states: "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 losses."

Contrary to Mankiewicz-Braden, an analysis of the Haynsworth deal does not disclose any violation of Canon 26. The Canon should be read carefully. "A *judge* should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court. . ." (emphasis added). Haynsworth hardly violated this, since he had made his investment seven years before he became a judge.

Furthermore, no one claims that Carolina Vend-A-Matic was involved in any litigation either before or after Haynsworth's accession to the court. Certainly it was not involved in the Darlington case, since Darlington didn't even use Vend-A-Matic machines.

In addition, there has been no convincing evidence that Haynsworth acted unethically by holding on to his part of Vend-A-Matic; many judges, including those on the Supreme Court, continue to have important financial holdings. Since selling a minority (one-seventh) interest in a company that is not publicly traded is often extremely difficult, Haynsworth waited to sell his stock when the entire company was sold.

Contrary to the impression conveyed by Mankiewicz and Braden, moreover, Vend-A-Matic's worth was not significantly tied to its dealings with Deering-Milliken.

While the vending machine company was grossing over $8 million a year, for instance, Deering-Milliken, with some 40 plants, mostly in South Carolina, had placed Vend-A-Matic food and beverage machines in only two plants by early 1963, one which was installed at the Marietta, S.C., plant in 1952, the other at Jonesville in 1958. Together they grossed only $50,000 yearly, with the profit margin estimated at not more than 10 per cent. In August 1963 Deering-Milliken, on the basis of a competitive bid, awarded Carolina Vend-A-Matic another contract worth $50,000 a year, but turned down two other Vend-A-Matic bids.

Hence, when Haynsworth ruled in Darlington's favor in November 1963, Deering-Milliken plants provided Vend-A-Matic between only 2 to 3 per cent of its gross sales—and Darlington was not one of those plants. Thus Haynsworth hardly appears to have been guilty of a massive conflict of interest.

Some observers point out, however, that since Vend-A-Matic did receive revenue from Deering-Milliken enterprises, Haynsworth, in order to remove even the faintest suspicion of bias on his part, might have been wiser to have stayed off the case. In retrospect, this would have been the more prudent course, but that does not mean he was in violation of any judicial code of ethics.

Indeed, Haynsworth's conduct on the court has been a model of judicial rectitude. When he went on the bench in 1957, for instance, he voluntarily—and six years in advance of ethical standards put forth by the prestigious U.S. Judicial Conference—resigned directorships in all publicly owned corporations (Vend-A-Matic was not publicly owned) on the grounds that holding such directorships might produce a conflict of interest.

Going further than most judges, he has also made it a rule to disqualify himself from any case in which his family law firm is involved. Many judges only disqualify themselves from cases on which they personally worked.

He has also been quick to adhere to standards issued by fellow judges. When the U.S. Judicial Conference, comprised of appellate court judges, passed a resolution in September 1963 against the holding of corporate office by federal judges, Haynsworth resigned his directorship in Vend-A-Matic.

The Darlington case, in fact, helped to underscore his integrity. On Dec. 17, 1963, Patricia Eames, an attorney for the Textile Workers Union, with which Darlington had had its dispute, addressed a letter to Simon E. Sobeloff, then the chief judge of the Fourth Circuit Court of Appeals. According to the letter, the message of an anonymous caller charged that Deering-Milliken, before the Darlington decision had been handed down by Haynsworth, had, in effect, offered to give Vend-A-Matic all the vending machine business in Deering-Milliken plants in exchange for Haynsworth's vote. At that time Deering-Milliken plants were using 10 different vending companies.

As requested by the letter, Judge Sobeloff immediately undertook an investigation of the matter. On Feb. 6, 1964, the union's attorney advised Judge Sobeloff as follows: "My letter to you caused trouble. I am genuinely sorry for that. Since we now know that the allegation made to our union was inaccurate, we know that the trouble was unnecessary."

On Feb. 18, 1964, Judge Sobeloff, at the request of Judge Haynsworth and with the concurrence of the entire court, transmitted his file concerning the matter to Atty. Gen. Robert Kennedy. In the letter of transmittal Judge Sobeloff stated that the attorney for the union "has 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 investigation has convinced us that there is no warrant whatever for these assertions and insinuations and we express our complete confidence in Judge Haynsworth."

On Feb. 28, 1964, Kennedy wrote to Judge Sobeloff, stating: "Your thorough and complete investigation reflects that the charges were without foundation. I share your expression of complete confidence in Judge Haynsworth."

Thus, unless there are some new and startling revelations in the weeks ahead, the liberals, hard as they might try, will find it exceedingly difficult to knock Haynsworth out of his job on a "conflict-of-interest" charge.

BRENNAN CASE A PARALLEL

While Mankiewicz and Braden were roasting Haynsworth last week for his supposed violation of Canon 26 and his failure to relinquish important investments while on the court, Capitol Hill observers were wondering where the dynamic duo were earlier this year when it was revealed that Supreme Court Justice William Brennan Jr. owned a 1.4 per cent interest as a limited partner in Concord Village, a garden apartment complex in Arlington, Va.

Brennan's partners included Abe Fortas; Fortas' wife, tax lawyer Carolyn Agger; Chief Judge David L. Bazelon of the U.S. Circuit Court of Appeals in Washington; Judge J. Skelly Wright, also of the Circuit Court and former Justice Arthur J. Goldberg. If Haynsworth violated any legal Canon for holding on to his stock after he came on the court, then why no hue and cry about Brennan, et al., for having, after they were on the bench, entered into a financial arrangement that also could become involved in future "litigation"?

Mr. PROXMIRE. May I say to the Senator from Kentucky that I have been deeply concerned for a long, long time about some of the proposals involved in this matter, and this should be an opportunity for the subcommittee to go into it in detail.

I invite the Senator from Kentucky, if he has the time, to come to that meeting, which will be held on Tuesday afternoon at 2:30, in the Capitol.

Mr. COOPER. Mr. President, I opposed section 23 in conference, and I opposed it on the floor of the Senate when the conference report came out. The Senator from Montana, the distinguished majority leader, supported me. His colleague, the junior Senator from Montana supported me, as well as the Senator from Idaho (Mr. JORDAN) who was a member of the conference committee, and others. The Senator from Idaho made a great fight against it in conference.

The Federal-Aid Highway Act of 1968 had within its scope the entire Federal-Aid highway system for the United States for 2 years. As I said, we had support from citizen's groups, the mayor and the District of Columbia Council, and from the Secretary of Transportation, among others. The newspapers in Washington gave us no support.

The principle is wrong, absolutely wrong. The practice is wrong to attempt to impose on a city a vast highway system which it does not ask for and objects to. That is the awful situation in which we find ourselves. I do not believe the Senate should acquiesce in it.

JUDGE HAYNSWORTH: TRIAL BY ORDEAL

Mr. HRUSKA. Mr. President, the Committee on the Judiciary this morning concluded its ninth day of hearings considering the nomination of Judge Clement F. Haynsworth to be Associate Justice of the U.S. Supreme Court. Thirty-four people were scheduled to be heard. The hearings were finished today, except for calling Judge Haynsworth as a final witness. This is scheduled for early next week.

These hearings have been extremely useful. They have provided the committee and the public with the information concerning Judge Haynsworth as an individual and as a jurist. They have provided to the committee the knowledge necessary to make its decision.

Unfortunately, however, these hearings have been much more. They represent a frantic effort to discredit the integrity of an honorable man and a fine jurist.

The integrity of Judge Haynsworth is a question properly to be investigated by the committee. If all of the testimony were truly concerned with this, I would not object. But the true attack is not being made on the issue of whether or when Judge Haynsworth bought stock, and his supporters and his detractors know it. The issue being fought over is this: What will be the political and philosophical viewpoint of those appointed to the Supreme Court?

There is no foundation for the charge that Judge Haynsworth should have disqualified himself from the Darlington case. That allegation died in the second day of hearings from a lack of facts, a lack of improper conduct, and a lack of realism. Judge Walsh, former Deputy Attorney General of the United States, former Federal judge, and chairman of the American Bar Association Committee on the Federal Judiciary, testified that there was nothing improper or unethical about Judge Haynsworth's participating in the Darlington case.

There is no foundation for the charge that Judge Haynsworth violated the standards of ethics in the Brunswick case. The case was decided before the stock was purchased. Judge Winter, circuit judge and author of the Brunswick opinion, testified that Judge Haynsworth was not in violation of the canons or the statute because he did not disqualify himself.

There is no requirement of trial by ordeal to qualify a man for service on the U.S. Supreme Court.

The danger to the United States from such trial should be apparent. In commenting on a similar situation in the early 1930's, Mr. George H. Haynes, author of "The Senate of the United States," stated on page 760:

> 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.

The Judiciary Committee is agreed and was agreed at the beginning of these hearings that a man's philosophy is not at issue here. That is determined by the President who nominates him. As it was put by a member of the Democratic Party who testified in support of the nominee:

> 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 (in the *Darlington* case) is a truly unjust criticism which cannot be fairly made.

Mr. President, I will support the nomination of Judge Haynsworth to the Supreme Court. I am confident that I will be joined by a majority of members of the Committee on the Judiciary, and when it comes to the floor, by a majority of the Senate.

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

The Senate resumed the consideration of the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States.

(At this point, Mr. BELLMON assumed the chair.)

Mr. BYRD of West Virginia. Mr. President, yesterday I queried the distinguished Senator from New Jersey with respect to the possibility of having language included in the bill which would provide for a program under which disability benefits would be paid to miners suffering from black lung and other pulmonary diseases who do not qualify under State law. At that time, the able Senator indicated it might be possible to work out a short-term interim program to provide disability payments to men disabled by the disease.

The able Senator said he would try to find some way to devise a temporary program leading ultimately toward a long-range program, thus giving the committee time in which to study the problem in depth.

I think it is fair to say for the RECORD that the able Senator and I have been conferring this morning and that we both have had discussions with the Representative from Kentucky in the other body, Mr. PERKINS, and that there seems to be favorable sentiment on that side of the Capitol for such an approach.

I just want to urge the manager of the bill at this time to devote every effort possible over the weekend to work out some program whereby these old and disabled miners, who have contracted this disease, perhaps 5, 10, or 15 years ago, and who have been in forced retirement for all these years but who have not qualified under State statutes for disability payments, can be given assistance through some Federal-State program.

I personally would urge that the cost of such a program be borne initially by the Federal Government. I hesitate to think that we would have to load an additional expense on the management of the mines at this time when overhead costs are already very high and at a time when it is difficult for the product to remain competitive in the marketplace.

I want to express the hope that we might devise some way for the Federal Government, along with the States, over a period of years, to shoulder the burden of the cost so that the mine management would not have to carry this additional burden.

But I strongly believe that out of fairness to the miners, and to the wives and widows of miners who have lost their lives through the contracting of pulmonary diseases from the inhalation of silica and coal dust, we in Congress have a responsibility to work out some program whereby disabled miners would be given help when they are not eligible under State workmen's compensation programs. Many of them cannot qualify under State statutes which are not retro-

Wis., Post Crescent on September 14, 1969, tells the story of the pollution of the Wolf River by erosion. A voyage down the river by nine members of the Wisconsin Assembly Conservation Committee opened their eyes to the difference that effective erosion control makes. The last sentence sums up the situation well:

Our eyes have been opened to a tragic thing . . . this disintegration because of the lack of a joint effort.

Mr. President, I ask unanimous consent that the article be printed in the RECORD.

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

LAWMAKERS SEE BOTH SIDES—WOLF RIVER: REAL JEKYL AND HYDE

(By Roger Pitt)

NEW LONDON.—Members of the state Assembly Conservation Committee saw two Wolf Rivers Friday—and it wasn't a mirror image.

The split personality Wolf River could be compared to a person—a real Jekyl and Hyde: one side is ugly, and showing signs of rapid deterioration; the other is wide, beautiful and easily navigable.

It is hard to believe they are the same river.

Fremont is the dividing point. Fremont north, shows the harsh signs of man, while below Fremont man has taken steps to prevent the erosion of valuable river banks.

MANY ACRES LOST

George Framberger, Winnebago County soil conservationist, told Assembly committee members, "I feel 10,000 acres of land has been lost by erosion."

Nine of 13 committee members made the tour. They were accompanied by a large number of officials from areas bordering the Wolf River and newsmen from the state.

A 20-minute drive by car is a long, 40-mile voyage from New London to Fremont.

WILDLIFE ABOUNDS

Twisting, agonizing bends in the river, dead falls protruding from the shores, shifting sand bars resulting from eroding shorelines and other debris of nature challenge the boat pilot. Nearly all obstructions except the meandering river course can in part be blamed directly to man. Even the changing river channel is being affected by man's encroachment on nature.

We saw a picturesque view only nature could duplicate. Bountiful wildlife—ducks, giant blue heron, deer, turtles and muskrats—were seen during the trip. State legislators from the metropolitan area were most impressed. Legislators from this area were most concerned.

Only in two places were cattle—often blamed for bank erosion—viewed along the river. Much of the farm land above Fremont has been rip-rapped with miles of stone and broken concrete. The areas disappearing the fastest are the marshes lining the river's course and privately owned, non-farm land.

Stone rip-rapping below Fremont is interpersed with wood and steel.

Gene Garrow, Fremont, told assemblymen he estimates 700 ton annually of silt pours into the river punctuating the need for greater streambank preservation measures.

MORE FOR LAWS

Wolf River residents hope that the legislative effort needed to end the increasingly serious threat to the river might have gotten its start Friday.

Paul Alfonsi, R-Minocqua, committee chairman, discussed the upper-Wolf problems for two hours with Ed Hildebrand, Weyauwega school teacher and a native of the river.

Hildebrand recalled how the river was "generous to his family during his youth." He said, "Much of our subsistence came from the river . . . white bass smoked, pickled and fresh; northerns—they were called pickerel."

"Now," he just shook his head and made a hand gesture in disgust, never finishing his statement, but clearly showing his thoughts.

Alfonsi said, "Many studies have been made by a varity of agencies . . . it's amazing how much of the material is duplicated."

The majority leader pledged hearings, probably in the spring or summer of 1970, with an eye toward a legislative report and action in 1971. "We have to see that we get all the information there is," he stressed.

"We couldn't paint a picture to show the unfortunate problem existing on the Wolf River," Alfonsi said at a noon luncheon. "Our eyes have been opened to a tragic thing . . . this disintegration because of the lack of a joint effort."

THE NOMINATION OF JUDGE CLEMENT F. HAYNSWORTH

Mr. MONDALE. Mr. President, I very much hope that President Nixon will withdraw his nomination of Judge Clement F. Haynsworth to the Supreme Court.

Judge Haynsworth's record clearly indicates his insensitivity to the needs and aspirations of Americans who have spent the last 50 years struggling for equal rights and the opportunity to earn a decent living. Moreover, I believe the conduct of his personal financial affairs shows far less discretion than we should expect of a Supreme Court Justice.

It is no accident that those most concerned about civil rights and economic justice—the civil rights movement and organized labor—have led the effort to prevent Judge Haynsworth's confirmation. To these groups and organizations, the nomination of a man with Judge Haynsworth's philosophy is a throwback to an America of a different age—when segregation was the law of the land and when working men were prevented from organizing for higher wages and better working conditions.

If this nomination is not withdrawn, the Senate will have to make a decision which may prove to be a turning point in American history.

The question before us is much broader and much more important than merely the nomination of a single individual to our highest court, as important as that would be by itself. The question really is the direction in which we will move in the country concerning the quality of rights which we say we stand for as a nation.

There are already disturbing indications that we have changed our direction on these matters. The administration has issued a statement of change policy on school desegregation, which is nothing more than a blatant invitation to the South to delay further. The statement has been followed by transparent requests to southern courts to slow down based on the claim that desegregation plans could not be implemented in time. In Mississippi, the request for delay in 33 school districts was premised upon the damage created by Hurricane Camille—yet not one of the 33 school districts was in the path of that terrible natural disaster. The administration has awarded defense contracts to textile firms with a history of racial discrimination. It has proposed a voting rights bill which is a clear watering down of the commitment to equal suffrage in the South and a patent call to southern Members to embroil the simple extension of the 1965 act in a welter of confusion and delay.

These are the circumstances in which Judge Haynsworth's nomination is received. Unfortunately, the nomination is clearly another step in the same direction, but this time a step which could affect the course of civil rights enforcement for a generation.

I, for one, will not stand still to see this country go through a second reconstruction period. If the Supreme Court—the one institution to which black Americans have been able to look with confidence—is turned around, there will be no reason for those in the South committed to resist change to act in any way other than according to their convictions.

This is happening already. I frequently hear disturbing reports from back communities in Mississippi and Alabama and rural Georgia that local sheriffs and Klansmen have been striking and retaliating with greater boldness and violence in the last 8 months. Think of what it would mean if they knew that the Federal courts were no longer open to those whose rights they violate.

The Washington Post said the other day that Judge Haynsworth's record on civil rights places him "merely in the middle of the civil rights stream." That is a gross misstatement, and if the editors of the Post had read the testimony of witness after witness before the Judiciary Committee or studied Judge Haynsworth's record with any care, they could never have made that statement.

We are dealing here with a man whose judicial record—not his personal views—is one of evasion and delay in the implementation of the law of the land. Throughout the struggle that has ensued since the Brown decision in 1954, Judge Haynsworth has been on the wrong side in crucial cases ever since he came on the bench.

In a major case where a majority of his court ruled that a hospital receiving Federal funds could not practice racial discrimination, Judge Haynsworth dissented. This dissent expressed his view that since the hospital had been established privately, it could legally practice discrimination, despite its receipt of Federal funds. A man who believes that private hospitals receiving Federal funds can legally discriminate against black Americans does not exemplify the values of 20th century America.

His record on school desegregation cases has been equally unresponsive to the rights of black Americans. In 1962, he said that it was permissible to have a rule which allowed any child to transfer from a school where he would be in a racial minority—despite the fact that the obvious purpose of the rule was to minimize integration. His colleagues overruled him by a vote of 3 to 2.

In 1963, he voted against requiring the schools of Prince Edward County to be reopened, and if any doubt his views on the merits of that case, it is neces-

sary to quote but one sentence from his opinion:

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.

Luckily the Supreme Court disagreed with him.

In 1965, he said that separate steps need not be taken for faculty desegregation, that assignment of teachers could be expected to change as racial patterns in the school change. Again, the Supreme Court reversed this decision.

In 1967, Judge Haynsworth refused to condemn "freedom of choice" as an ineffective route to desegregation. The Supreme Court reversed him once again. Indeed, Judge Haynsworth filed an opinion 4 days after the Supreme Court's decision disapproving freedom of choice, expressing his preference for this type of plan.

In December 1968, he granted stays in a number of cases to delay desegregation, all of which were vacated by Justice Black. This past summer, Judge Haynsworth refused to move a number of school cases along fast enough to bring desegregation for the fall term. Later in the summer, Justice Black made a statement which is in cold contrast to his record of sanctioned delay:

There is no longer the slightest excuse, reason or justification for further postponement of the time when every public school system in the United States will be a unitary one, receiving and teaching students without discrimination on the basis of their race or color.

Any Presidential appointment requiring Senate confirmation cannot be considered lightly. This is especially true of appointments to the Supreme Court—the one institution which has represented the last hope for redressing the grievances of those who have been denied fundamental rights and opportunities.

It is, therefore, vitally important that men be appointed to the Supreme Court who strongly oppose discrimination and economic injustice and who believe that courts should be prepared to provide remedies where other institutions have failed to do so.

Judge Haynsworth's record strongly suggests that he is not this type of man. It is a record which has not received enough attention. Judge Haynsworth may be a "moderate" on civil rights, but all that means in this context is that he has been sophisticated in his efforts to delay the course of desegregation.

There are other matters as well—such as Judge Haynsworth's consistently anti-labor record. But to me, the basic point is his record on civil rights—for that, in many ways, is the test of our quality and integrity as a nation. I will not participate in approving a nomination which could well affect the very essence of what America is supposed to be.

Mr. EAGLETON. Like every Senator, I have given considerable thought to the Haynsworth nomination. I have decided to vote against its confirmation. Let me make clear my reasons for this decision.

The fact that Judge Haynsworth may be a conservative, or that his views on certain matters may differ from mine or from a majority of the Warren court, does not, in my judgment, preclude his sitting on the Supreme Court.

The Senate has the right and the duty to consider the views of Supreme Court nominees on vital national issues. However, we should not seek a uniformity of opinion on the Court, and I believe a nominee should be rejected on this ground only if his views are so extreme as to place him outside the mainstream of American political and legal discourse. Clearly this is not true of Judge Haynsworth.

My opposition to his appointment rests solely on his apparent insensitivity to the canons of judicial ethics established by the American Bar Association. In my judgment, the record made before the Committee on the Judiciary with regard to the Darlington and Brunswick cases clearly evidences an insensitivity on Judge Haynsworth's part to canons 25 and 26, which read as follows:

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 relation 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."

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 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. 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.

The Canons of Judicial Ethics require, not just that judges be men of integrity, but that they avoid even the "appearance of impropriety." This Judge Haynsworth has not done.

Judge Haynsworth has been nominated to fill the seat left vacant by the resignation of Justice Fortas following allegations of conduct contrary to Canon 25. I cannot in good conscience vote to replace Justice Fortas with Judge Haynsworth.

THE FALLACIES IN THE FINANCE COMMITTEE'S ARGUMENTS FOR REPEAL OF AMMUNITION CONTROLS

Mr. DODD. Mr. President, the Committee on Finance has filed its report on H.R. 12829, the Interest Equalization Tax Extension Act. Section IV of the report on this tax measure is devoted to the repeal of the ammunition controls of the Gun Control Act of 1968.

While no hearings were held on this repeal amendment, it is, nevertheless, on the Calendar to be considered by the full Senate.

While I have already spoken about this matter, I now want to discuss section IV of the committee report in some detail.

In all candor, certain language in that section is in error. It is a misrepresentation, and it is misleading.

Initially, the report states:

Under Chapter 44 of title 18 of the United States Code, the Secretary of the Treasury is required to record the name, age, and address of a person buying any type of ammunition.

Mr. President, that is not true.

The Secretary of the Treasury is not required to record the name, age, or address of a person buying ammunition. That is required of the licensee, the dealer, the seller of ammunition.

Second, the committee report says that the ammunition control regulations from the Treasury Department go considerably beyond this requiring a person purchasing ammunition to give his name, address, and date of birth; the date of purchase, the manufacturer, caliber, gage, or type of component, and the quantity of the ammunition purchased; and the purchaser's driver's license number or other type of identification.

Mr. President, this information is in error. The ammunition purchaser is not required to give information concerning his purchase, it is the licensed dealer who is required to maintain such information in his records.

It is true that the dealer undoubtedly asks the purchaser for a copy of his driver's license, because that is the only way that the dealer can be sure that he is not selling handgun ammunition to minors under 21 or rifle and shotgun ammunition to persons under 18. This is hardly burdensome for, as we all know, most young people in this country must show proof of age when they seek to purchase alcoholic beverages and, in some cases, even cigarettes.

Third, the report goes on to state that the registration of persons purchasing ammunition creates an "enormous and unnecessary administrative burden on the Treasury Department, on firearms dealers, and on the Nation's sportsmen who purchase this type of ammunition."

Mr. President, there is no administrative burden on the Treasury Department that would be relieved if the Bennett amendment were adopted, for it is the licensee who maintains the records of sale or other disposition of ammunition, not the Treasury Department.

Certainly, this is not an enormous bur-

quickly; whether it fell on dry or already wet grounds; whether it was in the fall or spring when trees, plants and other vegetation were absorbing large amounts; whether the weather was hot and evaporation high; whether lake-feeding streams were high or low, etc.

COMPARED TO SUPERIOR

The Great Lakes are tremendous bodies of water. If the contiguous 48 states were level, had a rim around them and all the water in the Great Lakes were dumped over them it would make a lake nine feet deep from the Atlantic to Pacific and Gulf of Mexico to Canada, according to Lakes Survey engineers.

Lake Superior is 350 miles long, 160 miles at its widest point and ranges up to 1,333 feet deep. Lake Ontario, smallest of the five, is 193 miles long and 53 miles wide.

High water is not unwelcome by all who use the lakes. It means money to ship operators. For each inch of water above the so-called low-water datum line or guaranteed channel depth a freighter can take on an additional 100 tons of cargo.

Last month, the lakes ranged up to 47 inches above the low-water datum line, and all were above both their average levels for the past 10 years and for the 1860–1968 period.

And the Lakes Survey forecasts all except Ontario will exceed their 10-year and long-term average levels for the next six months. Ontario is expected to dip below in December but turn upward in January.

TO BUILD SEAWALL

The Michigan Highway Department has announced plans to build a 3,900-foot seawall at a cost of $10 million to protect a section of the Interstate 94 business route through St. Joseph.

The Corps of Engineers can partly control the outflow of Superior and Ontario by dams with gates. But there's no control anywhere else.

Some have suggested widening of the Detroit and St. Clair Rivers and possibly some control works on Lake St. Clair would provide the answer. It might, engineers agree, but it would be too costly to undertake, with the river having to be pushed several blocks into downtown Detroit and into Windsor, Ont., on the other side.

NOMINATION OF HON. CLEMENT F. HAYNSWORTH TO SUPREME COURT

Mr. WILLIAMS of New Jersey. Mr. President, the Committee on the Judiciary is now considering President Nixon's second nomination to the U.S. Supreme Court. As we all must realize the nomination of Justices to the Supreme Court is one of the most important decisions a President must make. The Senate, in confirming those nominations is making judgments which affect the very fabric and fiber of our society for years to come. With these thoughts in mind we approach the nomination of Clement F. Haynsworth, Jr., to assume the Supreme Court seat recently vacated by the resignation of Abe Fortas.

The Supreme Court, and the entire judiciary, for that matter, is an institution which most Americans view with awe and reverence. It is the final arbiter of some of the most basic decision concerning each American's relationship to his fellow man and concerning his relationship to society. It is also the final protector of man's rights to be free from governmental restraint.

Several times in the history of our Nation, Presidents have set for themselves the task of changing the complexion of the Supreme Court. They have done this by nominating Justices whose policy inclinations accorded with their own. Most Presidents, however, have only had the opportunity to nominate one or two Justices and so the policy directions of the Court have changed very slowly. On rare occasions, however, a President may have the opportunity to make several nominations and thereby cause an immediate, almost cataclysmic change in policy direction. So, for example, President Roosevelt named nine Justices to the Supreme Court. In the process, he converted the Court from one which vetoed Presidential and congressional efforts to take this country out of the depression to a Court which was attuned to the needs of America's workingmen, to the needs of the oppressed in our society.

President Nixon, in less than 1 year in office has nominated two Justices. It is likely that in his remaining 3 years in office he will nominate at least one, perhaps even three more Justices. In one 4-year term he may be able to name a majority of the Court.

And what does this nomination represent? Clement Haynsworth's record is clear. As a sitting judge he has 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. One perhaps could not quarrel if Judge Haynsworth's dissenting opinions were in landmark precedent-setting cases. But his dissents come in even the most obvious cases, cases raising the basic issue of workingmen's right to organize into a labor union in southern textile mills, mills where the basic salary for a full week's work is not much more than the minimum wage of $64 for a 40-hour week, cases ralsing the basic issue of a black man's right in the Southern United States to be free from legally imposed and fostered segregation.

If this is the kind of judicial temperament President Nixon wants on the Supreme Court, there is very little that can be done to prevent him from achieving his goal. The President can find other nominees who will vote against any effort to break the yoke of racial separatism, who will vote against even the most limited struggle of workingmen to improve their lot in life.

But the President not only has selected a man who rejects the strivings of the great majority of our society, he has selected a man who is insensitive to the needs for propriety in judicial conduct. Clement Haynsworth, admittedly, voted in favor of a textile company which was doing thousands of dollars worth of business with a company partially owned by Judge Haynsworth.

The judge has now also admitted purchasing $16,000 worth of stock in a company which, at the time of the purchase, was a party in a case before him. There has been considerable argument over the timing of this purchase of stock. It is now recognized that the judge bought the stock after he and his colleagues had reached their decision, in favor of the company, but before the opinion was written and before the decision was announced.

In my judgment, this appears to be as unconscionable as the "insider trading" prohibited by the Securities Exchange Act.

Both of these business transactions would be illegal if committed by an ordinary citizen and the wrong is certainly compounded by the fact that he was a judge. A judge should not permit himself to participate in this kind of conduct.

Whether or not Judge Haynsworth's conduct is unethical, is in my judgment, a question which need not be resolved. He has demonstrated a complete lack of judicious sensitivity. He has not sufficiently demonstrated sensitivity to the need for a judge to maintain both the appearance and substance of unimpeachable propriety that American people have a right to expect in all the judges in the land; certainly in the members of the Supreme Court of the United States.

If the nomination of Judge Haynsworth is not withdrawn, I shall vote against its confirmation.

STATEMENT OF POSITION ON TAX REFORM ACT BY 70 PENNSYLVANIA COLLEGES AND UNIVERSITIES

Mr. SCHWEIKER. Mr. President, on Wednesday, October 1, the minority leader, the distinguished Senator from Pennsylvania (Mr. SCOTT), and I had the distinct pleasure of meeting with Gaylord P. Harnwell, president, University of Pennsylvania; William W. Hagerty, president, Drexel Institute of Technology; Clarence Moll, president, Pennsylvania Military College; Rev. Robert J. Welsh, president, Villanova University; and Donald L. Helfferich, president, Ursinus College, who provided us on behalf of 70 independent institutions of higher education in the Commonwealth of Pennsylvania, attended by more than 128,000 students, a statement of position on the Tax Reform Act of 1969.

I ask unanimous consent that the statement of position by the Pennsylvania colleges and universities be printed in the RECORD.

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

A STATEMENT OF POSITION ON THE TAX REFORM ACT OF 1969 (H.R. 13270) BY THE FOLLOWING 70 PENNSYLVANIA COLLEGES AND UNIVERSITIES, SEPTEMBER 29, 1969

Albright College, Reading; Beaver College, Glenside; Bryn Mawr College, Bryn Mawr; Bucknell University, Lewisburg; Cabrini College, Radnor; Carnegie-Mellon University, Pittsburgh; Cedarcrest College, Allentown; Chatham College, Pittsburgh; Chestnut Hill College, Chestnut Hill; College Misericordia, Dallas; Dickinson College, Carlisle; Drexel Institute of Technology, Philadelphia.

Eastern Baptist College, St. Davids; Franklin and Marshall College, Lancaster; Gettysburg College, Gettysburg; Gwynedd Mercy College, Gwynedd Valley; Haverford College, Haverford; Immaculata College, Immaculata; Juniata College, Huntingdon; Keystone Junior College, La Plume; King's College, Wilkes-Barre.

Lafayette College, Easton; La Salle College, Philadelphia; Lebanon Valley College, Ann-

in book form next year by Natural History Press. Meanwhile, the supplement is available (supply limited) from Natural History Magazine, Central Park West at 79th Street, New York, N.Y. 10024. Price: 50 cents.

There need not be complete disaster

"Ecologists can scarcely afford to be optimists. But an absolute pessimist is a defeatist, and that is no good either . . . There need not be complete disaster and if our eyes were open wide enough, world wide, we could do much towards rehabilitation . . . The scientist as a social entity must eventually establish the necessity for the ecosystem approach to world problems as a safeguard against unbalanced technological action. We have yet to realize that political guidance and restraint is nothing like so operative on technology as on other major fields of human action."—CF Vice President F. Fraser Darling, in paper presented to UNESCO biosphere conference, 1968.

On salvation

"There is nothing wrong with the United Nations except the members. It is not the organization which has failed; it is the nation members which have not yet sufficiently grasped the truth that we are all members one of another. Our economic and political salvation will come not by everyone grabbing for himself and the devil take the hindmost; our salvation will come from international understanding and international cooperation."—Lord Caradon, United Kingdom ambassador to the UN, December 3, 1968.

From wilderness to dump heap

"Everywhere, societies seem willing to accept ugliness for the sake of increase in economic wealth. Whether natural or humanized, the landscape retains its beauty only in the areas that do not prove valuable for industrial and economic exploitation. The change from wilderness to dump heap symbolizes at present the course of technological civilization. Yet the material wealth we are creating will not be worth having if creation entails the raping of nature and the destruction of environmental charm."—Dr. Rene Dubos of Rockefeller University, in paper prepared for UNESCO biosphere conference, 1968.

Danger—Man at work

The United States "appears to be responsible for around one-third to one-half of many of the contaminants introduced into the atmosphere or oceans," according to Dr. Edward D. Goldberg of the Scrips Institution of Oceanography, La Jolla, Calif. In a paper presented to the recent meeting of the American Association for the Advancement of Science in Dallas, Texas, Goldberg also said that the levels of pesticides such as DDT in "such deep-living fish as the tuna are similar to those of terrestrial organisms, including man." He added that radioactivity "from the detonation of nuclear devices and emissions from nuclear reactors are found at all levels in all oceans."

Train leaves CF to become Interior Under Secretary; Howe acting director

Russell E. Train, CF president since August 1, 1965, resigned February 7 to become Under Secretary of the Interior. Sydney Howe, director of conservation services for CF since April 1965, was named acting director by the executive committee of the Foundation's board of trustees, pending selection of a new president to succeed Train.

ADDITIONAL COSPONSOR OF A JOINT RESOLUTION

SENATE JOINT RESOLUTION 150

Mr. HRUSKA. Mr. President, I ask unanimous consent that, at the next printing, my name be added as a cosponsor of Senate Joint Resolution 150, to authorize the President to designate the period beginning October 12, 1969, and ending October 18, 1969, as "National Industrial Hygiene Week."

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

FOREIGN ASSISTANCE ACT—AMENDMENT

AMENDMENT NO. 225

Mr. NELSON. Mr. President, last August I submitted an amendment to the Foreign Assistance Act under which the United States would contribute a maximum of $40 million over a 5-year period toward the construction of a desalination plant in Israel.

Senators CASE, EAGLETON, GOODELL, HARRIS, HART, HARTKE, HATFIELD, JAVITS, KENNEDY, MAGNUSON, MCGEE, MONDALE, MUSKIE, PELL, RIBICOFF, SAXBE, SCHWEIKER, SCOTT, TYDINGS, WILLIAMS of New Jersey, and YOUNG of Ohio have cosponsored this proposal.

Recently, the House Foreign Affairs Committee considered a similar proposal and agreed to including it in the foreign aid bill for fiscal year 1970.

In order to facilitate the Senate Foreign Relations Committee considering this desalination bill as part of the foreign aid bill, I am submitting an amendment intended to be proposed by me to the bill (S. 2347) the foreign aid authorization pending before the committee.

The development of a prototype desalting plant in Israel can bring great technological benefits and can help solve the increasingly acute water shortage problem of the world.

Historically, there has been broad bipartisan support for this joint project and that is true today also.

It is my hope that the Senate Foreign Relations Committee will also act favorably on this measure.

I ask unanimous consent that amendment No. 225 to S. 2347 be printed in the RECORD.

The PRESIDING OFFICER. The amendment will be received, appropriately referred, printed, and printed in the RECORD.

The amendment (No. 225) was received, ordered to be printed, referred to the Committee on Foreign Relations, and ordered to be printed in the RECORD, as follows:

AMENDMENT No. 225

On Page 19, between lines 4 and 5, insert the following section:

"SEC. 209. Development of Prototype Desalting Plant in Israel.—(a) In order to improve existing, and developing and advancing new, technology and experience in the design, construction, and operation of large-scale desalting plants of advance concepts which will contribute materially to low-cost desalination in all countries, including the United States, the Secretary of State is authorized to participate in the development of a large-scale water treatment and desalting prototype plant and related facilities to be constructed in Israel as an integral part of a dual-purpose power generating and desalting project. Such participation shall include financial, technical, and such other assistance as the Secretary deems appropriate to provide for the study, design, construction, and, for a limited demonstration period of not to exceed five years, operation and maintenance of such plant and facilities.

"(b) Any agreement entered into under subsection (a) of this section shall include such terms and conditions as the Secretary deems appropriate to insure, among other things, that—

"(1) the Secretary will be responsible for conducting the technical aspects of developing such plant and facilities;

"(2) all information, products, uses, processes, patents, and other developments obtained or utilized in the development of the plant and facilities will be available without further cost to the United States for the use and benefit of the United States throughout the world; and

"(3) the United States, its officers, and employees have a permanent right to review data and have access to such plant for the purpose of observing its operations and improving the science and technology in the field of desalination.

However, the provisions of this section shall not be construed to deprive the owner of a patent of any right under that patent or under a background patent.

"(c) In carrying out the provisions of this Act, the Secretary may—

"(1) enter into contracts with public or private agencies and with any person without regard to sections 3648 and 3709 of the Revised Statutes, and

"(2) utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency.

"(d) There is authorized to be appropriated (1) for administrative costs, such sums as may be necessary to carry out this section and (2) for the study, design, construction, and operation of such plant and facilities, an amount not to exceed either 50 per centum of the total capital costs of the plant and facilities and 50 per centum of the operation and maintenance costs for the demonstration period, or $40,000,000, whichever is less."

NOMINATION OF HON. CLEMENT F. HAYNSWORTH, JR., TO THE SUPREME COURT

Mr. INOUYE. Mr. President, when the nomination of Judge Clement F. Haynsworth, Jr., to be Associate Justice of the Supreme Court was first presented, I was prepared to give his nomination my support despite the fact that we are poles apart in our political philosophy. I was prepared to support its confirmation because it was my feeling that if President Nixon wished to nominate someone of this political philosophy, he has a perfect right to do so providing that nominee met the other tests of fitness for this high office.

Today, I wish to announce that I no longer intend to vote in favor of confirming Judge Haynsworth's nomination. As a result of the evidence which has been brought forth in the course of the hearings before the Committee on the Judiciary. I have concluded that a pattern of insensitivity to the problems of conflict of interest, raised by Judge Haynsworth's many business ventures as they related to his activities as a judge in the Federal court, has been clearly demonstrated.

To support his nomination under these circumstances would cause a serious loss of faith on the part of the American people as to the impartiality and fairness of our Nation's highest court. To do so in view of the recent refusal of the Members of this body to support the elevation

of an Associate Justice to Chief Justice for similar insensitivity would make a mockery of our standards and our concern for the canons of judicial conduct. It would make political philosophy rather than judicial fitness the determining criterion.

Mr. President, for this reason I announce my intention to vote against confirmation of this nomination.

THE TAX REFORM OF 1969

Mr. GRIFFIN. Mr. President, Prof. Raymond J. Saulnier of Barnard College, former chairman of the Council of Economic Advisors to President Eisenhower, has prepared a detailed analysis of the tax reform legislation which was passed by the House of Representatives (H.R. 13270).

I ask unanimous consent that his analysis be printed in the RECORD.

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

MEMORANDUM ON H.R. 13270: THE TAX REFORM ACT OF 1969

This proposed legislation is so long (368 pages), so complex (26 major sections with 63 subsections) and so deeply affected by loophole emotionalism that there is a danger of it being enacted without an adequate evaluation of its potential overall effects. Yet it should be clear even to a casual reader of press summaries that, as it is found in H.R. 13270, the Tax Reform Act of 1969 would be seriously counterproductive.

The object of H.R. 13270 is to correct certain inequities in the federal tax code but, whatever it would do in that connection, it would have seriously adverse side effects on two other matters that must be coordinate in importance with equity in the design of our tax laws, namely, the nation's capability for achieving vigorous economic growth and the balance between private and public effort in our society.

Specifically, the bill would impair the nation's capability for achieving vigorous economic growth by a number of provisions that would reduce incentives to save and invest, including the proposed treatment of capital gains and the reduction of incentives to invest in real estate and in minerals resources. It would further inhibit growth by reducing—in some cases eliminating altogether—ways in which business concerns reward management achievement under present tax law. And the balance of its revenue effect, which would become increasingly negative between 1970 and 1972, would favor consumption at the expense of investment, thereby weakening government efforts to overcome inflation as well as impeding economic growth. The Treasury estimates that, under the bill as it stands, the net longterm shift in the tax burden would be to raise taxes on corporations by $4.9 billion while lowering taxes on individuals by $7.3 billion.

In addition, H.R. 13270 would have a number of unfortunate effects on the structure of American institutions. It would impair the ability of state and local governments to finance public facilities independently and, in so doing, weaken their position in our present governmental structure. It would seriously impair the ability of private nonprofit institutions—colleges and universities, museums, hospitals, *etc.*—to obtain the private gifts on which they rely heavily, in some cases entirely, for the extension and improvement of their activities. And as this memorandum will show, it would weaken the enterprise system—the means through which this country has achieved a standard of living unparalleled elsewhere in the world and through which America, from its beginnings, has offered opportunity for personal development and improvement unmatched anywhere.

In doing all this, and more, some of the bill's major provisions offend one's sensibility by:

Being in a number of instances seriously, unnecessarily and punitively retroactive;

Violating the long-respected distinction between capital and income in their treatment by the tax laws;

Deviating from the established principle of taxing income when it is actually received;

Deleting a whole series of still valid and justifiable incentives on the ground, apparently, that yesterday's incentive is today's loophole.

The justification for this wholesale rewriting of the tax code is that a small group of individuals in the $200,000-and-over income bracket—154 in number—had no federal tax liability in 1966. Whatever the merits of the case against these individuals, it must be recognized that they represent only one percent of the taxpayers in this income class. Yet in order to reach 154 individuals, H.R. 13270 would adversely affect the tax status of hundreds of thousands of taxpayers, corporate as well as individual, would affect every citizen through higher prices and rents, would imperil every nonprofit, gift-supported institution in the country. It is hard to imagine a bill from which the fallout threat would be greater.

As for the 154, how much federal tax they paid in other years is typically overlooked, as is the taxes they paid over the years to state and local governments. Typically, no account is taken of the income these individuals chose to forego in achieving tax exemption, nor the amount of capital or income they gave away, *etc., etc.* Nor is there an adequate evaluation in the public dialogue on these questions of what it will cost the nation in the impairment of its productive institutions to correct such genuine inequities as exist under present tax law by the methods proposed. There surely must be a better and fairer way to do it. One is impressed again and again that what we have here is a massive example of throwing the baby out with the bathwater—in this case a whole family of babies, with a few cups of bathwater.

Although H.R. 13270 has been described as a milestone in tax legislation by the Secretary of the Treasury, there are valid objectives of tax reform—long recognized inside and outside of government—that it does nothing to achieve. Notable among these are simplification of the tax code and revisions to promote growth. Value-added taxation, a major subject of tax discussion these past few years, is nowhere in this bill. Nor is fiscal responsibility a part of it. The fact that the bill would burden the finances of the federal government—in amounts estimated as high as $4.1 billion in 1972—by tax cuts that more than offset the increased revenue involved in tax reform and in repeal of the investment tax credit, has already been commented on. In short, H.R. 13270 deserve not a mere patching-up but a thorough overhaul. One thing is certain: if it is passed, even with the changes proposed by the Secretary of the Treasury (many of which go in the right direction but others, in the opinion of this writer, do not), no true tax reformer need fear he has been done out of a job. Actually, the tax reform problem would be rendered more difficult.

It would be impossible for any one individual—and certainly not in one brief memorandum—to present a full critique of this lengthy and complex bill. The fact that many provisions are not commented on here is not to be construed as meaning anything, one way or the other, *pro* or *con*, with respect to their specific merits. Limitations of space, time and energy have required concentration on only a few of the bill's major provisions. It is hoped, however, that the selection is of those most in need of critical comment.

Let us begin with certain of the bill's provisions that affect capital investment and thus the nation's potential for economic growth.

1. PERMANENT REPEAL OF THE INVESTMENT TAX CREDIT

Permanent repeal of the investment tax credit, as H.R. 13270 proposes, would remove an incentive to capital expansion and improvement that from its inception has been a constructive provision of the tax code. There may be abuses here and, if so, they should be corrected, but not by the wildest stretch of the imagination can the investment credit be regarded as a loophole in any meaningful sense. Its permanent repeal would have to be regarded as a blow at the ordinary, everyday business of improving the nation's productive plant. Certainly, if this provision is enacted the Congress should find some means—presumably through depreciation liberalization—to make the volume of investible funds generated internally by businesses more nearly consistent with what is required for capital investment. Otherwise, the productivity and international competitiveness of American industry will suffer a damaging setback.

Finally, although an on-again off-again handling of the investment credit deserves, in my opinion, no place in stabilization policy—planning for capital expansion and improvement needs and deserves a more stable framework of taxation—the anti-inflation purpose (for which there is a reasonable argument) would be better served by suspension than by permanent repeal, if that has to be the choice.

2. LIMITATION OF ACCELERATED DEPRECIATION PRIVILEGES IN REAL ESTATE INVESTMENT

Despite the well-known tendency for investment in new construction (notably, new residential construction) to lag behind other types of investment, and despite the widely-recognized and increasingly critical shortage of residential facilities, H.R. 13270 would reduce certain incentives which Congress on earlier occasions deliberately incorporated into the tax law to encourage construction and rehabilitation of real property. Under the House bill:

(a) accelerated depreciation—previously allowed on all new construction on the 200% declining balance and sum-of-the-years digits methods—would henceforth be restricted to the recovery of capital invested in new residential building;

(b) despite the fact that the incentive to invest in new construction depends heavily on an active market for used structures, straightline depreciation would be required on the latter (residential and nonresidential) in place of the 150% declining method presently allowed;

(c) although new nonresidential construction is crucial to the creation of a satisfactory total environment, it would be allowed a slower (150% declining balance) depreciation in place of the accelerated rate presently allowed;

(d) the excess of accelerated over straightline depreciation would be recaptured as ordinary income on the sale of real property of any type, with no amelioration of this effect (as provided in present law) depending on how long the property was held, thus aborting the initial effect of fast writeoff; and

(e) the right to depreciate rehabilitation expenditures on a straightline basis over 20 months would be restricted to projects where the additions or improvements have a useful life of 5 years or more, where they constitute low cost housing for nontransient use (declared eligible for such treatment by HUD) and where rehabilitation cost per unit is not less than $3,000 or more than $15,000.

States had ways of circumventing any agreement, and that the proposed test-ban treaty was only a ploy to open up the Soviet Union to expanded American espionage. He said that if he had to depend on his military people for reducing tensions between the United States and the Soviet Union, he would have only torches and thorns to work with.

The limited nuclear test ban is regarded by many contemporary historians as the most significant achievement in an otherwise almost unbroken series of escalating moves in the world arms race. Let it be noted that this particular treaty was passed by the U.S. Senate over the opposition of most of our military leaders.

And now the same men who did their best to maintain unlimited nuclear testing are using the same arguments for unlimited development of bacteriological, chemical, and radiological weapons; and anti-ballistic missiles; and multiple independently targeted re-entry vehicles. It is not unnatural for them to apply such pressure, for, in a very real sense, this part of their job. But it is both unnatural and hazardous for the American people to be acquiescent or uncritical witnesses to this process. It is their clear historical right not to let their government get away from them.

The notion that peace is possible in an open-ended arms race has no basis in human experience. To this may be added a profound observation by Richard M. Nixon before he became President: he said the best time to bring weapons under control is before, not after, they get into the stage of manufacture and stockpiling.

By now, the complexities of the world arms race have reached a point where even the most painstaking, persistent, and genuine efforts may not yield dramatic or immediate results. But it would clear the air if the United States announced to the world that we would rather die ourselves than to loose chemical and bacteriological horrors on mankind—and that, accordingly, we were taking a first step in what we hoped would be a program to eliminate these weapons altogether. We would specify the nature and quantity of weapons to be destroyed in the first phase, and invite U.N. Secretary General U Thant to appoint personnel to observe and report. We would announce that, if other nations carried out similar phased reductions under U.N. certification, we would be prepared to continue this reciprocal process until the world's arsenals were fully purged. Most important, we could say we were prepared to extend this process to the reduction and elimination of nuclear weapons, so long as others will proceed with us.

At the same time, we could move mightily in the direction of strengthening the U.N. itself, broadening its authority in order to enable it to deal with world tensions and conflicts on a statutory rather than makeshift basis. For it will not be enough to bring the world arms race under control. Nations themselves must be brought under responsible control. The advocacy of such an approach to peace is where security begins.

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

Mr. HRUSKA. Mr. President, earlier today the Junior Senator from Kentucky (Mr. COOK) and I sent a letter and memorandum to each Senator dealing with the role of Judge Haynsworth in labor decisions during his tenure as a member of the Fourth Circuit Court of Appeals.

As members of the Judiciary Committee, the Senator from Kentucky and I felt it was desirable to make a broad dissemination of our analysis of the claims made by those who oppose the nomination of Judge Haynsworth to the Supreme Court. We also intend at a later time to discuss his civil rights decisions and the charges of improper conduct which have been made against him.

Mr. President, the political philosophy of a nominee to the Supreme Court is not a proper subject for examination by the U.S. Senate. The President of the United States, acting under the Constitution which gives him the power of appointment, makes the nomination. The Senate then reviews that nominee and his qualifications to determine whether he possesses the qualities of experience, judicial temperament, competence, and integrity which would qualify him for the post.

The Senate also in discharging its duty under advice and consent should determine whether he may have such a bias or such a prejudice against a particular litigant that such litigant may not receive a fair hearing in any litigation which arises before the Supreme Court at a time when the nominee would be sitting there. But for the U.S. Senate to get into the question of the philosophy or politics would be an invasion of the President's power of appointment.

When the Committee on the Judiciary and later the Senate consider the duty advising and consenting to the nomination of the Honorable Arthur Goldberg and later advising and consenting to the nomination of Justice Thurgood Marshall, the rule I just stated was followed. Certainly this Senator did not go into the matter of bias or the philosophy or the prejudices, which either of those nominees might possess.

All of us know of the tremendously broad practice which the Honorable Arthur Goldberg had in the field of labor law. All of us know the great extent to which Justice Marshall participated in the field of civil rights as a private lawyer and as a counsel for various civil rights groups. Yet, this Senator well recalls the question that was put to then Solicitor General Marshall during the hearings before the Committee on the Judiciary. He was asked whether notwithstanding his experience in this particular field of litigation, he could give anyone appearing from any section of the country a fair hearing in matters arising in that field.

His answer was in the affirmative. And that is the ultimate answer that the Senate must ask for in the pending case.

A review of the cases in which Judge Haynsworth participated during his tenure on the Circuit Court of Appeals of the Fourth Circuit clearly establishes that there is no such bias which would affect Judge Haynsworth's ability as a member of the United States Supreme Court. There would be no such bias as to prevent fair hearings and decisions in any cases which may come before the court in the future. A review of these cases establishes that each decision in which he participated is buttressed by case law and logic. Regardless of the resulting subsequent appeals, each decision is intellectually honest.

Perhaps the most important case in this regard, in which Judge Haynsworth participated, takes issue with the decision in the Geizelle Packing Co. case, which involved the use of an authorization card count to establish a union as a bargaining agent. In reversing that case, the Supreme Court stated:

> 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 case of Enterprise Wheel & Car Corp. saw the Supreme Court announce new rules regarding judicial review of arbitration cases. At the same time the Supreme Court reversed the fourth circuit, it reversed the sixth and the fifth circuits on the same point. The seventh and the 10th circuits had decided similar cases and were relied upon by the fourth circuit in the latter's decision in the matter. In the face of these concurring views in different circuits, it is impossible to find that Judge Haynsworth was wrong or that he was "antiunion."

I will not undertake to review all the cases discussed in our memorandum. The point is this: Judge Haynsworth participated in many labor decisions. He sometimes decided in favor of unions; he sometimes decided against them. In each case, when the merits are examined, it is clear that the decision was based upon a sound review of the law and the fair application of the law to the facts of the case.

Mr. President, the American Bar Association Committee on the Federal Judiciary is certainly considered a reliable source for analysis of a judge's record and experience in this connection. Currently, and during the evaluation of Judge Haynsworth's career as a member of the fourth circuit, that Committee on the Federal Judiciary is headed and chaired by Judge Walsh, at one time Deputy Attorney General of the United States, at one time a judge of the Federal court, and certainly one of the distinguished and eminent members of the American bar today. I quote from his testimony 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 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.

Mr. President, I ask unanimous consent that the letter of transmittal, from the Senator from Kentucky and myself to all Senators, as well as a brief extract from the memorandum be printed at this point in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., October 6, 1969.

Hon. ——— ———,
United States Senate,
Washington, D.C.

DEAR SENATOR: Some confusion has obviously arisen over the record of Judge Clement F. Haynsworth, Jr., the President's Supreme Court nominee, during his tenure of service on the U.S. Court of Appeals for the Fourth Circuit.

In the spirit of fairness, we ask that you read the entire record, both pro and con, before making your decision.

We are glad this nomination has received the scrutiny that has been given it. Justices of the Supreme Court from this day forward must be able to stand the test of complete and honest disclosure before Senate confirmation can be anticipated. Judge Haynsworth's record will stand this test.

As members of the Judiciary Committee, we have had the opportunity to attend the hearings and study the record. As fair-minded Americans, we regret the proliferation of insinuations about Judge Haynsworth which we feel are based either upon misinformation or little knowledge of the facts. The decision which the Constitution calls upon the Senate to make must be made fairly. We are enclosing an appraisal of the Judge's entire record in labor cases so that you will be correctly apprised of his position in this area. We will subsequently be forwarding to you objective appraisals of his civil rights decisions and a complete rebuttal of the conflict of interest charges which have been leveled against him.

With best wishes,
Sincerely yours,
ROMAN L. HRUSKA,
MARLOW W. COOK,
U.S. Senators.

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 *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* (8) pro-labor opinions *written* by Judge Haynsworth, and an *additional thirty-seven* (37) pro-labor opinions in which Judge Haynsworth *concurred* but did not write an opinion.

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 rights is demonstrably false.

The Fourth Circuit completely or substantially *enforced* 93% of the NLRB petitions before it in 1968–69, as compared with only 81% for all circuit courts during 1963–68.

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

COAL MINE HEALTH AND SAFETY ACT OF 1969—AUTHORIZATION FOR PRINTING OF BILL

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from New Jersey (Mr. WILLIAMS), I ask unanimous consent that S. 2917, the Coal Mine Health and Safety Act of 1969, be printed as it was passed by the Senate on Thursday, October 2, 1969.

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

ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 8 minutes p.m.) the Senate adjourned until tomorrow, Tuesday, October 7, 1969, at 12 o'clock noon.

NOMINATIONS

Executive nominations received by the Senate October 6, 1969:

WORLD HEALTH ORGANIZATION

Dr. S. Paul Ehrlich, Jr., of Virginia, to be representative of the United States of America on the Executive Board of the World Health Organization.

U.S. DISTRICT JUDGE

David L. Middlebrooks, Jr., of Florida to be U.S. district judge for the northern district of Florida vice George Harrold Carswell, elevated.

CONFIRMATIONS

Executive nominations received by the Senate October 6, 1969:

U.S. MARSHAL

Ollie L. Canion, of Louisiana, to be U.S. marshal for the eastern district of Louisiana for the term of 4 years.

NATIONAL TRANSPORTATION SAFETY BOARD

Isabel A. Burgess, of Arizona, to be a member of the National Transportation Safety Board for the remainder of the term expiring December 31, 1969.

HOUSE OF REPRESENTATIVES—*Monday, October 6, 1969*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

God loveth righteousness and justice; the earth is full of the goodness of the Lord.—Psalm 33: 5.

O Spirit of the living God, who governs the world with righteousness and whose judgments are true and righteous altogether, grant that these representatives of our people may be of one mind and of one heart as they seek to provide justice, to produce good will, to protect freedom, and to promote the welfare of all the citizens of our beloved land.

Endue them with Thy spirit that with clear understanding, clean motives, and creative principles they may rise above all self-seeking and through self-discipline be primarily concerned about the good of our country and the brotherhood of man.

Bless all the courts of justice in our Nation and particularly our Supreme Court opening on this day. Grant unto all Justices the spirit of wisdom that they may decide wisely and uphold the law as it is without fear or favor.

May the Lord give strength to His people and bless them with peace of mind, purity of heart, and power of spirit to work together for the good of all men.

In the Master's name we pray. Amen.

THE JOURNAL

The Journal of the proceedings of Friday, October 3, 1969, was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment a joint resolution of the House of the following title:

H.J. Res. 851. Joint resolution requesting the President of the United States to issue a proclamation calling for a "Day of Bread" and "Harvest Festival."

The message also announced that the Senate has passed with amendments in which the concurrence of the House is requested bills of the House of the following titles:

H.R. 9825. An act to amend subchapter III of chapter 83 of title 5, United States Code, relating to civil service retirement, and for other purposes;

H.R. 11039. An act to amend further the Peace Corps Act (75 Stat. 612), as amended; and

H.R. 12982. An act to provide additional revenue for the District of Columbia, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 9825) entitled "An act to amend subchapter III of chapter 83 of title 5, United States Code, relating to civil service retirement, and for other purposes," requests a conference with the House on the disagreeing votes of the

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

(Subsequently, the Senate modified this order to provide that at the conclusion of its business today it stand in recess until 10 a.m. tomorrow.)

ORDER FOR RECOGNITION OF SENATOR HUGHES TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, after the disposition of the Journal on tomorrow, the distinguished junior Senator from Iowa (Mr. HUGHES) be recognized for not to exceed 1 hour.

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

ORDER OF BUSINESS

Mr. HOLLINGS. Mr. President, I ask unanimous consent that I may proceed for a period of 30 minutes.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none and it is so ordered.

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

Mr. HOLLINGS. Mr. President, I would have hoped that the most deliberative body in Government would have proceeded with the nomination of Judge Haynsworth in a more deliberate fashion. At the present moment, the hearings have not been completed and all the testimony has not been submitted, according to the Senator from Indiana. The committee record, as a result, has not been finalized or printed. The Committee on the Judiciary has not formally considered the particular nomination, and as a result the committee has yet to act.

Already, Mr. President, Senators are jumping to conclusions. Rather than the most deliberative body, I almost have the feeling that we are about the 100 fastest guns in the East, trying to get the headline, rather than trying to get to the point in substance of the Haynsworth nomination; that is, the Judge's qualifications to be an Associate Justice of the U.S. Supreme Court.

For example, in the newspaper coverage of this matter, they have rushed headlong and failed to cover many things of importance and, consequently, many things in support of this distinguished jurist. One, which I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks, is the statement by Prof. William Van Alstyne, of the Duke University School of Law, who is known as a civil libertarian and an outstanding and eminent professor.

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

(See exhibit 1.)

Mr. HOLLINGS. Another example, of course, is the studied judgment and testimony of Dr. Charles Alan Wright, now with the University of Texas School of Law, who formerly was with the University of Minnesota; and, if I may, I would like to point out his qualifications:

> For more than twenty years my professional specialty has been observing closely, and teaching and writing about, the work of the 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.

His writings include a seven-volume revision of the Barron and Holtzoff Treatise on Federal Practice and Procedure, and he has taken the trouble to study every decision in which Judge Haynsworth has participated—not merely every one that he has written upon, but every one in which he has participated, which covers a span of some 12 years and 167 volumes of the Federal Reporter.

He says that with his professional interest in the Federal judiciary and with his writing commitments, he necessarily studies with care all the decisions of the Federal courts and inevitably forms judgments about the personnel of those courts. I quote Professor Wright:

> 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.

Quite to the contrary of what we read in the headlines, Mr. President, where it is said Judge Haynsworth is "obscure" and he does not have the gloss and eminence that we should have on the highest court of our land.

Professor Wright concludes with the following comment:

> 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.

Mr. President, at this point I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks the two statements by Professor Wright.

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

(See exhibit 2.)

Mr. HOLLINGS. Mr. President, those things do not appear in the headlines and it appears that some of our brethern, some of our colleagues, are making their judgments on the headlines. If that is the test and the measure, I cannot help but wonder. That would make it pretty easy to understand if that were the test.

Mr. President, I go immediately to the Evening Star of Monday, October 6, 1969. The headline of the Washington Evening Star article of yesterday is "Haynsworth Deal Eyed." I say this with some mixed appreciation and not criticism of the substance of the article in the Evening Star. Actually, there is an editorial in the same newspaper supporting Judge Haynsworth. However, the fact of the matter is that is not what the headline implies. It intimates that: "We have a judge involved in deals, and we are eyeing the deals."

All the poor judge has said is, "I will take all my stocks and put them in trusteeship." Is that a deal? It is an offer for complete disclosure. We do not want to fault anyone for a moment for insisting on complete disclosure. When I introduced Judge Haynsworth, I included that in my introduction.

No one faults the Senator from Indiana (Mr. BAYH) for going into this matter as meticulously as he can. This is a lifetime appointment. The Senate is the responsible body. It is our duty to go into every facet possible to make certain of the qualifications of Judge Haynsworth, and every other aspect of the matter, including his personal habits, his personal character, and his ability. I do not want it to appear that I am leaning toward the school of thought that "Now that you have my good friend the judge up for confirmation, we are going to skirt over the record." In introducing the judge I asked that everything be introduced. But what happened? Rather than having it appear we have given a complete record, which is the fact, they would make it appear the contrary is true.

I would like to have awaited the action by the Committee on the Judiciary, but in the initial hearing a letter dated September 6, 1969, was presented to the committee with the complete stockholdings up until the time of the nomination.

Mr. President, I ask to have printed in the RECORD at the conclusion of my remarks that letter with the complete stockholdings.

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

(See exhibit 3.)

Mr. HOLLINGS. Mr. President, Mr. Arthur McCall, who testified, was his stockbroker. He was asked for a listing of all stock transactions of Judge Haynsworth.

Mr. President, I ask unanimous consent to have printed in the RECORD that listing of stock transactions.

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

(See exhibit 4.)

Mr. HOLLINGS. Mr. President, then, after we obtained a listing of all stockholdings—and it must be remembered that at the time he placed in the record of the Committee on the Judiciary his complete income tax returns for the years 1957 through the time of his nomination— we were then asked both orally and in writing two things by the Senator from Indiana. At that particular time, last Wednesday, before the Committee on the Judiciary, the Senator from Indiana said, we knew of five stocks where

it appears that the judge sat on particular cases while he held the stock where those parties were litigants. He was asked, "Give us the names of the five stocks and we will get a complete record." He said, "No, we will not do that. We will wait. We want the listing of all stocks. Before I tell you my five stocks, I want a listing of all stocks."

Now who is playing games with whom? We have been trying to get everything they want. It does not take just 1 or 2 hours to get a complete listing. Those other sheets were worked on for days to obtain as accurate and as complete a record as could be done in answer to the Senator's request.

On October 1, last Wednesday, the Senator from Indiana wrote to the chairman of the committee, the Senator from Mississippi (Mr. EASTLAND) as follows:

OCTOBER 1, 1969.

HON. JAMES O. EASTLAND,
Chairman, Judiciary Committee,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I appreciate your continued cooperation in our efforts to lay the Haynsworth matter to rest. In discussing what had transpired with Mr. Chrissos, I suggested that I would forthwith recount the information which I had requested. It seems to me that the following items are still of importance to conclude fully our deliberations:

(1) a chronological listing of ownership of all assets of Judge Haynsworth from the time he went on the bench to the present day.

(2) The financial records, including profit and loss statements of Carolina Vend-A-Matic from the time of its incorporation to the time of its merger with ARA.

(3) The records of Carolina Vend-A-Matic's profit sharing and pension plans.

This information, plus the tax records and Carolina Vend-a-Matic's minutes and other records presently available to the Committee, should be very helpful in enabling us to conclude our deliberation. I regret that this matter has taken so much of the Committee's time. However, I feel it is imperative that we be complete insofar as this matter is concerned.

Thank you again for your continued thoughtfulness and cooperation.

Sincerely,

BIRCH BAYH.

Mr. President, I reiterate that he has every right and duty, and we do not fault the request. What was requested was a chronological listing of all assets of the judge from the time he went on the bench. The chronological listing by years was furnished to the Committee on the Judiciary at 4 o'clock yesterday afternoon. Then, last night, from the release, it appeared some hanky-panky was going on. Somehow it was made to appear that there was a judge on the run and they could not get the information. On the contrary, there was the offer to place the stock in the hands of trustees, but these efforts are labeled "Haynsworth Deal."

In yesterday's Evening Star, Mary McGrory writes:

Senator Birch Bayh, D. Ind., retired over the week end with a new batch of financial records laboriously wrested from the Justice Department. He hopes to find in them the "just one more case" which could defeat the nomination of Judge Clement Haynsworth, Jr. to the Supreme Court.

Mr. President, I cannot help but read the next paragraph:

A number of Republicans secretly wished him good hunting.

I emphasize the words "laboriously wrested from the Justice Department." No one is trying to hide. I do not represent the Republican Department of Justice. I say only this. I checked upon reading this particular article. Yes, Judge Haynsworth has his cousin, Harry Haynsworth, helping him compile this information. He took it for what was requested in Senator BAYH's letter, a chronological listing. It appears now they want the time of every purchase and the date of every sale of every stock. Mr. Harry Haynsworth was trying to prepare the chronological listing. He could not obtain the fractional shares unless he got the information from the company, and he was working on that. He has made the compilation by getting every stock slip showing the date of sales and date of purchase, and that information is with the Committee on the Judiciary. No one is trying to hide information.

Some say he is a racist. A professor of law and associate dean of the University of Wisconsin Law School, Mr. G. W. Foster, who wrote the HEW guidelines which first appeared in 1965, said he is not. However, these things do not get into the newspapers.

Mr. President, now specifically I turn to the case of the *Brunswick Corp.* v. *J. C. Long*, 392 F. 2d 337 (1968). On November 10, 1967, the judge decided a case, in which he later bought a thousand shares of Brunswick.

Question: Did he violate the canon or the statute?

Well, obviously it was a mistake, a lapse of memory, and not a lapse of ethics. No one questions it. He is the most sensitive fellow in the world. The other day he was criticized for the way he talked on television. Everyone who knows him knows he stutters. It has been a handicap for him in his lifetime. But he is not insensitive. Everybody talks about the big profits he made, but they do not talk about the big loss of over a million dollars if he held onto the stock. In the Carolina Vend-A-Matic matter, Carolina Vend-A-Matic has never been in court. In spite of all the headlines in which that company is involved, it was not a party litigant.

Now, we are going through scenarios of a judge on the run. When he tries to do everything they want done it is said that there is a "deal." No one is having to pull teeth. All they have to do is ask me to get the information. I do not know who is in charge of this appointment. Certainly, I have not been. I would like to have been, but it is not mine.

Mr. President, I cannot fault the reaction of some of my Democratic colleagues who attack this nomination in an ethical and diplomatic way when a Republican President is out trying to get a Governor to run against you and you are running for reelection next year. Why should you view so kindly this appointment to the U.S. Supreme Court? Why should he search behind the headlines? If it appears a mess, fine business. We messed up with President Johnson and Justice Fortas. Why not help President Nixon mess up with Judge Haynsworth. That is the rule of the game. Unfortunately, rightly or wrongly, I understand that. That is exactly the way it is headed. They are looking only at the headlines. They will not listen to both sides of the case. They are trying to equate this, obviously, with the Fortas case.

I emphasize this difference.

It was said to Justice Fortas, "Well, Justice, you explain or resign," and he chose to resign.

Judge Haynsworth has chosen to explain everything there is.

Justice Fortas was charged with dealing with a person who was convicted by a Federal criminal court in America. That person we might call, crassly, a convict. I hate to be that way about it, but that is it. When asked about the deal on the $20,000 a year that Justice Fortas obtained from that particular convict family's foundation, he said, "I got the $20,000. I held it for a year. I then gave it back," but the agreement on the $20,000 was for life and then over to his wife's life all for the Justice to write about brotherhood.

Who believes that? I do not believe it to this day. I might be wrong.

But rather than explain the circumstances, Justice Fortas chose to resign.

The point is, it might look wrong or it might look questionable but each Senator has his duty to perform. There is no faulting anyone to say these things look questionable. But when we come to try to explain, do not give me this stuff that it is just like Justice Fortas' case. It was only this year that he refused to explain. He chose rather to resign.

No one is asking Judge Haynsworth to resign.

They are having a game with this case. I am getting a little worn watching them play this game, especially with the headlines.

I want to mention one particular item which does give a meritorious difference between a judge's duty and a judge's discretion, because, Mr. President, we get right down to a matter that concerns me.

They say, "We will reveal this and that—we have got some five cases. We know about the five cases but are not telling you until you give us a list." Maybe, as Mary McGrory says, they can find one more. Last night, they mentioned one on the radio.

They supposedly discovered this Grace Line case. The fact is, however, that on September 24, 1969, Irving Abramson, who is the general counsel for the IUE of the AFL–CIO, stated before the Committee on Judiciary, that Judge Haynsworth owned some stock in the Grace Line Co., and that he decided a case in *Farrow* v. *Grace Line Inc.*, 381 F. 2d 380 (1967); and that he decided this for the Grace Line. This case brings into sharp focus exactly what I have in mind.

What was the Grace Line case and what was the judge's duty?

I have tried many personal injury cases. The Grace Line case involved the doctrine of unseaworthiness and the ab-

sence of liability. How much? Farrow, the plaintiff seaman, injured his wrist when a fellow seaman dropped one end of a ladder that two men were carrying. As a result, he was put for a time on light work and while on light work he received his regular wages. He claimed that he did not want to be on light work because otherwise he would have received overtime which was additional compensation which would have been payable.

He also claimed compensation for pain in the wrist while on the light work schedule. In any event, he was denied all liability. There was a jury trial. The jury found for $15.12. Think of it—$15.12.

Now, Mr. President, Judge Haynsworth owned 300 shares out of approximately 18 million shares of the W. R. Grace and Co. which, for the record, is part of the Grace Line, Inc., a wholly owned subsidiary of the W. R. Grace and Co., and holding company of the parent company. He owned 300 of some 18 million shares.

The trial judge increased it to $50 and when appealed to the court there was a per curiam decision in which Judge Haynsworth participated.

I read as follows:

[James Lee Farrow v. Grace Lines, Inc. 381 F. 2d 380 (1967)]

PER CURIAM

We think the District Court was well within its discretionary authority in refusing to set aside the verdict of the injury on the ground of inadequacy. The amount of the verdict was small, but well within the range permitted by the testimony.

Affirmed.

That was all that was held.

Now, was it a violation, Mr. President, of law or of ethics for Judge Haynsworth to have sat on that particular case?

That is the question.

Under the particular law we, as Members of Congress, have it within our power to legislate and we give the judge discretion and put in subjective language, like the word "substantial."

I shall not read the entire statute, but it is title 28, 455 of the United States Code, 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 . . . 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.

We put in there the word "substantial." And then we ask that he make a determination "in his opinion." We put that burden on the judge, with a similar burden of sitting on cases to ensure random panels in the appellate jurisdiction of the full circuit court of appeals, which is an important task for a judge.

As chief judge, Judge Haynsworth must make sure that the selection is random, so he has this duty on random panels conflicting to some extent with the other duty. He has to test each time "in his opinion" whether it is "substantial." In the Grace Line case he had a $50 case in front of him. Knowing it is going to be per curiam, he says, "It is not substantial." "I do not have any interest in it." It really does not affect the leading decision. The leading decision on a subsidiary is a California case which states:

Where a judge owns stock in a corporation which in turn owns or controls the stock of a party litigant, disqualification is not required, according to the principal case in the field. *Central Pacific Railway Co.* v. *Superior Court*, 211 Calif. 706, 296 Pacific 883 (1931).

Now, Mr. President, in fairness to the Senator from Indiana (Mr. BAYH) and his concern, there is the canon involved as well as the statute. The canon involved is contained in the Canons of Judicial Ethics of the American Bar Association. Canon 26 reads:

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 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. 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.

But we go right down and we take that particular canon in connection with a decision or opinion of 30 years ago, in which the American Bar Association states:

A judge who is a stockholder in a corporation which is a party to litigation pending in his court may not, with propriety, perform any act in relation to such litigation involving the exercise of judicial discretion.

Is that binding or is that controlling, or is it not?

Obviously, Congress has said, "You have got to determine whether or not there is a substantial interest. You have got to determine it in your opinion, the basis of disqualification."

Let me say a word about Prof. John P. Frank. Professor Frank in his letter to the chairman of the Judiciary Committee, concerning the Carolina Vend-A-Matic matter, said:

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.

Mr. President, I ask unanimous consent to have printed in the RECORD the entire letter written by Professor Frank to the chairman of the committee (Mr. EASTLAND).

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

LEWIS, ROCA, BEAUCHAMP, & LINTON,
Phoenix, Ariz., September 3, 1969.

Hon. JAMES O. EASTLAND,
Senate Office Building,
Washington, D.C.

DEAR SENATOR EASTLAND: I respond to your request for an opinion as to whether Judge Clement Haynsworth might properly have disqualified himself in the case of *NLRB* v. *Darlington Mfg. Co.*, 325 F.2d 682 (4th Cir. 1963).

You make this inquiry while Judge Haynsworth's appointment to the Supreme Court is pending before your Committee because of my article, *Disqualification of Judges*, 56 *Yale L. J.* 605 (1947), which is, so far as I know, still the most comprehensive report on both law and actual practice in that field; the article includes a questionnaire survey of all federal, circuit and state supreme courts. Attached is a personal identification sheet, but a brief notation of points of view may be relevant here, and I append it in the note.[1]

I turn now to the precise matter.

QUESTION PRESENTED

Might Judge Haynsworth properly have disqualified in the *Darlington* case?

ANSWER

No; it would have been unsound practice to do so.

DISCUSSION

A. Facts

Deering Milliken Company in the early 1960's was a largely Milliken family-held textile selling house. It was also what can be loosely called a holding company, owning or dominating 17 textile manufacturers which had 27 plants. One of those plants was Darlington Manufacturing Company, in which the Deering Milliken group held a majority, but by no means all of the stock. Darlington fell into conflict with the Textile Workers Union in 1956 and went out of business. The broad legal question was whether Darlington had committed unfair labor practices, and if so, whether Deering Milliken should be held financially responsible.

Judge Haynsworth, when the matter reached his Court was a substantial stockholder in Carolina Vend-A-Matic Co., a vending machine company which sold coffee and other refreshments. This company had "locations" in many places, including three of the twenty-seven Deering Milliken affiliates. The locations were obtained by competitive bidding. Deering Milliken did not pay Vend-A-Matic to come to the premises—Vend-A-Matic paid a premium to Deering Milliken, if anything was paid. It had nothing to do with Darlington. Revenues from those plants amounted to about three per cent of the vending company's income.

When the case came before the Fourth Circuit Court of Appeals, the judges concluded that its importance warranted hearing by all of the five Circuits Judges, of whom Judge Haynsworth was one. The Court decided three to two that there was no unfair labor practice, with Judge Haynsworth in the majority. Hence, it never reached the question of whether Deering Milliken was chargeable with the cost. The Supreme Court held that there might have been an unfair labor practice, depending upon facts which were not in the record, and

Footnotes at end of article.

that the Labor Board's opinion was not comprehensive enough to cover the case. It therefore vacated the decision of the Court of Appeals with instruction to send the case back to the Labor Board for further proceedings. On this remand, the Board found unfair labor practices and the Court of Appeals, Judge Haynsworth concurring specially, enforced the order. 397 F. 2d 760 (1968).

In late 1963, the Textile Workers Union of America, on the basis of an anonymous telephone call received by it, forwarded an allegation to Judge Sobeloff, the Chief Judge of the Fourth Circuit, charging improper inducements by Deering Milliken to Judge Haynsworth. Judge Haynsworth asked for a full-scale investigation and consideration, both by the Circuit Judges and the Department of Justice. On February 6, 1964, the Union, after the investigation, withdrew its complaint with warm apologies. The Court of Appeals Judges, after independent investigation, concluded that there was "no warrant whatever" for the charge; and Attorney General Kennedy expressed his "complete confidence" in Judge Haynsworth.

B. Question

Clearly, if there were any basis whatsoever for the anonymous suggestion of improper inducement, Judge Haynsworth would not be considered for any post. But there is not, and we put the call aside as one of those unhappy prices which judges must sometimes pay for the vexation of disappointed litigants.

There remains, however, the question presented in your letter to me as to whether Judge Haynsworth should have disqualified himself in the case.

C. General principles of disqualification

Disqualification is a term generally applied to the process or result by which a judge disengages from participation in a particular case which he would otherwise hear. There is a technical distinction between disqualification or exclusion by force of law, and recusation, or withdrawal at the judge's discretion, but the latter term is now largely obsolete, and I put it aside.[2]

There are two sources of the law of disqualification. The first is the common law. The second is the statutes. But these are to some extent overlaid by the constitutional conception of due process. That is to say, some kinds of disqualification are so absolutely basic that justice would be altogether denied if a judge were allowed to participate in a case. This amounts to what might be regarded as the inner core of disqualification. Surrounding that inner core are the group of further restrictions which are not constitutional, but are simply refinements. Illustrative of the constitutional inner core is the famous case of Dr. Bonham,[3] in which Lord Coke said that not even an Act of Parliament can allow a judge to retain a fine which he levies; the case illustrates the axiom that "No man shall be a judge in his own case."[4] The Bonham principle was followed in 1927, when the Supreme Court held that a judge could not hear a case in which he received a portion of the fine which he might levy.[5] The guiding due process principle was restated by the Supreme Court when it said:

"A fair trial in a fair tribunal is a basic requirement of due process . . . 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."[6]

At common law, a judge could be disqualified only for interest. This has expanded by decision and statute to cover today three grounds of disqualification—interest, relationship, and bias. Speaking generally for a moment, interest is a personal involvement in the result, as if the judge had an interest in a property being foreclosed. Relationship is a family connection with a party, or perhaps an attorney. Bias is a hostility to a party, as a long personal enmity.[7]

Clearly, those are broad terms, and can take meaning only in concrete cases. Before coming directly to the federal practice, we observe in the country as a whole two conflicting currents on disqualification. In some states, disqualification is easy; in my own, *e.g.*, one may have one change of judge almost for the asking. A simple affidavit will do it. In others, disqualification is hard—one must squarely show interest, relationship, or bias or keep the judge he has.

The federal practice tends to the latter view. Originating in a period of few judges, perhaps one in a state, where disqualification might well mean long delay, casual disqualification was not much welcomed. This is reflected in the two federal statutes:

1. 28 U.S.C. § 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."

2. 28 U.S.C. § 144: "Bias or prejudice of judge.

"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. . . ." (Remainder immaterial).

One other important generalization. Particularly in the federal practice, the judge has an *equal* duty to disqualify when he should and to sit when he should. "It is a judges' 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; *Edwards* v. *United States*, 334 F. 2d 360, 362, n. 2 (5th Cir. 1964) a case in which the judge clearly regretted that he could not withdraw. This is the general federal view.[8]

D. This case

If Judge Haynsworth were to have disqualified in this case, it would necessarily have been for interest. That is to say, there is no conceivable question of relationship or bias, apart from interest, as those terms are used in the law.[9] We must therefore give close attention to the concept of interest as it exists in disqualification cases.

This permits a sharpening of the general question: Under what circumstances, if any, must a shareholder of a company which has business dealings with a party, disqualify from hearing a case involving that party? For the sake of brevity, we may reach the answer with a series of numbered paragraphs:

1. 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.

2. Where the judge has an interest in a non-party, however, the rules are entirely different. This is a necessary concession both to common sense and to the practicalities of modern life. As was noted by an English court in 1572 dealing with the subject of disqualification for relationship. "All the inhabitants of the earth are descended from Adam and Eve, and so are cousins of one another," but "the further removed blood is, the more cool it is."[11] Lines must be drawn somewhere.

Thus at common law, a judge might have disqualified in a case involving taxes in an area in which he paid. But this is not the modern view.[12]

In these non-party cases, the rule of disqualification which has developed is a test of immediacy or remoteness of the interest. The interest must be direct, proximate, inherent in the instant event, and affected by the direct outcome of the particular case.[13] It must be direct, real and certain, and not incidental, remote, contingent, or possible.[14] The interest contemplated is a "pecuniary or beneficial interest" in the case,[15] with equal attention both to the benefit and to its connection with the particular case.[16]

Some cases push this to the point of saying that in order to be disqualified for interest in these third party situations, the judge must be capable of being made an actual party to the case, but this is not the better view, which is that it is sufficient if he has a proprietary interest in the actual result of the actual case.[17]

3. Coming then squarely to the problem of judges who in some manner have financial relations with a party, the question may arise when the judge is connected with a supplier, as here; or in some other fashion is or is connected with a creditor or debtor of the party. These problems have been solved as the foregoing principles clearly foreshadow. If the interest of the judge as creditor or debtor or supplier will in any way be affected by the case, then he must disqualify. Otherwise, he should not. For example, when there is a dispute over a corporate election in Corporation *A*, which in turn has a large claim against Corporation *B*, in which the judge is a shareholder, the judge was held disqualified to pass on the election because he would in effect be choosing who was to be in control of a lawsuit against him.[18] Similarly, where a judge is a stockholder in a bank which is a creditor of plaintiff for a substantial amount, and plaintiff is dependent upon a judgment in the particular case to pay the bank, the judge was disqualified. *Jones v. American Cent. Insurance Co.*, 83 Kan. 44, 109 P. 1077 (1910); and note opposite result where judge is creditor but will not be affected by the result, *Dial v. Martin*, 37 S.W. 2d 166 (Tex. Civ. App. 1931). On the other hand, where there is no direct effect in any meaningful way, the judge is not disqualified. Thus a judge who is a stockholder in a bank which is restrained as a stakeholder but will not be affected by the final outcome was not disqualified.[19]

The Supreme Court of Michigan has emphatically rejected a view that a judge who is a shareholder of a creditor of a party, even on a substantial obligation, is disqualified in the absence of a showing of some direct and precise benefit to the creditor from the case; a suggestion to the contrary is said to have "no foundation in reason."[20]

A leading case very close to the instant situation is *Webb* v. *Town of Eutaw*, 9 Ala. App. 474, 63 So. 687 (1913), in which the judge was a stockholder in a bank to which a party was indebted. The Court, in holding no disqualification, laid down the guiding rule that the mere existence of "a business relation with one of the parties to it is to be regarded as too remote or contingent to constitute a ground of disqualification." The disqualification will exist only where the corporate creditor or the judge who is a stockholder in it "has such a direct and immediate interest in the result of the suit" as to be disqualified.[21]

4. The principles just outlined are codified in the controlling federal statute, 28 U.S.C. § 455; the judge is disqualified "in any case in which he has a substantial interest." This requires a substantiality of interest in the particular case.[22]

Footnotes at end of article.

CONCLUSION

A judge with an interest in a third party which in turn has business relations with a party to a case is not disqualified for interest unless somehow the case directly affects the third party. Any contrary result would lead to impossible consequences. If, hypothetically, a judge owned stock in a major automobile company, he would be disqualified from hearing auto accident cases if a party happened to be a regular purchaser of cars manufactured by "his" concern. In the present case, the issue was a determination of an unfair labor practice involving a subsidiary of a large concern which had no connection except common ancestry with other plants with which Vend-A-Matic did business. Vend-A-Matic's locations were obtained by competitive bidding. It did its business not with Deering Milliken except as it paid for the privilege of installing machines, but with its employees. The proportion of its revenue from this source was slight. There was no issue in the case which related even in the remotest or most fanciful degree to coffee and food distribution by Vend-A-Matic. A review of all of the reported cases on disqualification in the United States shows no instance in which a judge has ever disqualified in circumstances in any way similar to those here.

In the instant case, it was necessary to have all of the judges of the Circuit participate; it was an *en banc* determination. Had Judge Haynsworth not participated, the Court would have been unable to decide the case at all. But regardless of that circumstance, since he 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. 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 re Union Leader Corp.*, 292 F. 2d 381, 391 (1st Cir. 1961), *cert. denied*, 368 U.S. 927 (1961).

Yours very truly,

JOHN P. FRANK.

FOOTNOTES

[1] 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*, 399 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.

[2] This was a meaningful distinction in the federal system prior to 1949, when the applicable statute applied only to district judges and not to appellate judges; the appellate judges then frequently applied the statute to themselves. The adoption of 28 U.S.C. § 455 in that year as a general disqualification statute applicable to all judges makes this term of no consequence now. For discussion of these distinctions between House Judiciary Chairman Hobbs and Chief Justice Stone, see *A. Mason, Harlan Fiske Stone* 702–03 (New York: The Viking Press, 1956).

[3] 8 Co. 107a, 77 Eng. Rep. 638 (K.B. 1608).

[4] Co. Litt. 141a.

[5] *Tumey v. Ohio*, 273 U.S. 510 (1927).

[6] *In re Murchison*, 349 U.S. 133, 136 (1955).

[7] For development of these generalizations, see my article.

[8] See *Wolfson v. Palmieri*, 396 F. 2d 121 (2d Cir. 1968); *United States v. Hoffa*, 382 F. 2d 856 (6th Cir. 1967); *In re Union Leader Corp.*, 292 F. 2d 381, 391 (1st Cir. 1961), *cert. denied*, 368 U.S. 927 (1961)

[9] We may for other reasons put side 28 U.S.C. § 144; not only does it relate only to district courts, but it requires an affidavit procedure, and it is restricted to bias.

[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 are some refinements 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 own article at 56 *Yale L. J.* 605, 637 (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).

[11] *Vernon v. Manners*, 2 Plowden 425, 75 Eng. Rep. 639 (K.B. 1572).

[12] My article shows no judges disqualifying because they are taxpayers, and only two areas in which they disqualified because they would be affected by public utility rates.

[13] *Goodspeed v. Great Western Power Co. of California*, 19 Cal. App. 2d 435, 65 P. 2d 1342, 1345 (1937).

[14] See cases collected at 48 *C.J.S. Judges* at 1048.

[15] *United States* v. *Bell*, 351 F. 2d 668, 878 (6th Cir. 1965); *Edwardson* v. *State*, 243 Md. 131, 220 A. 2d 547 (1966).

[16] *Beasley* v. *Burt*, 201 Ga. 144, 39 S.E. 2d 51 (1946).

[17] *Hall* v. *Superior Court*, 198 Cal. 373, 245 P. 614 (1926) (judge owns property in an irrigation district immediately involved in litigation); for a view requiring a party capacity, see another California case, *Central Pac. Ry. Co.* v. *Superior Court*, 211 Cal. 706, 296 P. 883, 888–89 (1931). The proper test is whether the third party has a "present proprietary interest in the subject matter." *City of Vallejo* v. *Superior Court*, 199 Cal. 406, 249 P. 1064 (1926). If so, the judge is disqualified or worse. In Anonymous, 1 Salk. 396, 91 Eng. Rep. 343 (K.B. 1698), the judge was "laid by the heels" for sitting in an ejectment case when he was lessor of the plaintiff.

[18] *Bentley* v. *Lucky Friday Extension Mining Co.*, 70 Idaho 511, 223 P.2d 947 (1950).

[19] *Adams* v. *McGehee*, 211 Ga. 496, 86 S.E.2d 525 (1955).

[20] *In re Farber*, 260 Mich. 652, 245 N.W. 793, 795 (1932).

[21] *Id.* at 666. The same problem arises when municipal bodies are called upon to award contracts for public works, and it is frequently held that the mere fact that a municipal officer is a shareholder in a supplier of a contractor is not a disqualification; *O'Neill v. Town of Auburn*, 76 Wash. 207, 135 P. 1000 (1913).

[22] As is said of a third-party involvement under an earlier form of the statute, where the judge as shareholder of a creditor was wholly unaffected by the case, the interest to disqualify may be "so slight or inconsequential that the rights of the parties would be best subserved by his proceeding . . ." *Utz & Dunn Co. v. Regulator Co.*, 213 F. 315, 318 (8th Cir. 1914).

BIOGRAPHICAL DATA OF JOHN P. FRANK

John P. Frank, lawyer and author, was born in Appleton, Wisconsin, in 1917, and received his B.A., M.A. and LL.B. at the University of Wisconsin and his J.S.D. from Yale University. He has held various governmental positions, having been law clerk to Mr. Justice Hugo L. Black at this October, 1942, Term, and having served as an assistant to Secretary of Interior Ickes and as a special Assistant in the Department of Justice under Attorney General Biddle.

Mr. Frank taught law from 1946 to 1954 at Indiana and Yale Universities, specializing in constitutional law, legal history, and procedure, and has been a visiting professor at the University of Washington and the University of Arizona. From 1954 to the present, he has been a member of the firm of Lewis Roca Beauchamp & Linton in Phoenix, Arizona.

Mr. Frank is the author or editor of nine books, largely on legal subjects. These include *Marble Palace* and *The Warren Court*, books on the United States Supreme Court; *Lincoln as a Lawyer;* and *Justice Daniel Dissenting*, a biography of a nineteenth century Supreme Court Justice. His lectures at the opening of the Earl Warren Legal Center at the University of California will shortly be published under the name of *American Law: The Case for Radical Reform.*

Mr. Frank is a member of the Advisory Committee on Civil Procedure of the Judicial Conference of the United States. He is also the author of numerous articles in legal and popular magazines, including *Fortune, Redbook, Reader's Digest*, and others.

Mr. HOLLINGS. He says, at the very beginning, in talking of the duty of a judge to sit:

One other important generalization. Particularly in the federal practice, the judge has an equal duty to disqualify when he should and to sit when he should. "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; *Edwards* v. *United States*, 334 F. 2d 860, 862, n. 2 (5th Cir. 1964) a case in which the judge clearly regretted that he could not withdraw. This is the general federal view.

He goes on and finalizes the entire opinion, and Professor Frank states:

In the instant case, it was necessary to have all of the judges of the Circuit participate; it was an *en banc* determination. Had Judge Haynsworth not participated, the Court would have been unable to decide the case at all. But regardless of that circumstance, since he 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.* 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 re Union Leader Corp.*, 292 F. 2d 381, 391 (1st Cir. 1961), *cert. denied*, 368 U.S. 927 (1961).

I will just read the one on ethics, in which he said:

In the Darlington case, it was his plain responsibility to participate, and he would have shirked his duty if he had not done so.

How many Senators have heard that? In the Darlington case, which the smear is all about, this eminent authority says that if he had not participated, he would have shirked his duty. He says the judge shall sit in such a case. He says there is

"as much obligation upon a judge not to recuse when there is no occasion as there is for him to do so when there is."

I understand further inquiry has been made of this gentleman with respect to the matter of the case——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HOLLINGS. Mr. President, I ask unanimous consent to have an additional 10 minutes.

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

Mr. HOLLINGS. By the way, Judge Frank's opinion was concurred in by Judge Lawrence Walsh, chairman of the American Bar Association, who has the following background:

I have been admitted to the bar of New York since 1936, the bar of the Supreme Court since, well, 1950. I have been assistant district attorney and counsel to the Governor of New York, counsel to and director of the New York-Waterfront Commission, New York Harbor. I have been a Federal judge deputy attorney general of the United States.

He now represents the U.S. Government in the negotiations in Paris.

Judge Walsh was chairman of the particular American Bar Association group which examined Judge Haynsworth's qualifications, opinions, and everything else. I quote from Judge Walsh with reference to the Darlington case:

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.

They come back to that same conclusion. So it is not one particular man's opinion. This is the general, prevailing authority. In fact, Judge Frank says that if there is authority otherwise, he wishes that they would please point it out for him.

Let us go specifically to the matter of the Grace Line.

S. 2994—INTRODUCTION OF A BILL PROVIDING A JUDGE SHALL ABSTAIN FROM PARTICIPATION IN ANY CASE INVOLVING A PARTY LITIGANT IN WHICH HE HAS ANY INVESTMENT

Mr. HOLLINGS. Mr. President, I introduce a bill at this time and ask that it be referred.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 2994), to amend title 28, section 455, United States Code, introduced by Mr. HOLLINGS, was received, read twice by its title, and referred to the Committee on the Judiciary.

Mr. HOLLINGS. I should like to read the bill, since it is short:

That Title 28, Section 455, U.S. 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."

Obviously, the thrust of the introduction of this bill is to bring into focus the particular provision of the statute with reference to which Judge Haynsworth would be called back and asked about the Grace Co. case, in which he participated in the per curiam decision. Ipso facto, the question would be whether it was his duty to sit. He would have sat because he would have said, "It was my duty. I would not have been doing my my duty if I had not sat." That is all opposed to the argument that he was insensitive; that he has no regard for his duty. He does have regard for his duty.

The question is one of judicial authority, rather than monetary interest. It is a question of persuasion; whether legally the judge should sit or whether it bars him from coming before the court. The main thing is that the judge has been adhering to the statute in this case. He has been adhering to the ethic.

In the testimony of Judge Frank he states that, with respect to the statute involved and the canon involved, the question raised by the Senator from Indiana (Mr. BAYH) and others, there is no conflict at all, and he has adhered to the particular statute involved with the effect that the judge did not violate the canon.

But I am sure Senators have not had that language read to them from that particular part of his testimony. And I ask unanimous consent to insert an excerpt of his testimony in the RECORD at this point.

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

Mr. FRANK. Because I did not deal with the Canons. Because I think for purposes of the Federal courts they are simply immaterial. They merely are reflective of, in this highly general language of, what is in the Code anyway, and the rule for the Federal judges is adequately, I think, covered by the statutes and the cases and I don't think the Canons really add anything other than a confirming note or echo.

Mr. HOLLINGS. The point is that when asked by Senator BAYH, "What about the canon?" he said:

The ethic and the statute are consonant. The statute is no more than a clear enunciation of the ethic and the duties that the court has and that the judge has.

In my judgment, he had a particular duty, and there has been no violation of that particular part of the canons of ethics.

There is a feeling in this body—and I know, because I have been talking with Senators—that if you own a share of stock, you ought to disqualify yourself.

Mr. President, the judiciary does not know that. They point to the California case and to the cases by Judge Frank, holding that they have a duty to sit. I want to clarify that, and if the Senator from Indiana wishes to join me as a cosponsor, fine; let us tell the judge exactly what he is expected to do.

To me, this situation is very much like that of the young fellow who went to the psychiatrist, who, in attempting to analyze his problem, drew a circle and asked the young man, "What does that make you think of?"

"Sex," he responded.

The psychiatrist drew a line, and asked the same question.

Again he said, "Sex."

Then the psychiatrist drew a cross, and the young man again replied, "Sex."

Thereupon the psychiatrist turned to him and said: "You have got the most depraved mind I ever saw. All you ever think about is sex."

To which the young man replied: "Who is filthy minded? You are the one drawing the dirty pictures."

Mr. President, who has provided the statute? This body and the House next door, the Congress, with the signature of the President thereon. When a judge adheres to the statute, we say, "By gosh, you are insensitive." We say, "You violated the canons of ethics." We say, "You violated the statute."

Mr. President, that is not the case at all, because the authors, those who have dealt with it—and there is no more eminent authority on judicial disqualification than John P. Frank—in accordance with the decisions of the courts, and with that 30-year-old decision by the American Bar Association, have all held that Judge Haynsworth is in obedience, and that he is not insensitive. He has had a large holding; but we have never said they could not have holdings in stocks.

He is not involved in honorariums. He is not involved in receiving fees, through his clients or through educational institutions. He is not involved with foundations. He is not practicing law while still on the bench. He has made an error in the Brunswick case, but no one says that is really a breach of ethics; it is more a lapse of memory.

By this long, drawn-out proceeding, we cannot get at the facts. We have got to extract it from the hearsay and the rumor, first that they have withdrawn his name, or he has asked that it be withdrawn.

Mr. President, I say that does not provide the answer, nor comport with the dignity of the most deliberative governmental body in this world.

EXHIBIT 1

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.

EXHIBIT 2

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 the 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 covering 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 distanct * * *" [*Spector Motor Service* v. *Wash*, 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 of 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 "comtemptuous and punishable as such" since they had violated no court order in distributing the funds. [*Griffin* 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], hut 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 increasingly 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*, 387 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, hut 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 parrotted." [*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" [*Cross & 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*, 337 F.2d 579, 593 (4th Cir. 1964), *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 extermely 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. *Virginian 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 [*Bruton* 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 620 (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*, 282 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 ehould 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, 1066 (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 defendants 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 they 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 be 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 the 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*, 336 F.2d 491 (4th Cir. 1964).] He has 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, an 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*, 397 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 force 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 nor 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 it. 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 expressions 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 Alstyne, 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 suspensions 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 States 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 (5th 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 outweighted 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 furtber 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 tbe 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 begin. 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.

EXHIBIT 3

U.S. COURT OF APPEALS,
FOURTH JUDICIAL CIRCUIT,
Greenville, S.C., September 6, 1969.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, Washington, D.C.

MY DEAR SENATOR: I have received by telephone this morning a copy of the letter addressed to you on yesterday by Senator Hart and Senator Tydings.

To the extent the requested information has relevance, I believe that the requested information is already in your possession in the statement I have filed with you, in the file delivered to you by the Department of Justice, and in the copies of my income tax returns. However, I shall address myself to the Senators' request as best I can.

(1) My financial interest in Carolina Vend-A-Matic and its subsidiaries from 1957 to 1964 is fully detailed in the statement I have previously filed. I never received any compensation from Carolina Vend-A-Matic or any of its subsidiaries as an officer or as a trustee of any profit sharing or retirement plan. I did receive compensation from Carolina Vend-A-Matic as a director, and in 1962 my wife received compensation as Secretary. These receipts for the period 1957–1964 are fully disclosed in the copies of the income tax returns filed with you. Since those returns are unavailable to me now, I cannot compile a schedule of those receipts here, but I am sure the staff of your Committee can do so from the tax returns.

(2) I believe the statement previously filed discloses the general nature of my services for Carolina Vend-A-Matic. In supplementa-

tion of that statement, however, I may report that there was a weekly luncheon meeting of the board of directors. I attended these meetings when I was in Greenville and not otherwise engaged. At these extremely informal meetings, we considered and discussed weekly cash flow data and problems of financing which were my particular concern. From time to time there were also discussions of personnel and other problems, though I never became directly involved in any of them. After I went on the court I may have handled matters of the renewal and extension of bank credit, though I am not at all certain that I did so. Mr. Dennis handled all arrangements with the bank beginning shortly after his employment.

I rendered no other services to Carolina Vend-A-Matic.

(3) A complete list of the locations of vending machines of Carolina Venda-A-Matic and its subsidiaries and the gross receipts from the machines in each location for the years 1957–1964 could be compiled only from the original books of record of Carolina Vend-A-Matic and its subsidiaries. Those books are in the possession of ARA in Philadelphia, Pennsylvania. I believe it would permit an accountant to have access to them if the Committee wishes it, but such information is not in my capacity to supply immediately.

The file compiled by Judge Sobeloff contains a copy of the proposal made by Carolina Vend-A-Matic to Drayton Mill in December 1963. It contains a list of the forty-six industrial plants in which Carolina Vend-A-Matic then had vending machines installed. These were all full food service operations, in addition to which Carolina Vend-A-Matic had many machines in numerous locations dispensing only coffee, cold drinks or candy. For your convenience, I can reproduce here the list of forty-six industrial plants in which Carolina Vend-A-Matic provided full food vending service in December 1963:

1. Apalache Plant, Greer.
2. Bloomsburg Mill, Abbeville.
3. Brandon Rayon, Greenville.
4. Buffalo Mill, Union.
5. Carlisle Finishing Co., Union.
6. Central Mill, Central.
7. Columbia Nitrogen Corp., Augusta, Ga.
8. Consolidated Trim Co., Union.
9. Delta Finishing Co., Cheraw.
10. Diehl Manufacturing Co., Pickens.
11. Dunlop Corp., Westminster.
12. Firth Carpet Co., Laurens.
13. Fork Shoals Mill, Fork Shoals.
14. F. W. Poe Manufacturing Co., Greenville.
15. Gayley Mill, Marietta.
16. Greer Mill, Greer.
17. Her Majesty Manufacturing Co., Mauldin.
18. Homelite, Greer.
19. James Fabrics, Cheraw.
20. Jeffrey Manufacturing Co., Belton.
21. Jonesville Mills, Jonesville.
22. Magnolia Finishing Plant, Blacksburg.
23. Monaghan Mill, Greenville.
24. Mohasco Industries, Liberty.
25. Morgan Mills, Inc., Laurinburg, N.C.
26. Oak River Mill, Bennettsville.
27. Owens-Corning Fiberglas Corp., Aiken.
28. Piedmont Mill, Piedmont.
29. Pickens Mill, Pickens.
30. Pratt Reed, Central.
31. Procter & Gamble Mfg. Co., Augusta, Ga.
32. Pyle National, Aiken.
33. Rocky River Mill, Calhoun Falls.
34. Runnymede Corp., Pickens.
35. Sangamo Electrical Co., Pickens.
36. Sangamo Electrical Co., Walhalla.
37. S.C.M. Corp., Orangeburg.
38. Selma Hosiery, Dillon.
39. Shuron Optical Co., Barnwell.
40. Southern Weaving Co., Greenville.
41. Torrington, Walhalla.
42. Torrington-Clinton Bearing Div., Clinton.
43. Union Bleachery, Greenville.
44. Union Mill, Union.
45. Victor Mill, Greer.
46. Woodside Mill, Liberty.

(4) I am unable to supply a complete answer to question No. 4 for the same reason I am unable to supply a complete answer to question No. 3. However, I do have audited statements of Carolina Vend-A-Matic and its subsidiaries for the years 1961, 1962 and 1963, which I enclose. The file developed by Judge Soberloff discloses that the gross receipts from the machines located in Gayley Mill and the Jonesville Products plant, both Deering Milliken affiliated, approximated $50,000 annually. Those machines were in place in those two plants in each of the years 1961 through 1963. The enclosed audited financial statements show gross sales in 1961 of $1,690,698 and in 1962 of $2,546,046. It thus appears that the gross receipts from machines in plants affiliated with Deering Milliken amounted to slightly less than three per cent of total sales in 1961, and to less than two per cent of total sales in 1962.

The estimated annual gross receipts from machines placed in Magnolia Finishing Plant were approximately $50,000. The gross receipts from the three Deering Milliken affiliated plants, therefore, approximate $100,000 annually. The machines in Magnolia Finishing Plant were in place during part of 1963 only and, without access to the original books of account, I cannot estimate the proportion of sales from machines in those three plants to total sales in that year. Had Magnolia Finishing Plant been in operation during the whole of 1963 and Carolina Vend-A-Matic's machines had been in place during the whole of that year, however, the sales in the three Deering Milliken affiliated plants would have been slightly more than three per cent of the total gross sales of $3,155,102.

(5) Carolina Vend-A-Matic never had vending machines in Darlington Manufacturing Company and, so far as I know, never had any business relation whatever with it.

(6) I cannot say that I never heard prior to December 1963 that Carolina Vend-A-Matic had vending machines in Gayley Mill, in Jonesville Products or in Magnolia Finishing Plant. From time to time there were references to such matters at the luncheon meetings of the directors, and I may have heard some reference to one, two, or all three. 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. Nor, if I had heard that Carolina Vend-A-Matic had vending machines in those three plants, or any of them, can I say that I knew that any one of those plants was related to Deering Milliken. In the Deering Milliken group, there were some seventeen manufacturing corporations in which Deering Milliken, and/or individuals associated with Deering Milliken, owned all or a majority of the stock. (See Darlington Manufacturing Company v. NLRB, 325 F. 2d 682, 688, 397 F. 2d 760, 764.) I can only say now that when I participated in the hearing and decision of the Darlington case in 1963, I had no conscious awareness of any business relation between Carolina Vend-A-Matic and Deering Milliken affiliates, though, of course, I knew that Carolina Vend-A-Matic had vending machines in a miscellany of manufacturing plants.

Had I known in 1963, however, that Carolina Vend-A-Matic had vending machines in Gayley Mill, Jonesville Products and Magnolia Finishing Plant and that they were Deering Milliken affiliates, I would not have requested Chief Judge Sobeloff to relieve me of the duty of sitting. A judge has a duty to disqualify himself when there is legal disqualification, but he has an obligation to perform his judicial duty when there is no legal disqualification. 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. (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. Thus instances may be found in the books in which judges of the Fourth Circuit owning 100 shares or so of General Motors may be found to have sat in a case involving General Motors. It seems to us inconceivable that any judge of the Fourth Circuit would be influenced by any such interest, and the lawyers involved, when the question has arisen, have not thought so.)

Disqualification is disruptive, however. If a district judge in a small district should refrain from participation in any case in which he conceivably might have a remote interest, or in which friends have an immediate, even an emotional interest, the efficiency of the judicial machinery would be gravely impaired. In a court of appeals it would adversely affect the random selection of panels, for it requires deliberate rearrangement which affects not only the one case involved, but others as well. It is administratively disruptive, and it can cast heavy and uneven burdens upon judges called upon to substitute. In an en banc case 28 U.S.C. § 46(c) requires the participation of every judge of the court in active service who is is not disqualified; declination of an active, qualified judge to sit would appear to be a violation of the statute and its purpose. In *Edward* v. *United States*, 5 Cir., 334 F.2d 360, 362–3, Judge Rives, somewhat regretfully, concluded after reviewing all of the considerations, "In the absence of a valid legal reason, I have no right to disqualify myself and must sit."

(7) This morning I contacted by telephone Mr. Lee P. Driscoll, Jr. of Philadelphia, Pennsylvania, who has possession of the minute books of Carolina Vend-A-Matic and its subsidiaries. He agreed to procure copies of all of the minutes and to transmit them to you. Meanwhile, I received this morning from him extracts from the minute books of Carolina Vend-A-Matic and its subsidiaries showing their officers and directors. For the possible convenience of the Committee, these sheets are attached.

(8) The sources and amounts of my income from 1957 through 1968 are fully disclosed in the copies of my income tax returns which have been filed with you. Without present access to them, I am unable to prepare schedules which would recapitulate that information. I have prepared and I attach hereto a list of my current investments.

(9) I am informed that since my sale of the stock of ARA received in exchange for my stock in Carolina Vend-A-Matic;

(i) Carolina Vend-A-Matic has been ejected from Gayley Mill as a result of some dissatisfaction on the part of the plant manager;

(ii) That Jonesville Products Plant was sold and is no longer an affiliate of Deering Milliken;

(iii) While Carolina Vend-A-Matic now serves only one Deering Milliken affiliated plant that it served in 1963, it serves ten others, one of which was a result of an acquisition of an existing supplier, the other nine having been obtained as a result of competitive bidding. I am further told by one of my former associates in Carolina Vend-A-Matic that Deering Milliken has maintained a record of all vending machine bids and proposals and a record of its own data showing the basis of its selection of

one of the bidders. I am further informed that if any such information should be of interest to the Committee, it may be obtained from Hal C. Byrd of Deering Milliken Research Corporation, Spartanburg, South Carolina.

This supplemental statement, together with my earlier statement and the file compiled by Judge Sobeloff and the copies of my tax returns, supplies as fully as I can with the materials to which I have access the answers to the questions suggested by Senators Hart and Tydings.

Finally, I hope the Committee now has all the information it needs, but if there is anything else you wish me to supply, I will be happy to undertake to do it.

Respectfully,

CLEMENT F. HAYNSWORTH.

INVESTMENTS OWNED BY CLEMENT FURMAN HAYNSWORTH, JR., SEPTEMBER, 1969

[Number of shares of stock]

Allied Chemical Corporation	108
American General Insurance Co.	201
Brunswick Corporation	1000
Burlington Industries, Inc	400
Business Development Corporation of South Carolina	10
Chrysler Corporation	119
Cole Drug Company, Inc	600
Computer Servicenters, Inc	500
Dan River Mills	1575
Fairchild Camera and Instrument Corp	100
Georgia-Pacific Corporation	5238
Government Employees Financial Corp	106
Government Employees Life Insurance Co	110
W. R. Grace & Co	300
Greenville Memorial Gardens	72
G & W Land and Development Corp	18
Gulf & Western Industries	346
Insurance Securities Inc	100
International Tel. & Tel. Corp	200
The Investment Life and Trust Co	321
Ivest Fund, Inc	802.925
Jefferson-Pilot Corporation	250
Leverage Fund of Boston, Inc. (Capital)	350
The Liberty Corporation (Common)	9523
The Liberty Corporation (Voting preferred stock 40¢ convertible series)	337
Main-Oak Corporation	31
Monsanto Chemical Company	219
MGIC Investment Corporation	630
Multimedia, Inc. (Common)	11,728
Multimedia, Inc. (5% convertible cumulative preferred stock)	2932
Mutual Savings Life Ins. Co	240
Nationwide Corporation	500
Nationwide Life Insurance Co	20
Owens-Corning Fiberglas Corp	100
Peoples National Bank	330
Piedmont National Gas Co., Inc	60
The Rank Organization Limited	500
Scope Incorporated	120
Sonoco Products Co	284
South Carolina National Bank	768
Southern Weaving Company	287
Sperry Rand Corporation	400
J. P. Stevens & Co	550
Synalloy Corporation	52
Tenneco Inc	200
United Nuclear Corporation	104

DEBENTURES

	Amount
Government Employees Financial Corp. (convertible subordinated 5½%)	$350
Government Employees Financial Corp. (convertible subordinated 5¼%)	550
W. R. Grace & Co. (subordinate debenture 4¼%)	1,700

BONDS

	Amount
Calhoun-Charleston Tennessee Utility District	$4,000
Clemson, S.C., General Obligation Sewer	5,000
Greenville County, South Carolina, 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

REAL ESTATE

A one-seventh undivided interest in a tract of land upon which there is a warehouse known as ARA Warehouse, from which my net taxable income in 1968 was $548.

A one-fifth undivided interest in a small tract of land on which there is a small warehouse known as Lowndes Hill Warehouse, from which my net taxable income in 1968 was $343.

CAROLINA VEND-A-MATIC CO.

April 5, 1950, first meeting of subscribers and stockholders: Directors elected: Eugene Bryant, W. Francis Marion, R. E. Houston, Jr., Christie C. Prevost, Vincent G. Williams, John Mahoney, and Clement F. Haynsworth, Jr.

April 5, 1950, first board of directors meeting: Officers elected: president, Eugene Bryant; vice president, R. E. Houston, Jr.,; vice president, Vincent G. Williams; secretary, W. Francis Marion, and treasurer, Christie C. Prevost.

January 9, 1951, annual stockholder meeting: Directors elected: Eugene Bryant, R. E. Houston, W. Francis Marion, Christie C. Prevost, and Clement F. Haynsworth, Jr.

January 9, 1951, annual board of directors ("B of D") meeting: Officers elected, President, Eugene Bryant; vice president, R. E. Houston, Jr.; vice president, Clement F. Haynsworth, Jr.; secretary, W. Francis Marion, and treasurer, Christie C. Prevost.

January 8, 1952, annual stockholders meeting: Same directors elected.

January 8, 1952, annual B of D meeting: Same officers elected.

January 13, 1953, annual stockholders meeting: Same directors elected but Mrs. R. E. Houston, Jr. to act as alternate director when necessary.

January 13, 1953, annual B of D meeting: Same officers elected.

January 13, 1954, annual stockholders meeting: Same directors elected.

January 13, 1954, annual B of D meeting: Same officers elected.

January 10, 1955, annual stockholders meeting: Same directors elected.

January 10, 1955, annual B of D meeting: Same officers elected.

January 9, 1956, annual stockholders meeting: Same directors elected.

January 9, 1956, annual B of D meeting: Same officers elected.

(NOTE. There are no minutes of either an annual stockholders meeting or B of D meeting in January of 1957.)

May 29, 1957, special stockholders meeting: Recognition that there had been resignations by Eugene Bryant as President and Director and R. E. Houston, Jr. as Vice President and Elizabeth Houston as Director.

Buck Mickel, George McDougall and Wesley Davis elected Direotors to serve wtih already elected Directors, W. Francis Marion, Christie C. Prevost and Clement F. Haynsworth, Jr.

May 29, 1957, special B of D meeting: Officers elected: president, W. Francis Marion; vice president, Wesley Davis; vice president, Clement F. Haynsworth, Jr.; secretary, George Mc Dougall, and treasurer, Christie C. Prevost.

January 14, 1958, annual stockholders meeting: Same directors elected.

January 14, 1958, annual B of D meeting: Officers elected: president, W. Francis Marion; vice president, Buck Mickel; vice president, Wesley Davis; vice president, Clement F. Haynsworth, Jr.; secretary, George Mc Dougall, and treasurer, Christie C. Prevost.

January 13, 1959, annual stockholders meeting: Same directors elected.

January 13, 1959, annual B of D meeting: Same officers elected.

January 12, 1960, annual stookholders meeting: Directors elected: W. Francis Marion, Buck Mickel, J. Wesley Davis, C. F. Haynsworth, Jr., George Mc Dougall, Christie C. Prevost, and Wade H. Dennis.

January 12, 1960, annual B of D meeting: Same officers elected except that Wade H. Dennis is added as a vice president.

January 10, 1961, annual stockholders meeting: Same directors elected.

January 10, 1961, annual B of D meeting: Same officers elected.

January 9, 1962, annual stockholders meeting: Same directors elected.

January 9, 1962, annual B of D meeting: Officers elected: president, W. Francis Marion; vice president, Buck Mickel; vice president, J. Wesley Davis; vice president, C. F. Haynsworth, Jr.; vice president, George E. Mc Dougall; vice president, Wade H. Dennis; secretary, Dorothy M. Haynsworth, and treasurer, Christie C. Prevost.

January 8, 1963, annual stockholders meeting: Same directors elected.

January 8, 1963, annual B of D meeting: Same officers elected.

October 21, 1963, weekly B of D meeting: Resignation of Clement F. Haynsworth, Jr. as Director is accepted as of October 31, 1963. He remains a stockholder. The Minutes refer to a letter stating his reasons but such a letter is not found in the Minutes.

January 14, 1964, annual stockholders meeting: Directors elected. Wesley Davis, Wade H. Dennis, W. Francis Marion, Buck Mickel, George McDougall, and Christie C. Prevost.

January 14, 1964, annual B of D meeting: Officers elected. President, Wade H. Dennis; vice president, Buck Mickel; vice president, Wesley Davis; vice president, W. Francis Marion; vice president, George E. McDougall; treasurer, Christie C. Provost; secretary, William S. Mullins, and assistant secretary, Mary Frances Dennis.

(NOTE.—At weekly B of D Meeting on April 6, 1964, resolution was passed that certain property be leased from C. F. Haynsworth, Jr. and some of the present Directors and Officers of the Company.)

April 8, 1964, special B of D meeting: Resignation of W. Francis Marion as Director and Vice President and Mary Frances Dennis as Asst. Secretary were accepted.

Additional Officers elected: Vice president, James F. Hutton; assistant secretary, Lee F. Driscoll, Jr., and assistant treasurer, Edwin W. Keleher.

January 12, 1965, action of shareholder by consent: Directors elected: Herman G. Minter, James F. Hutton, and David D. Dayton.

January 12, 1965, action of B of D by consent: Officers elected: president, James F. Hutton; vice president, Wade H. Dennis; vice president, Roy Gramling; secretary, Lee F. Driscoll, Jr.; treasurer, Herman G. Minter, and assistant treasurer, Edwin W. Keleher.

January 12, 1966, action of shareholders by consent: Same directors elected.

January 12, 1966, action of B of D by consent: Same officers elected.

December 15, 1967, action by shareholder by consent: Directors elected: Herman G. Minter, David D. Dayton, and James F. Wanink.

December 15, 1967, action of B of D by consent: Officers elected: President, James F. Wanink; Vice president, David D. Dayton; Vice president, Wade H. Dennis; Treasurer, Herman G. Minter; Secretary, Lee F. Driscoll,

Jr.; assistant treasurer, James A. Rost; and assistant secretary, Henry T. Dechert.

May 27, 1968, action of B of D by consent: Harry S. Glick elected as assistant treasurer.

VENDING CO.

July 2, 1956, meeting of subscribers to capital stock: Directors elected: Eugene Bryant, C. F. Haynsworth, Jr., R. E. Houston, Jr., W. Francis Marion, and Christie C. Prevost

July 2, 1956, directors meeting: Officers elected: President, Euguene Bryant; vice president, C. F. Haynsworth, Jr.; vice president, R. E. Houston, Jr.; secretary, W. Francis Marion, and treasurer, Christie C. Prevost.

January 8, 1957, annual stockholders meeting: Same directors elected.

January 8, 1957, annual board of directors ("B of D") meeting: Same officers elected.

May 29, 1957, special stockholders meeting: Resignations by Eugene Bryant as a director and president, by R. E. Houston, Jr., as vice president, and by Elizabeth W. Houston as a director (alternate) were noted.

Buck Mickel, George E. McDougall, and J. Wesley Davis, were elected to serve with already elected directors, W. Francis Marion, C. F. Haynsworth, Jr., and Christie C. Prevost.

May 29, 1957, special B of D meeting: Officers elected: President, W. Francis Marion; vice president, Buck Mickel; vice president, J. Wesley Davis; vice president, C. F. Haynsworth, Jr.; secretary, George E. McDougall, and treasurer, Christie C. Prevost.

January 14, 1958, annual stockholders meeting: Same directors elected.

January 14, 1958, annual B of D meeting: Same officers elected.

January 13, 1959, annual stockholders meeting: Same directors elected.

January 13, 1959, annual B of D meeting: Same officers elected.

January 12, 1960, annual stockholders meeting: Directors elected: W. Francis Marion, Buck Mickel, J. Wesley Davis, C. F. Haynsworth, Jr., George E. McDougall, Christie C. Prevost, and Wade H. Dennis.

January 12, 1960, annual B of D meeting: Same officers elected except that Wade H. Dennis is added as a vice president.

January 10, 1961, annual stockholders meeting: Same directors elected.

January 10, 1961, annual B of D meeting: Same officers elected.

January 9, 1962, annual stockholders meeting: Same directors elected.

January 9, 1962, annual B of D meeting: Officers elected: President, W. Francis Marion; vice president, Buck Mickel; vice president, J. Wesley Davis; vice president, C. F. Haynsworth, Jr.; vice president, George E. McDougall; vice president, Wade H. Dennis; secretary, Dorothy M. Haynsworth, and treasurer, Christie C. Prevost.

January 8, 1963, annual stockholders meeting: Same directors elected.

January 8, 1963, annual B of D meeting: Same officers elected.

*October 21, 1963, regular B of D meeting, resignation of Clement F. Haynsworth, Jr. as a Director was accepted as of October 31, 1963.

January 14, 1964, annual stockholders meeting: Directors elected: Wesley Davis, Wade H. Dennis, W. Francis Marion, Buck Mickel, George McDougall, and Christie C. Prevost.

January 14, 1964, annual B of D meeting: Officers elected: President. Wade H. Dennis; vice president, Buck Mickel; vice president, Wesley Davis; vice president, W. Francis Marion; vice president, George E. McDougall; treasurer, Christie C. Prevost; Secretary, William S. Mullins, and assistant secretary, Mary Frances Dennis.

All qualifying shares held by directors were canceled and new shares issued to Carolina Vend-A-Matic Co.

April 8, 1964, special B of D meeting: Resignation of W. Francis Marion as a Director and vice president and of Mary Frances Dennis as assistant secretary were noted.

Additional Officers elected: vice president, James F. Hutton; assistant secretary, Lee F. Driscoll, Jr., and assistant treasurer, Edwin W. Keleher.

January 12, 1965, action of shareholder by consent: Directors elected: James F. Hutton, Herman G. Minter, and David D. Dayton.

January 12, 1965, action of B of D by consent: Officers elected: President, James F. Hutton; vice president, Wade F. Dennis; vice president, Ray Grambling; vice president, David D. Dayton; Secretary, Lee F. Driscoll, Jr.; treasurer, Herman G. Minter, and assistant treasurer, E. W. Keleher.

December 15, 1967, action by sole shareholder by consent: Directors elected: Herman G. Minter, David D. Dayton, and James F. Wanink.

December 15, 1967, action of B of D by consent: Officers elected: president, James F. Wanink; vice president, David D. Dayton; vice president, Wade H. Dennis; treasurer, Herman G. Minter; secretary, Lee F. Driscoll, Jr.; assistant treasurer, James A. Rost, and assistant secretary, Henry T. Dechert.

May 27, 1968, action of B of D by consent: Harry S. Glick elected as an assistant treasurer.

VEND CO. OF GEORGIA

October 31, 1962, meeting of subscribers to capital stock: W. Francis Marion, Buck Mickel, J. Wesley Davis, C. F. Haynsworth, Jr., George E. McDougall, Christie C. Prevost, and Wade H. Dennis.

November 1, 1962, first board of directors ("B of D") meeting: Officers elected: President and general manager, Wade H. Dennis, and vice president and secretary-treasurer, William S. Mullins.

January 8, 1963, annual stockholders meeting: Same directors elected.

January 8, 1963, annual B of D meeting: Same officers elected.

**October 21, 1963, regular B of D meeting:* Resignation of Clement F. Haynsworth, Jr., as director is accepted as of October 31, 1963.

January 14, 1964, annual stockholders meeting: Directors elected: Wesley Davis, Wade H. Dennis, Buck Mickel, George McDougall, and Christie C. Prevost.

January 14, 1964, annual B of D meeting: Same officers elected.

April 8, 1964, special B of D meeting: Resignation of W. Francis Marion as a director accepted.

Additional officers elected: Vice president, James F. Hutton; assistant secretary, Lee F. Driscoll, Jr., and assistant treasurer, Edwin W. Keleher.

June 12, 1964: Vend Co. of Georgia merged into Carolina Vend-A-Matic Company with the latter surviving.

VEND CO. OF NORTH CAROLINA

May 13, 1963, organizational meeting of shareholders: Directors elected: Wesley Davis, Wade H. Dennis, W. Francis Marion, Buck Mickel, George McDougall, and Christie C. Prevost.

May 13, 1963, first board of directors ("B of D") meeting: Officers elected: President and General Manager, Wade H. Dennis, and vice president and secretary treasurer, William S. Mullins.

October 21, 1963, regular B of D meeting: Resignation of Clement F. Haynsworth, Jr., as a Director is accepted as of October 31, 1963. (NOTE: This is confusing because there is no record he was elected as a director).

January 14, 1964, annual stockholders meeting: Same directors elected.

January 14, 1964, annual B of D meeting: Same officers elected.

April 8, 1964, special B of D meeting: Resignation of W. Francis Marion as a Director accepted.

Additional officers elected: Vice president, James F. Hutton; assistant secretary, Lee F. Driscoll, Jr., and assistant treasurer, Edwin W. Keleher.

June 12, 1964: Vend Co. of North Carolina merged into Carolina Venda-A-Matic Company with the latter surviving.

EXHIBIT 4

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

Stock owned as of April 1, 1957

Carolina Natural Gas Corporation, 75 shares.

Carolina Vend-A-Matic Company, 24 shares.

Ford Motor Company, 25 shares.

Martel Mills Corporation now Valfour Corporation, 125 shares.

Woodside Mills, 350 shares.

Chrysler Corporation, 14 shares.

Cup O'Life Corporation, 100 shares.

Georgia Pacific Plywood Company now Georgia-Pacific Corporation, 239 shares.

W. R. Grace & Co., 100 shares.

Liberty Life Insurance Company now The Liberty Corporation, 116 shares.

Greenville Hotel Company now Main-Oak Corporation, 3.1 shares.

Monsanto Chemical Company, 157 shares.

The Peoples National Bank, 50 shares.

Sonoco Products Company, 110 shares.

The South Carolina National Bank, 144 shares.

The First National Bank, 60 shares.

Southern Weaving Company, 14 shares.

J. P. Stevens & Co., Inc., 741 shares.

United Nuclear Corporation formerly Sabre-Pinon Corporation formerly Sabre Uranium Corporation, 50 shares.

Owens-Corning Fiberglas Corporation, 20 shares.

Tekoil Corporation, 100 shares.

WMRC, Inc. now Multimedia, 990 shares.

Buckhorn Sanctuary, 1 share.

Greenville Country Club, 1 share.

Period—April 1, 1957, to December 31, 1957

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

Period—April 1, 1957, to December 31, 1957

Stock dividends:

35/50 sh. Georgia-Pacific Corporation.

4 & 40/50 sh. Georgia-Pacific Corporation.

5 shs. Georgia-Pacific Corporation.

58 shs. Liberty Life Insurance Company.

3 shs. Monsanto Chemical Company.

50 shs. Westwater Corporation later North Star Oil Corporation (Board of Directors of Sabre-Pinon voted their shareholders of record 9–27–57 a share for share distribution of Westwater stock).

Stock exchanges and gifts:

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

137 shs. Liberty Life Insurance Company—Christmas present—Mother. *This stock was given me by my mother.*

1958

Sales:
- Hollyridge Development Co.—3% debentures $2,902.50
- Greenville Country Club—certificate 500.00
- Valfour Corp. (Martel Mills) (Liquidating dividend) (Payable in part by $3125 face amount Burlington Industries, Inc. 5.4% subordinated debentures) 3,484.38

Purchases:
- Hollyridge Development Co.—balance on subscription 1,000.00
- 86/100 sh. Monsanto Chemical Co 30.01
- 45/50 sh. Georgia-Pacific Corporation 29.57
- 39/50 sh. Georgia-Pacific corporation 29.06
- 33/50 sh. Georgia-Pacific Corporation 29.63
- 27/50 sh. Georgia-Pacific Corporation 26.60

Stock dividends:
1 and 14/100 shs. Monsanto Chemical Co.
5 shs. Georgia-Pacific Corporation.
5/50 sh Georgia-Pacific Corporation.
5 & 11/50 shs. Georgia- Pacific Corporation.
5 & 17/50 shs. Georgia-Pacific Corporation.
5 & 23/ shs. Georgia-Pacific Corporation.

Stock splits:
56 shs. Southern Weaving Company (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. $3,125) sent in for conversion into oommon stock of Burlington Industries, Inc. 12–22–59.
156 shs. common stock Burlington Industries plus check for $5.78, rec'd 12–28–59.
Valfour Corp. (Martel Mills) liquidating dividend, and is shown on 1960 income tax ret. $6.25.

Purchases:
- 21/50 sh. Georgia-Pacific Corporation $28.57
- ¾ sh. Georgia-Pacific Corporation 34.27
- 43/100 sh. Georgia-Pacific Corporation 21.47
- 23 shs. and 8/10 right The South Carolina National Bank 1,158.00
- 100 shs. White Stag Mfg. Co. (now part The Warner Brothers Company 107–1/7 Cum. Conv. Sink. Fund P/d) 1,600.00
- 10 shs. Business Development Corporation of South Carolina 100.00
- 72 shs. Greenville Memorial Gardens 4,000.00
- 200 shs. The Investment Life and Trust Company 800.00
- 1/6 sh. voting stock Liberty Life Insurance Company 3.08
- 1/6 sh nonvoting stock Liberty Life Insurance Company 3.08

Change in par value, stock dividends, stock splits:
5 & 29/50 shs. Georgia-Pacific Corporation—dividend.
3 & 57/100 shs. Georgia-Pacific Corporation—dividend.
71 & ¼ shs. Georgia-Pacific Corporation issued to take care of par value change from $1 to 80 cents.
2 shs. W. R. Grace & Co.—dividend.
1,296 shs. Liberty Life Insurance Company nonvoting stock) All old certifs.
1,296 shs. Liberty Life Insurance Company voting stock) sent in with cks. for $6.16 for effectuation of this change.
8 & 22/100 shs. Monsanto Chemical Company—dividend.
15 shs. The Peoples National Bank—dividend.

1959—Continued

Change in par value, stock dividends, stock splits—Continued
11 & 7/10 sh. Sonoco Products Company—dividend.
245 shs. The South Carolina National Bank—change of par value from $10 to $5 per share.
Gifts: (Donor):
141 shs. J. P. Stevens & Co., to Christ Church (Given to broker on Sept. 17, 1959 for transfer to Christ Church).

1960

Sales:
- Valfour Corp. (Martel Mills liquidating dividends) $1,338.75
- 1/2 sh. Sabre-Pinon Corporation (rec'd. as part of 5% stock div.) 2.88
- 2 shs. Carolina Vend-A-Matic Co 2,500.00

Purchases:
- 3/10 sh. Sonoco Products Company 9.10
- 78/100 sh. Monsanto Chemical Company 42.78
- 96/100 sh. W. R. Grace & Co 38.02
- 39/100 sh. Georgia-Pacific Corporation 21.82
- 35/100 sh. Georgia-Pacific Corporation 19.73
- 31/100 sh. Georgia-Pacific Corporation 14.60
- 100 shs. Texize Chemicals, Inc 975.00
- 70/100 sh. Monsanto Chemical Company 31.46

Stock Dividends:
3 & 30/100 shs. Monsanto Chemical Co.
2 & 4/100 shs. W. R. Grace & Co.
3 & 61/100 shs. Georgia-Pacific Corporation.
3 & 65/100 shs. Georgia-Pacific Corporation.
3 & 69/100 shs. Georgia-Pacific Corporation.
3 & 73/100 shs. Georgia-Pacific Corporation.
25 shs. The Peoples National Bank.
2 shs. Sabre-Pinon Corporation (fractional sh. sold). (Now United Nuclear).

Gifts (Donor):
Furman University was given 333 shs. Liberty Life Insurance Company nonvoting stock on 5/11/60.

1961

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

Purchases:
- 100 shs. Television Shares Management Corporation (Later became Supervised Investors Service, Inc.) 1,475.00
- 15 shs. Government Employees Life Insurance Company 1,402.50
- ½ sh. Government Employees Life Insurance Company 52.50
- 100 shs. Class B Union Texas Natural Gas Corporation (Merged into Allied Chem.) 2,775.00
- 27/100 sh. Georgia-Pacific Corporation 14.73
- 23/100 sh. Georgia-Pacific Corporation 16.37
- 19/100 sh. Georgia-Pacific Corporation 12.70
- 15/100 sh. Georgia-Pacific Corporation 8.68

Gifts (Donor):
On 12/20/61 gave Furman University 150 NV Liberty Life Insurance Company.
Stock dividends:
3 & 77/100 Georgia-Pacific Corporation shs.
3 & 81/100 Georgia-Pacific Corporation shs.

1961—Continued

Gifts (DonorD—Continued
3 & 85/100 Georgia-Pacific Corporation shs.
3 & 89/100 Georgia-Pacific Corporation shs.
7 & ½ shs. Government Employees Life Insurance Company.
2 shs. W. R. Grace & Co.
259 shs. Liberty Life Insurance Company V stock.
192 shs. Liberty Life Insurance Company NV stock.
3 & 38/100 shs. Monsanto Chemical Company.
2 shares Sabre-Pinon Corp. (Now United Nuclear).
Gifts (receipts):
200 shs. V Liberty Life Insurance Company—Christmas present from Mother.

1962

Sales:
- ½ sh. Dan River Mills $4.89

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

Stocks Dividends, exchanges, Stock splits:
88 shs. Allied Chemical Corporation acquired by merger with Union Texas Natural Gas—Basis: ⅞ths sh. Allied Chemical for each sh. Union Tex.
1312 shs. Dan River Mills were obtained in exchanged for 350 shs. Woodside.
3 & 93/100 shs. George-Pacific Corporation—dividend.
3 & 97/100 shs. Georgia-Pacific Corporation—dividend.
4 & 1/100 shs. Georgia-Pacific Corporation—dividend.
4 & 6/100 shs. Georgia-Pacific Corporation—dividend.
2 & 14/100 shs. W. R. Grace & Co.—dividend.
3 & 46/100 shs. Mosanto Chemical Company—dividend.
49 shs. The South Carolina National Bank—dividend.
60 shs. J. P. Stevens & Co., Inc.—dividend.
40 shs. Consolidated Oil & Gas, Inc. were obtained by the surrender of 100 shs. of Tekoil Corp.
110 shs. W. R. Grace & Co.—two for one stock split.
Gifts, Receipt:
100 shs. V Liberty Life Insurance Company—Christmas present from Mother.
Gifts, Donor:
200 shs. J. P. Stevens & Co., Inc. given Furman University.

1963

Sales:
- Consolidated Oil & Gas rights ..... $.40

Purchases:
- 500 shs. Aztec Oil & Gas 10,187.50
- 200 shs. mutual Savings Life Insurance Company 2,725.00
- 4 shs. Liberty Life Insurance Company 160.00
- 54/100 sh. Monsanto Chemical 26.95
- 46/100 sh. Monsanto Chemical 25.76
- 89/100 sh. Georgia-Pacific Corporation 41.83
- 84/100 sh. Georgia-Pacific Corporation 44.10

1963—Continued

Purchases—Continued

79/100 sh. Georgia-Pacific Corporation ---------- $39.50
74/100 sh. Georgia-Pacific Corporation ---------- 39.87
60/100 sh. W. R. Grace & Co.---- 24.03

Stock dividends, stock splits:

4 & 40/100 shs. W. R. Grace & Co.—dividend.

14 shs. Chrysler Corporation—2 for 1 stock split.

28 shs. Chrysler Corporation—2 for 1 stock split.

4 & 11/100 Georgia-Pacific Corporation—dividend (shares).

4 & 16/100 shs. Georgia-Pacific Corporation—dividend.

4 & 21/100 shs. Georgia-Pacific Corporation—dividend.

4 & 26/100 shs. Georgia-Pacific Corporation—dividend.

23 shs. Government Employees Life Insurance Company—100% stock dividend.

10 shs. The Investment Life and Trust Company—10% stock dividend.

464 shs. Liberty Life Insurance Company V—25% stock dividend.

252 shs. Liberty Life Insurance Company NV—25% stock dividend.

3 & 54/100 shs. Monstanto Chemical Company—stock dividend.

12 & 9/10 shs. Sonoco Products Company—stock dividend.

32 shs. The South Carolina National Bank—stock dividend.

50 shs. White Stag Manufacturing Co.—50% stock dividend (later merged into The Warner Brothers Company).

Gifts, (Receiver):

704 shs. Liberty Life Insurance Company V stock given to me by my Mother.

1964 (Number of Shares & Face Amount of Bonds)

Sales:	*Dollars*
Consolidated Oil & Gas, Inc. (40)	$118.55
North Star Oil Corp. (50)	11.46
Supervised Investors Service, Inc. (100) (formerly Television Shares Management Corp.)	611.51
U.S. Treasury Bills ($40,000.00)	39,067.22
U.S. Treasury Bills (5,000.00)	4,887.50
U.S. Treasury Bills (5,000.00)	4,893.01
U.S. Treasury Bills (30,000.00)	29,385.19
U.S. Treasury Bills (7,000.00)	6,862.10
U.S. Treasury Bills (20,000.00)	19,611.27
U.S. Treasury Bills (50,000.00)	49,178.47
U.S. Treasury Bills (81,000.00)	79,760.09
U.S. Treasury Bills (21,000.00)	20,740.16
U.S. Treasury Bills (11,000.00)	10,989.00
Automatic Retailers of America (14,173) (Exchanged for Carolina Vend-A-Matic)	455,307.63
Purchases:	
Fed. Int. Credit Bonds (130,000)	130,025.00
U.S. Treasury (270,000)	262,948.55
U.S. Treasury (130,000)	129,875.72
Piedmont Park F/D (20,000)	20,387.61
Liberty Life Insurance Company (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 Company (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)	3,484.69
Chrysler Corporation (44)	2,277.00
Burlington Industries, Inc. (44)	2,071.46

1964 (Number of shares & Face Amount of Bonds)—Continued

Purchases—Continued

The South Carolina National Bank (29)	$1,595.00
Texize Chemical, Inc. (400)	1,800.00
Owens-Corning Fiberglas Corporation (80)	5,782.74
Surety Investment Co. (now part of The Liberty Corp.) (102)	5,712.00
Surety Investment Co. (now part The Lib. Corp.) (112)	6,272.00
Insurance Securities, Inc. (100)	2,556.63
Insurance Securities, Inc. (500)	12,783.15
Insurance Securities Inc. (400)	10,276.76
Surety Investment Co. (now part The Lib. 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.) (200)	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 Corporation (1,200)	69,374.37
Broadcasting Co. of the South (now Lib. Corp.) (120)	6,000.00
Guaranty Insurance Trust (now part of MGIC) (3,000)	7,500.00
Greenville Waterworks System Rev. Bonds (10,000)	10,636.54
Maryland Casualty Company (200)	12,690.64
(Purchased in—June—in August exchanged for 200 shs. Convertible Preferred Stock and 66⅔ shs common stock of American General Casualty Company)	
Georgia-Pacific Corporation (69/100 sh.)	38.12
Georgia-Pacific Corporation (55/100 sh.)	31.49
Georgia-Pacific Corporation (37/100 sh.)	21.00
W. R. Grace & Co. Corporation (½ sh.)	26.40
Sonoco Products Company (1/10 sh.)	4.50

Stock dividends, Stock splits:

Chrysler Corporation (4 shs.) 4% stock div.

The Broadcasting Company of the South (now part of The Liberty Corp., but for a time it was known as Cosmos Broadcasting Corporation) (56 shs.) 25% stock div.

Georgia-Pacific Corporation (shs) 4 & 31/100 stock dividend.

Georgia-Pacific Corporation (shs) 109 25% stock split.

Georgia-Pacific Corporation (shs) 17 & 45/100 stock dividend.

Georgia-Pacific Corporation (shs) 17 & 63/100 stock dividend.

W. R. Grace & Co. (shs) 3 & 50/100 stock dividend.

The Investment Life and Trust Company (shs) 10 stock dividend.

Main-Oak Corporation formerly Greenville Hotel Company (shs) 31—2 for 1 stock split and 4 for 1 stock dividend. (Old certificate turned in).

Monsanto Chemical Company (shs) 4 stock dividend.

Southeastern Broadcasting Corporation now part of Multimedia Inc. (shs) 990 shs 100% stock dividend.

1964 (Number of shares & Face Amount of Bonds)—Continued

Stock dividends, stock splits—Continued

The Peoples National Bank 50 shs 50% stock dividend.

J. P. Stevens & Co., Inc. 50 shs 10% stock dividend.

Aztec Oil & Gas Company 30 shs 6% stock dividend.

Sale of fractional shares:

The Investment Life & Trust Company (½ sh.)	$2.65
Cosolidated Oil & Gas—proceeds of 3/5 fractional warrant	.90
Consolidated Oil & Gas—proceeds of 1 right	.21
The Broadcasting Company of the South—proceeds of fractional sh. of stock	12.63

Gifts (Receiver):

Liberty Life Insurance Company (631 shs.), Gift from Mother.

Liberty Life Insurance Company (100 shs), Gift from Mother, Xmas.

1965

Sales:	*Dollars*
Aztec Oil & Gas Company (562 shs.)	$9,975.50
Purchases:	
Sperry Rand (400 shs.)	9,067.50
Cost of additional rights to buy W. R. Grace debentures below	3.94
Monsanto Chemical Company (92/100 sh.)	73.44
W. R. Grace & Co. 4¼% Subordinate Deb. ($1,700)	1,700.00
Azetc Oil & Gas Company (20/100 sh.)	3.75
U.S. Treasury Bills ($134,000)	133,110.80
Texize Chemicals, Inc. (1,300 shs.)	6,984.25
Texize Chemicals, Inc. (400 shs.)	2,199.52
Texize Chemicals, Inc. (300 shs.)	1,573.89
Southeastern Broadcasting Co. (now part of Multimedia, Inc.) (100 shs.)	6,550.00
Chrysler Corporation (1 right and 15 shs.)	720.75
Georgia-Pacific Corporation (19/100 sh.)	11.92
Georgia-Pacific Corporation (1/100 sh.)	.64
Georgia-Pacific Corporation (83/100 sh.)	49.07
Georgia-Pacific Corporation (64/100 sh.)	38.88

Stock dividends, Stock splits:

Allied Chemical Corporation, 2 shs. stock dividend.

Burlington Industries, Inc., 200 shs. stock split.

Georgia-Pacific Corporation, 17.81 shs. stock dividend.

Georgia-Pacific Corporation, 17.99 shs. stock dividend.

Georgia-Pacific Corporation, 18.17 shs. stock dividend.

Georgia-Pacific Corporation, 18.36 shs. stock dividend.

Government Employees Life Insurance Company, 2 shs. stock dividend.

The Investment Life and Trust Company, 22 shs. stock dividend.

Liberty Life Insurance Company now The Liberty Corporation 510 shs. stock dividend.

Monsanto Chemical Company, 4.08 shs. stock dividend.

Nationwide Life Insurance Company, 10 shs. 2% stock dividend or 1 share for each 50 owned of Nationwide Corporation.

Sonoco Products Company, 142 shs. stock split.

The South Carolina National Bank, 36 shs. stock dividend.

Azetc Oil & Gas Company, 31.80 shs. stock dividend.

Gifts (receiver):

Liberty Life Insurance Company, 100 shs. Xmas present from Mother.

1966

Sales:
- Insurance Securities (100 shs.) — $500.37
- The Investment Life & Trust Company (20-100sh.) — 1.41

Purchases:
- Calhoun-Charleston Tenn. Util. Dist. Bonds ($4,000) — 4,231.79
- Richmond Newspapers, Inc. (300 shs.) — 4,400.00
- Insurance Securities, Inc. (100 shs.) — 726.63
- Allied Chemical Corporation (96-100 sh.) — 44.74
- Warner Brothers Company formerly White Stag (6-7 sh.) — 33.06
- Cole Drug Co. (300 shs.) — 4,050.00
- Government Employees Financial Corporation ($350) — 350.00
  7 $50 5½% convertible subordinated debentures)
  (For the above debenture purchase it was necessary to purchase seven rights for — 1.35
- Monsanto Company (82-100 sh.) — 32.85
- Georgia-Pacific Corporation (45-100 sh.) — 28.74
- Georgia-Pacific Corporation (1-2 sh.) — 22.40
- Georgia-Pacific Corporation (57-100 sh.) — 22.80
- Georgia-Pacific Corporation (33-100 sh.) — 11.43

Stock dividends, Stock splits, Exchanges:

Allied Chemical Corporation, 2.4 shs. stock dividend.

Dan River Mills, 75 shs. stock dividend.

Georgia-Pacific Corporation, 18.55 shs. stock dividend.

Georgia-Pacific Corporation, 468.50 shs. five for four stock split.

Georgia-Pacific Corporation, 23.43 shs. stock dividend.

Georgia-Pacific Corporation, 23.67 shs. stock dividend.

The Investment Life and Trust Company, 24 shs. stock dividend.

Monsanto Chemical Company, 4.18 shs. stock dividend.

Mutual Savings Life Insurance Company, 40 shs. stock dividend.

Nationwide Life Insurance Company, 10 shs. 2% stock dividend or I sh. for each 50 owned of Nationwide Corporation.

The Peoples National Bank. On August 2, 1966, old certificates totalling 150 shs. sent in to bank—a stock certificate for 300 shs. was then received in 2 for 1 split.

Warner Brothers Company formerly White Stag 107-1/7 shs. received in exchange for 150 shs. White Stag Mfg. Co.

1967

- Texise Chemicals, Inc. (200 shs.) — $3,648.92
- Texize Chemicals, Inc. (100 shs.) — 1,886.33
- Texize Chemicals, Inc. (200 shs.) — 3,723.16
- Texize Chemicals, Inc. (100 shs.) — 1,799.71
- Texize Chemicals, Inc. (400 shs.) — 7,396.84
- Richmond Newspapers, Class A (200 shs.) — 3,488.12
- Warner Bros. Conv. P/d. (108 shs.) — 3,206.96
- Insurance Securities (400 shs.) — 2,447.00
- Insurance Securities (1,500 shs.) — 8,990.55
- Texize Chemicals, Inc. (1,000 shs.) — 18,739.60
- Texize Chemicals, Inc. (500 shs.) — 9,246.05
- Carolinas Capital Corporation liquid distribution, 200 shs. owned. Received: $1,000. cash, 120 shs. Scope, Incorporated, 40 shs. Synalloy.
- American General Insurance Company conb. P/d (200 shs.) — 6,777.74

1967—Continued

Purchases
- Greenville County, S.C. Hospital Bonds ($5,000) — $4,907.99
- Southeastern Broadcasting Co. (now part of Multimedia, Inc.) (66 shs.) — 5,313.00
- Rank Organisation, Ltd. (500) — 4,176.00
- International Tel. & Tel. (100) — 10,849.80
- Fairchild Camera & Instrument Corp. (100) — 10,199.15
- Brunswick Corp. (1,000) — 16,230.00
- Allied Chemical Corporation (90/100 sh.) — 36.12
- Ivest Fund, Inc. (728) — 10,0002.72
- Georgia-Pacific Corporation (9/100 sh.) — $4.21
- Leverage Fund of Boston, Inc. (350 shs.) — 5,250.00
- Southern Weaving Company (200 shs.) — 5,400.00
- Liberty Life Insurance Company (.7879480 sh.) — 14.77
- Government Employees Life Insurance Co. (94/100 sh.) — 45.12
- Georgia-Pacific Corporation (85/100 sh.) — 51.21
- Gulf & Western (325 shs.) — 19,091.62
- Georgia-Pacific Corporation (60/100 sh.) — 36.60
- Georgia-Pacific Corporation (35/100 sh.) — 19.86
- Monsanto Chemical Company (72/100 sh.) — 30.69

Stock dividends:

Allied Chemical Corporation, (2.10 shs).

American General Insurance Company, (134 shs.) com. 200% stock div.

Georgia-Pacific Corporation, (23.91 shs).

Georgia-Pacific Corporation, (24.15 shs).

Georgia-Pacific Corporation, (24.40 shs).

Georgia-Pacific Corporation, (24.65 shs).

Government Employees Financial Corporation, (3 shs).

Government Employees Life Insurance Company, (3.06 shs).

The Investment Life and Trust Company, (26 shs).

Ivest Fund, Inc., (1,309 shs.) dividend.

Ivest Fund, Inc., (31.406 shs.) capital gain.

Liberty Life Insurance Company, (1211.-212520 shs.) stock dividend.

Monsanto Chemical Company, (4.28 shs.) stock dividend.

Southeastern Broadcasting Corporation, now Multimedia, Inc. (586 shs.) stock dividend.

The South Carolina National Bank (63 shs.) stock dividend.

Southern Weaving Company (17 shs.) stock dividend.

The Broadcasting Company of the South later Cosmos Broadcasting and in 1969 became part of The Liberty Corp. (56 shs.) stock dividend.

Gulf & Western Industries (9.75 shs.) stock dividend.

Gifts (Receiver):

Liberty Life Insurance Company (100 shs.) XMAS gift from Mother.

1968

Sales:
- Fairchild Camera & Instrument Corp. (100 shs.) — $6,104.72
- U.S. Pipe & Foundry (200 shs.) — 6,232.80
- Carolinas Capital Corporation (Cash) — 325.37
  Final distribution—Liquidation.

Purchases:
- Clemson, S.C. General Obligation Sewer Bonds ($5,000) — $5,055.00
- Tenneco, Inc. (200) — 5,289.12
- 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

1968—Continued

Purchases—Continued
- Jefferson-Pilot Corp. (200) — $8,580.50
- Gulf & Western Industries, Inc. (25/100ths sh.) — 15.16
- Georgia-Pacific Corporation (10/100ths sh.) — 5.85
- Georgia-Pacific Corporation (65/100ths sh.) — 62.90
- Georgia-Pacific Corporation (59/100ths sh.) — 49.63
- Georgia-Pacific Corporation (33/100ths sh.) — 28.92
- Government Employees Financial Corporation 11 $50 5¼% Conv. Sub. Debentures ($550) — 550.00
- Government Employees Financial Corporation (94/100ths sh.) — 31.02

Stock dividends, Splits:

Cole Drug Company, Inc., (300 shs.) 1 additional share for each sh. held 5–7–68.

Georgia-Pacific Corporation (24.90 shs.) stock dividend.

Georgia-Pacific Corporation (25.15 shs.) stock dividend.

Georgia-Pacific Corporation (25.41 shs.) stock dividend.

Georgia-Pacific Corporation (25.67 shs.) stock dividend.

Government Employees Financial Corporation (2.06 shs.) stock dividend.

Gulf & Western Industries (10.05 shs.) stock dividend.

International Tel. & Tel. Corp. (100 shs.) 2 for 1 stock div.

Ivest Fund, Inc. (4.129 shs.) dividend.

Ivest Fund, Inc. (38.081 shs.) capital gains.

Synalloy Corporation (10 shs.) 5 for 4 split.

Exchanges:

Guaranty Insurance Trust, 3000 shs. exchanged on 1–2–68, for 210 shs. Mortgage Guaranty Insurance Corporation, and on 8/21/68 this was exchanged for 630 shs. of MGIC Investment Corporation.

Southeastern Broadcasting Corporation, 2,932 shs. exchanged for: Multimedia, Inc., 2,932 5% conv. cum. pref. and Multimedia, Inc., 11,728 Common.

Carolina Natural Gas Corporation, 500 shs. exchanged for Piedmont Natural Gas Company, Inc., 60 shs. $6 cum. conv. 2nd P/d.

Liberty Life Insurance Company, 7,022 shs. exchanged for The Liberty Corporation, 7,022 shs. 1 for 1 basis.

Gifts, Receiver:

The Liberty Corporation (100 shs.) Xmas present from mother.

1969

Sales: *Dollars*
- Synalloy Corporation (½ sh.) — $6.59
- The Investment Life & Trust Co. (2/10 sh.) — .65
- The South Carolina National Bank (9/10 sh.) — 32.67

[These were occasioned by stock dividends]

Purchases:
- The Liberty Corporation (⅓ sh.) — 8.34
- Georgia-Pacific Corporation (7/100 sh.) — 6.60
- Georgia-Pacific Corporation (62/100 sh.) — 29.76
- Gulf-Western Industries (95/100 sh.) — 38.57
- Government Employees Life Ins. Co. (82/100 sh.) — 42.03
- G & W Land & Dev. Corp. (7/10 sh.) — 7.00

Stock dividends:

Georgia-Pacific Corporation (25.93 shs.) Stock dividend.

Georgia-Pacific Corporation (2,619 shs.) 2 for 1 stock split.

Georgia-Pacific Corporation (52.38 shs.) Stock dividend.

Govt. Employees Life Ins. Co. (3.18 shs.) Stock dividend.

G & W Land and Development Corp. (17.3 shs.) 1 sh. for each 20 shs. Gulf & Western owned 7–18–69.

1969—Continued

Purchases—Continued

The Investment Life and Trust Co. (29 shs.) Stock dividend.

Jefferson-Pilot Corporation (50 shs.) Stock dividend.

The Peoples National Bank (30 shs.) Stock dividend.

Synalloy Corporation (2 shs.) Stock dividend.

The South Carolina National Bank (69 shs.) Stock dividend.

United Nuclear Corporation (4 shs.) Stock dividend.

Exchanges:

The Broadcasting Company of the South later Cosmos Broadcasting (337 shs.) Exchanged for: The Liberty Corporation (1,011 shs.) Common and (337 shs.) $.40 Voting Preferred conv. series.

Surety Investment Company (379 shs.) Exchanged for The Liberty Corporation (1,389⅔ shs.).

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.

HARRY HAYNSWORTH.

Mr. DOLE. Mr. President, will the Senator from South Carolina yield?

Mr. HOLLINGS. I yield.

Mr. DOLE. Mr. President, let me say at the outset that I am one of those who have not yet determined how to vote on the nomination. But let me ask the Senator from South Carolina if he feels he can get his story told by the liberal press in America, when the nomination was made by a Republican President of a conservative Democrat from the State of South Carolina.

Mr. HOLLINGS. Judge John J. Parker was appointed to the Supreme Court, but not confirmed, some 30 years ago under similar circumstances.

The inference left by the press is that Justice Goldberg disqualified himself on labor decisions. He never did; he disqualified himself on the Darlington case, but he had been their lawyer.

Judge Haynsworth was not Deering-Milliken's lawyer, but that has not been told.

No one contends that Justice Thurgood Marshall should disqualify himself from civil rights cases. But they say Judge Haynsworth has made money on textiles, that he is a textile judge.

I think it is highly important that those who know the judge, and have read every one of his decisions, over a 12-year period, that he has ever participated in, can come here with admiration and support for Judge Haynsworth. I have tried to get that in the papers, but instead, the story has been distorted until he has been made to feel that he was indicted rather than appointed, because they have taken the ball and started running with it toward a predetermined touchdown, saying, "Why has he not withdrawn?"

Mr. DOLE. The Senator's discussion has been very helpful to me as one who has not made a decision, but I believe he will find the press and the media more interested in taking a position than in telling the truth. The press which defended Mr. Fortas would naturally be against a Republican President's nominee for the Supreme Court. It is an unfortunate fact that 90 percent of the media are liberals in their thinking, not looking for a conservative judge or interested in telling the true story to the American people. I think the Senator is making a valiant attempt today; I hope it will be successful.

Mr. HOLLINGS. Mr. President, I yield the floor.

CHINESE THREAT: THE MOST EXPENSIVE ILLUSION OF OUR TIME

Mr. PROXMIRE. Mr. President, this country has devoted a great deal of its enormous military spending to combat the expansion of Communist China.

In Vietnam—perhaps the major reason for our immensely expensive involvement has been to stop Communist expansion. One article in a recent issue of the New York Times characterized President Nixon's strong commitment in Vietnam to be based on the notion that our active military presence constitutes the cork in the bottle that contains Communist expansion.

But Vietnam is only part of a vastly expensive military effort to contain Red China. It includes our many expensively manned far Pacific bases, our hugely expensive aircraft carriers, the other components of our Far Eastern fleets and their reserves, as well as a major Air Force commitment.

The reason for all this is because of the fear that without a vigorous and active military presence Red China would sweep throughout Asia and perhaps extend far beyond.

Mr. President, this is probably the most expensive illusion of our time.

What kind of a threat does mainland China really constitute to this country? How serious a threat does it really represent in Asia? Could China execute a successful invasion elsewhere in Asia? Could she mount a serious attack in the Pacific?

Consider the facts: In spite of the most vigorous sometimes vicious denunciation by Red China of U.S. involvement in Vietnam, there has been no verified report of a single Chinese soldier involved in the Vietnam war. Why? Not because of any moral or peaceful compunction on the part of the Chinese but for the simple reason that China does not have the economic strength to support any military effort except on its borders even in a country as nearby as Vietnam.

China lacks the transportation facilities. It has no navy worthy of the name. It has a pitifully inadequate air force. Its highway system, rail system and rolling stock are so feeble that they are barely adequate to provide border protection.

Within the borders of China its 750 million people widely equipped with small arms would constitute a highly formidable, probably an impossible force to overcome without using massive nuclear arms. But as a world conquering invader, Red China is simply not in the ball game.

China's own nuclear arsenal is primitive bush league compared to that of the United States and Russia.

But most significant of all, Mr. President, China has not been gaining economic strength. She has been losing it.

A couple of years ago our Joint Economic Committee conducted an in-depth study of the economy of China. We commissioned 20 of the leading scholars in the world to do the job. That study showed an erratic course of progress and setback for the Chinese economy.

Without a strong and growing economy, the Chinese threat dissolves in smoke. And the most recent reports from the Chinese Communists celebration of their 20th year in power show how unlikely it is that China will constitute a serious threat in coming years.

Maoist China faces its third decade with massive problems and handicaps. Here is the only major country in the world that has not grown economically in the past 10 years. China's gross national product is probably no higher than it was 10 years ago. But it has an annual population growth of 15 million to 20 million. This has destroyed attempts to raise the standard of living or the military power, except for a rudimentary nuclear power.

Mr. President, the dangerous dispute with the Soviet Union over borders and ideological influence and the continued hostility toward not only the United States but most other countries add to the strains and uncertainties.

Certainly the United States along with other Pacific powers should maintain a constructive military presence in the Pacific. But we are spending far more than can possibly be justified now. And other independent Pacific nations should carry their share of stopping any Red Chinese expansion.

As the New York Times reported Thursday:

Given stability, practical domestic guidelines and policies of peaceful adjustment in foreign relations, the Chinese Communist state would stand a good chance of pulling out of its present slump and making new progress. But these factors appear difficult to assure under a leadership headed by Mr. Mao or any other leader now on the horizon.

Mr. President, I submit, the only justification for our enormous military expenditures lies in the threat of potential enemies. Two nations constitute the overwhelming basis for this threat: the Soviet Union and the mainland Chinese.

The military threat of the Soviet Union like that of China is limited by economic constraints. The Office of Strategic Studies in London tells us that the Soviet spends about half as much on her military operations as the United States. She has half the gross national product of this Nation. She is constrained by an industry and agriculture that simply cannot afford to give up more resources to the military without seriously weakening the Soviet's long-term economic and hence its military power.

But in Red China we confront an even more conspicuously overestimated adversary. And the cost of this overestimate in military overspending, in inflation, in an onerous tax burden, in shamefully inadequate housing and in a series of other

neglected domestic problems is very great indeed.

This country can afford to cut $10 to $15 billion from its military budget now. In fact we cannot afford not to make those cuts.

JUDGE HAYNSWORTH

Mr. YOUNG of Ohio. Mr. President, in my judgment President Nixon should certainly withdraw the nomination of Judge Clement F. Haynsworth as Associate Justice of the U.S. Supreme Court. There are approximately 436 U.S. district court judges and U.S. Court of Appeals judges. It is difficult for me to comprehend how the President selected Judge Haynsworth for nomination to the Supreme Court. Admittedly, that judge has been highly proficient in making a fast buck. If the President thinks it is desirable to appoint a judge who is regarded to hold views considered very conservative there certainly should be a number of judges with this viewpoint, who unlike Judge Haynsworth, cannot be said to have ever rendered judicial decisions favoring segregation and delaying integration as directed by the Supreme Court of the United States.

Surely, of the approximate 436 judges of various Federal courts there are many, many whose judicial careers have been outstanding and, in fact, who are superior as jurists in every respect to Judge Haynsworth. Then, Mr. President, in addition to judges of the U.S. district courts, and of the U.S. Courts of Appeals, there are eminent judges in the supreme courts or in the courts of highest jurisdiction of the 50 States. In fact, in our 50 States, just as is the situation in my State of Ohio, there are trial judges in the various counties of those States who are highly trained and experienced, have served in a most creditable manner, are greatly admired and highly respected for their wisdom, integrity, are known to be devoted to the law and are men of the highest character and of judicial caliber.

Judge Haynsworth in at least two cases clearly violated the canons of judicial ethics—in his vote in 1963 which decided a case for a company which had contracts with a firm in which he owned a one-seventh interest; and in 1967 when he bought 1,000 shares of stock in a company on which he had helped render a favorable legal verdict and before that verdict was announced. In the former he made a profit of some $400,000 on an initial investment in 1950 of approximately $3,000. This from a company in which he was not just a casual investor, but an insider.

Canon 26 of the code of judicial ethics promulgated in 1908 by the Committee on Professional Ethics of the American Bar Association reads:

> 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.

Also, United States Code, title 28, section 455 states:

> 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 to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceedings therein.

It is crystal clear that Judge Haynsworth violated canon 26 and the United States Code on at least two occasions.

President Nixon on several occasions has stated that he is a strict constructionist in interpreting the Constitution. In his recent announcement reiterating his support of Judge Haynsworth, it is clear that he is far less strict in interpreting the canons of judicial ethics, and that section of the United States Code pertaining to the conduct of Federal judges.

Although Judge Haynsworth has denied any impropriety and has expressed sorrow over these incidents, the fact is that judges of the U.S. courts and especially the Supreme Court of the United States must, like Caesar's wife, be above suspicion. There should be no shadow or taint of impropriety on an Associate Justice of the highest court of our land. This is especially imperative today in view of the conditions which gave rise to the Supreme Court vacancy for which Judge Haynsworth has been nominated—the circumstances which prompted the resignation of Associate Justice Fortas.

As the distinguished junior Senator from Michigan (Mr. GRIFFIN), the assistant minority leader, wrote in an article published by the University of Michigan Law School in April 1969:

> The Senate must not be satisfied with anything less than application of the highest standards, not only as to professional competence but also as to such necessary qualities of character as a sense of restraint and propriety . . . Thus, when the Senate considers a nomination to one of the nine lifetime positions on the Supreme Court of the United States . . . the importance of its determination cannot be compared in any sense to the consideration of a bill for enactment into law. If Congress makes a mistake in the enactment of legislation, it can always return at a later date to correct the error. But once the Senate gives its "advice and consent" to a lifetime appointment to the Supreme Court, there is no such convenient way to correct an error since the nominee is not answerable thereafter to either the Senate or to the American people.

In pressing forward with the Haynsworth nomination, President Nixon is damaging the image of the U.S. Supreme Court in the eyes of millions of Americans. He is further disillusioning many younger Americans over the honesty of today's society and government—of the establishment, so to speak.

Mr. President, for these reasons alone, I shall vote against confirmation of Judge Haynsworth as Associate Justice of the Supreme Court of the United States.

However, there are other compelling reasons for rejecting this nomination.

Judge Haynsworth's decisions in a series of civil rights cases clearly suggest that he is opposed to desegregation. Among our most serious domestic problems are those dealing with civil rights and the problems of minority groups. During the past 15 years, the Supreme Court of the United States has taken leadership in helping redress their grievances and in assuring civil rights and civil liberties to all regardless of their race or creed. It would be unfortunate indeed if millions of citizens believed that the Supreme Court was no longer concerned with equal treatment for all and human dignity. From his past record, Judge Haynsworth's appointment to the Court might well leave that impression and perhaps have grave consequences.

I believe it is significant that in every one of the seven labor cases on which Judge Haynsworth sat that were reviewed by the Supreme Court, he voted against labor. In every one he was reversed by the Supreme Court. In all those cases only one Supreme Court Justice agreed with Judge Haynsworth, and then only once.

The rights and needs of working men and women are too important to entrust to adjudication by a man so out of tune with the law and with the times that his decisions have been reversed in all cases in these areas which were appealed to the Supreme Court.

Mr. President, the American people's sense of what a Supreme Court Justice's reputation and qualifications should be is offended by the revelations made since the nomination of Judge Clement Haynsworth. The standard of ethics that will be established by the Senate in determining his fitness for this high office will be witnessed by all Americans. Those standards should not be lowered for reasons of temporary political expediency. The nomination of Judge Haynsworth should be withdrawn. If it is not, it should be rejected by the Senate forthwith.

Mr. President, yesterday Judge Haynsworth offered to put his extensive financial holdings beyond his personal reach to avoid conflict-of-interest problems. This in itself, coming as it does after numerous revelations of judicial impropriety on his part, is sufficient reason for withdrawal of his nomination. Does this indicate that now Judge Haynsworth may not feel competent to handle his finances without the possibility of a conflict of interest arising? It is a sad commentary on the state of our Nation and of our Federal Government that the only Federal judge in the Nation offering to place his holdings beyond his personal reach has been nominated to be Associate Justice of the highest court of the land.

On Sunday, Vice President AGNEW stated that Judge Haynsworth was "clean as a hound's tooth." If the Vice President's evaluation is any indication of the ethical standards to be followed by this administration, then the Nation is in for a sorrowful 3 years indeed.

Mr. President, the National Observer, published and copyrighted by Dow Jones & Co., and a highly respected publication regarded as a spokesman for that Grand Old Party of which I am not a member, in its issue of Monday, October 6, published an editorial which I believe every Senator should read before he determines how he will vote in the question of confirmation of the nomination of Judge

Haynsworth, unless, of course, that nomination is withdrawn by our President. I ask unanimous consent that this editorial, entitled "Judge Haynsworth's Finances," be inserted at this point in the RECORD.

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

JUDGE HAYNSWORTH'S FINANCES

It would take exceptional courage now for President Nixon to admit that the nomination of Clement F. Haynsworth, Jr., to the U.S. Supreme Court was a mistake: After all, no scandal mars Judge Haynsworth's career, no clear-cut indiscretion tarnishes his record. For the same reason, it would take an exceptional turn of events to prevent his confirmation by the Senate, however vigorous the opposition there. And last week there seemed little chance Judge Haynsworth would bow out; he apparently has a hard time understanding what all the fuss about his personal finances is all about. This innocence, however, is an excellent reason—among others—why this nomination should be withdrawn or defeated.

Judge Haynsworth had vigorous opposition from the start. Civil-rights leaders deplored the choice, often intemperately. Labor leaders were hopping mad, shouting that the judge's record proved him to be pro-business. Neither objection was compelling, and neither certainly argued against confirmation. It wasn't until the opposition began exploring the judge's personal finances that the appointment began to emerge as a boner.

No, Judge Haynsworth broke no laws, nor did he broach the letter of judicial and legal ethics. The record as it unfolded before the Senate Judiciary Committee was one of a series of questionable investments and associations, but not one of them so damaging as to make him an unfit candidate for the High Court. And certainly no single item or even an accumulation of items, was so clearly a violation of good judgment as the conflict of interest that eventually forced Abe Fortas to resign his Supreme Court seat.

HE WAS VERY SORRY

Then came the revelations about the judge's investment in the Brunswick Corp. He bought the stock after his court had reached a decision on an appeal involving Brunswick, and the decision probably would have no effect on the stock's value. Nevertheless, he bought the stock before the court officially handed down the ruling, and the appearance, at least, of impropriety lingers. Judge Haynsworth's evaluation of his own action? He is "very sorry" he bought the stock, but he simply had forgotten when he made the purchase that the Brunswick case was still officially before his court.

The accumulation, then, capped by the Brunswick investment, portrarys a man who is probably a nice fellow, a judge who will gladly keep his nose clean if someone will spell out for him how it is to be done, but a man who is oblivious of the need for a jurist to maintain a singleminded interest in the administration of justice, free of even the hint that his decisions are influenced by anything else.

The appointment, simply, is an embarrassment to the Nixon Administration, which is hardly of great moment, and a potential embarrassment to the Supreme Court, which, in light of the recent Fortas embarrassment, is of great moment.

IT IS BETTER LABELED OPERATION INEPT

Mr. YARBOROUGH. Mr. President, Operation Intercept has now been in effect for 2 weeks and has earned the more appropriate title of "Operation Inept."

Just as no one can quarrel with the need for controlling the traffic in illegal drugs and narcotics, no one can quarrel with the fact that Operation Intercept has done serious, possibly permanent, damage to our relations with Mexico.

The operation is an inept way to deal with another nation. It is an inept way to treat the citizens of a friendly nation. It is an inept way to treat the citizens of this Nation who have visited a great and good neighbor. It is a most inept way to treat the economy of a section of this Nation and of Mexico.

There are also many who say it is an inept way to handle the problem it is supposed to be solving—the inflow of marihuana, dangerous drugs, and hard narcotics into this country.

The President of Mexico, Gustavo Diaz Ordaz, has called Operation Intercept a "bureaucratic error" and has said that it raises a "wall of suspicion" in United States-Mexico relations.

Mr. President, the United States and Mexico have developed good relations through the years. We have many programs of cooperation and friendship. In just 2 weeks of this operation we see serious damage to those relations.

Two border celebrations have already been canceled or postponed because of the action by the Government.

In Texas, Brownsville's "Mr. Amigo" celebration, which was scheduled for October 12, has now been canceled. It is usually an annual event; an event to honor a top Mexican personality and to demonstrate the friendship between the United States and Mexico. Officials of Del Rio and its neighbor city, Ciudad Acuna, have postponed for at least 10 days their annual "friendship festival" because of Operation Intercept.

Mr. President, not only is the operation an inept treatment of good relations; it is an inept way to deal with the economic situation along the border of this Nation with another nation.

Mexican businessmen are being hurt because citizens of this country are canceling trips to border cities. Many Mexican citizens who cross the border every day to work in the United States are having a difficult and sometimes impossible task of getting to their jobs in this country. There are reports some have already lost their jobs.

Just as Mexican businessmen are being hurt, so are businessmen on this side of the border. Many citizens of Mexico come to the United States on buying trips. Businessmen in this country are being hard hit as their customers refuse to suffer the delays and indignities of Operation Intercept. The balance of trade in some sections runs 10 to 1 in favor of the United States. That is true in border cities in California and border cities in Texas. We are the ones who are hurt worst by Operation Intercept. But it was 10 to 1 in favor of the United States before Operation Intercept.

Our businessmen will be hurt further, as Mexico now has started Operation Dignity. This operation urges Mexicans to stop going to the United States and to make all their purchases in Mexico. This operation was started by Mexico because of the affront to Mexico implicit in our Nation's implementation of Operation Intercept without any friendly consultation with a friendly border nation. The border is a border of two nations, not one. Anything done to the border by one nation should be after consultations with the other nation. Mexico was not treated as a friendly neighbor or as a coequal partner in the fellowship of nations in this matter, and Mexico knows it. The long, friendly relations between the two nations, built up on the American side by the successive diligent efforts of Presidents Franklin D. Roosevelt, Truman, Eisenhower, Kennedy, and Johnson is being badly damaged. Thirty-six years of careful building of friendship has now been jolted by this operation.

I live in a border State; I visit Mexico every year, and I think it a very unfair way to treat a good neighbor.

And so the story goes, Mr. President, of this inept operation.

Thousands of dollars in commerce lost. Friendships damaged. Relations with a good neighbor severely strained. And all with even questionable results of the stated purpose of this operation.

After all, Mr. President, when you tell somebody, "We're going to set up something to catch smugglers," the smugglers stop smuggling. It reminds me of the operation of the Secretary of the Interior when he announced he was going to Florida to catch alligator poachers. The alligator poachers shaved and went to church that week—probably the first time in years.

The action of the Treasury Department in this operation reminds me of the farmer who was plagued with rats. After failing with various methods to eradicate these rats from his barn, he set fire to his barn and burned the barn down to get rid of the rats. Let us not burn the barn of profitable international trade and invaluable international relationships to get rid of some lawless individual smugglers.

S. 2997—INTRODUCTION OF A BILL PROVIDING JUDICIAL PROCEDURE FOR OBTAINING EVIDENCE OF IDENTIFYING PHYSICAL CHARACTERISTICS

Mr. McCLELLAN. Mr. President, I introduce for appropriate reference, together with Senators HRUSKA and ALLOTT, S. 2997, a bill to provide a judicial procedure for the obtaining of evidence of identifying physical characteristics. At the outset, however, because this is a new and novel approach to a traditional evidentiary problem facing law enforcement, I am not necessarily committed to the bill, and I am not sure, at this point, that it will receive my wholehearted support. In short, S. 2997 is a bill which I want subjected to close scrutiny and study by all those knowledgeable in the area of criminal law and procedure.

Mr. President, S. 2997 is an outgrowth of the Supreme Court's recent decision in *Davis* v. *Mississippi*, 394 U.S. 721, decided on April 22 of this year. It would be helpful, therefore, to set out briefly the facts in the case.

On December 2, 1965, in Meridian, Miss., an individual was raped by an assailant she could describe only as a young

but this legislation will be effective so that, at some point in the not too distant future, it will begin to bite.

Mr. ELLENDER. But the States, as the Senator has stated, would first have to act?

Mr. MUSKIE. Yes.

Mr. ELLENDER. They would have to set State standards?

Mr. MUSKIE. Yes; most of the States may now have legislation adequate to such standards. I think they do, under the 1965 act.

Mr. ELLENDER. As the Senator may know, I understand that of the 17 or 18 plants that have been completed, some have been closed down because of the fact that there was an indication that water in the neighborhood, or even in the general environment of the place, was becoming polluted from the operation of such atomic-powered electric powerplants; and it would seem to me that we ought to place in this bill, if it is not already there, language which would permit the Federal Government to step in, in order to prevent the construction of powerplants from which there may result pollution, as a result of either their construction or their operation.

Mr. MUSKIE. Mr. President, it is my best judgment, and I so state to the Senator, that I think that we have written that kind of provision into the act, though there will be the inescapable time delay to which I have referred.

May I point out to the Senator that the provision of the bill I read applies to the construction or operation of plants that are subject to Federal license or Federal permit. There are other forms and other sources of thermal pollution, to which the Senator has addressed himself which are not subject to Federal permit or license.

Large industrial plants also discharge heated water into streams. There are coal- and oil-fired plants which do the same. Since those plants do not require Federal licenses or permits unless the construction is under the authority of the Corps of Army Engineers, there will be a great deal of thermal pollution in this country that will not be subject to the provisions of the act.

Mr. ELLENDER. Mr. President, why would it not be advisable to cover that phase of the problem?

Mr. MUSKIE. Mr. President, the States could, under their water standard setting authority, act in the matter. It is our hope that under this example set by the Federal Government they will act to cover other forms of thermal pollution within their borders.

I think we will have to keep putting pressure on.

I point out to the Senator, whose dedication I have learned to respect, that, sitting as he does on the Appropriations Committee, he is in perhaps a more effective position than I am to watch the implementation of the policy upon the nuclear powerplants.

I urge him to do so. I welcome enthusiastically his interest in this matter as I know of his influence.

We are trying to do our job on the legislation, but I welcome the interest of the Senator in it.

Mr. ELLENDER. Mr. President, I have set hearings for next week. Members of the AEC will be present to testify as to the plants already in existence.

Unless we are certain of the environmental effects of these nuclear plants, some day we may find that we have created a monster. Before the matter goes too far, I am very hopeful that we will be able to do something about it. I understand that the discharge in some areas is very bad and that it contaminates not only the water but also the air.

Mr. MUSKIE. The Senator is correct. As I think I told the Senator in conversation the other day, we had testimony in a hearing before our committee that as much as 50 percent of the flow of a river might be necessary to cool the discharge from one of these nuclear powerplants.

JUDGE CLEMENT F. HAYNSWORTH, JR.

Mr. WILLIAMS of Delaware. Mr. President, Judge Clement F. Haynsworth, Jr., has been nominated to fill a vacancy on the Supreme Court, and the Senate will soon be voting on the question of the confirmation of his nomination.

Personally, I have not made any decision as to how I shall vote on this nomination and will not do so until I have had a chance to study the record and hear the arguments regarding the allegation that some of his financial transactions may have been improper or that they interfered with his court duties.

But there is one point which has been raised that in my opinion needs to be answered; and that is, the argument that since Mr. Haynsworth and Bobby Baker had at one time—in 1958, 5 years prior to Mr. Baker's exposure—both owned stock in the same company, this association automatically raises a cloud over his qualifications.

In 1963, I took no small part in exposing the questionable financial transactions of Bobby Baker and his associates, and it was upon my insistance that those charges were presented to the Department of Justice. I am not here today to defend either Mr. Baker or any of his partners who were engaged in these questionable financial arrangements; they were a major scandal and a disgrace to the Senate.

During the 2 years of the Senate investigation into Mr. Baker's activities I spent many hours trying to unravel his various financial manipulations, and since Mr. Haynsworth's name was recently mentioned as having been connected with Mr. Baker, I have again reviewed my files. I can find no reference which would connect Mr. Haynsworth with Bobby Baker in an improper manner. If there are those who have such evidence, then in fairness they have a responsibility to present it and let it be considered on its merits. It should also be pointed out that the memorandum which Mr. Haynsworth submitted to the Judiciary Committee supports this contention.

But while we may condemn Mr. Baker and his partners who were engaged in these illegal activities, I caution the Senate not to resort to a policy of guilt by association. Such a policy may prove embarrassing to those who would promote this as an argument against the confirmation of the nomination of Mr. Haynsworth.

To emphasize this I remind the Senate of certain points which may have been overlooked:

First. Prior to 1963, when Bobby Baker's activities were first exposed, Mr. Baker held the position of secretary to the majority, and in that capacity was a daily associate of every one of us who was serving in the Senate at that time.

Second. Senator Lyndon Johnson was a close friend of Bobby Baker's and the majority leader of the Senate at the time Bobby Baker was appointed to the position of secretary to the majority. Mr. Johnson was later elected President of the United States.

Third. Mr. Abe Fortas, a friend and the personal attorney for Bobby Baker when the charges against Mr. Baker were first initiated, later severed his relationship as Baker's attorney and subsequently was appointed and his nomination confirmed by the Senate as a Justice of the Supreme Court.

Fourth. Mr. David Bress, a Washington attorney, represented Mr. Baker and and was subsequently appointed and his nomination confirmed by the Senate, to the position of U.S. attorney in Washington, D.C.

Fifth. Mr. Sheldon Cohen was a tax specialist in the Fortas law firm at the time Mr. Fortas was representing Mr. Baker during the Senate investigation. Mr. Cohen was later appointed, and his nomination confirmed by the Senate to the position of Commissioner of Internal Revenue.

Sixth. Prior to the time of Mr. Baker's exposure the then Senator from Florida, Mr. Smathers, and Mr. Baker had been associated in a business venture in Florida.

Seventh. Two former Cabinet officers, Secretary of Commerce Luther Hodges and Secretary of Treasury Henry Fowler, prior to the exposure of Mr. Baker's questionable activities and prior to their appointment, had financial interests in companies with which Mr. Baker was a stockholder. The wife of Secretary Fowler had served as an officer of one of these companies. The nominations of both of these men were confirmed by the Senate.

Eighth. One further point: I remind Senators that the Committee on the Judiciary, which will be voting on this nomination tomorrow, still carries Bobby Baker's wife on the committee payroll at a salary of $17,500 per year.

I outline this record here today not for the purpose of casting any reflection upon the integrity of any of those mentioned as having been friends or associates of Bobby Baker prior to 1963, when his questionable activities were first exposed, but merely as a reminder to the Senate of the danger of discrediting any man on the basis of "guilt by association."

I frankly admit that as one Member of the Senate who daily saw Bobby Baker for several years during the time he was serving as secretary to the majority

I liked the young man, and it was a great disappointment to me when his questionable financial transactions were first called to my attention and the necessity arose for his denunciation.

I am sure that the members of the Judiciary Committee, which committee still retains Mr. Baker's wife on its payroll, the Members of the U.S. Senate who, like me, were associates of Mr. Baker while he served as the secretary to the majority, and the Members of the Senate who voted for the confirmation of the nominations of several nominees referred to above will all agree that "guilt by association" is not a basis for arriving at our decision.

I repeat, I have not made any decision as to how I shall vote on this nomination and will not do so until I have had a chance to study the record and hear the arguments regarding the allegation that some of his financial transactions may have been improper or that they interfered with his court duties. These points do merit our consideration.

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

Mr. WILLIAMS of Delaware. I yield.

Mr. COOPER. Mr. President, the Senator was kind enough to show me this statement before he made it.

We all recall that it was the Senator from Delaware (Mr. WILLIAMS) who brought to the Senate the information upon which the inquiry into Bobby Baker's case was initiated.

I was a member of the Committee on Rules and Administration which conducted the investigation at that time. Again and again, throughout that very sad period, the Senator from Delaware bore the chief burden of presenting evidence and of insisting upon a full investigation.

I think the Senator has done what is typical of him with respect to his fairness. I point out that it is enough to say that the Senator has done what is typical of him with respect to being absolutely fair.

I find myself in the same position as the Senator from Delaware. I have not determined how I will vote on the matter.

I commend the Senator from Delaware for his statement.

Mr. WILLIAMS of Delaware. Mr. President, I thank the Senator.

Two of the men I mentioned came before our committee for confirmation. I knew about their previous friendship with Bobby Baker. We saw nothing wrong with it. I was the one who moved that their nominations be reported favorably to the Senate.

There have been other nominations that I have opposed, but I think we should make our decision based upon the merits in each case. As I have stated, I am not taking any position as to what my vote on this nomination will be, although I do not doubt that there will be those who will try to read into my statement an indication of what my position will be. I merely want to emphasize that I will try to arrive at the decision on the basis of the merits of the case and not on the basis of any guilt by association.

Since this question as to Mr. Haynsworth's connection with Mr. Baker has arisen in the press several reporters have asked me, "Do you know anything about it?" I thought I had better make one clear statement for all concerned. So far as I can determine I have seen nothing whatever in the files that would indicate any improper connection.

I am merely trying to clarify my position, in fairness, and I do that as one who may or may not vote, in the final analysis, for confirmation. My decision will be based on factors other than this.

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

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

WATER QUALITY IMPROVEMENT ACT OF 1969

The Senate resumed the consideration of the bill (S. 7) to amend the Federal Water Pollution Control Act, as amended, and for other purposes.

Mr. CURTIS. Mr. President, I have an amendment at the desk, and I ask that it be read.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 66, line 6, strike out the word "two" and insert "three"; and in line 7, strike out the word "two" and insert "three".

Mr. CURTIS. Mr. President, under section 16(c)(6) it is provided that for any facility being constructed under a Federal license on the date of enactment of S. 7, no certification under section 16(c)(1) is required for any Federal operating license necessary for such facilities, if such operating license is issued within 2 years following the date of enactment. The subsection further provides that after 2 years, the licensee must provide certification or see its operating license terminate.

This provision is directed principally at facilities licensed under the Atomic Energy Act and is designed to require those facilities to comply with applicable water quality standards particularly as they relate to thermal pollution. This objective is laudible and I support it. However, the 2-year period of time for facilities being constructed to revise their specifications is possibly too short. The installation of facilities necessary to achieve compliance with water quality standards involves millions of dollars and requires considerable time for design and construction. I, therefore, submit, and the basis of my amendment is, that the 2-year time period in order that facilities under the provisions of subsection 16(c)(6) be given added time to achieve necessary compliance.

I think this amendment is necessary to avoid undue hardship while at the same time achieving compliance with water quality standards. The amendment would merely extend the time 1 year.

I urge the adoption of the amendment. It is my hope that the distinguished chairman of the committee, who is in charge of the bill, will see fit to accept it.

Mr. MUSKIE. Mr. President, I have discussed this amendment with the distinguished Senator from Nebraska and the distinguished Senator from Delaware (Mr. BOGGS). It does not in any way change the thrust of this provision of the bill or the principle underlying it. It is a question of allowing more time for plants that began their construction before the date of enactment of this bill to adjust to its requirements. I have no objection to the amendment.

Mr. CURTIS. I thank the distinguished Senator very much.

I ask for a vote.

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

The amendment was agreed to.

AMENDMENT NO. 132—ADDITIONAL COSPONSORS

Mr. NELSON. Mr. President, I call up my amendment No. 132, and I ask unanimous consent that the names of the following Senators be added as cosponsors of the amendment: Mr. MUSKIE, Mr. RANDOLPH, Mr. BAYH, Mr. BROOKE, Mr. BURDICK, Mr. CANNON, Mr. CASE, Mr. CHURCH, Mr. CRANSTON, Mr. DODD, Mr. EAGLETON, Mr. GOODELL, Mr. GRAVEL, Mr. HARRIS, Mr. HART, Mr. HARTKE, Mr. HOLLINGS, Mr. INOUYE, Mr. JAVITS, Mr. KENNEDY, Mr. MAGNUSON, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MONDALE, Mr. MOSS, Mr. PELL, Mr. PROXMIRE, Mr. TYDINGS, Mr. WILLIAMS of New Jersey, and Mr. YOUNG of Ohio.

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

The amendment will be stated.

The assistant legislative clerk read as follows:

AMENDMENT NO. 132

On page 69, line 7, in lieu of "(k)" insert "(l)".

On page 72, between lines 8 and 9, insert the following: "(j)(1) The Secretary shall, after consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, as soon as practicable but not later than two years after the effective date of this subsection, develop and issue to the States for the purpose of adopting standards pursuant to section 10(c) criteria reflecting the latest scientific knowledge useful in indicating the kind and extent of effects on health and welfare which may be expected from the presence of pesticides in the water in varying quantities. He shall revise and add to such criteria whenever necessary to reflect developing scientific knowledge.

"(2) For the purpose of assuring effective implementation of standards adopted pursuant to paragraph (1) the Secretary shall, in consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, conduct a study and investigation of methods to control the release of pesticides into the environment, which study shall include examination of the persistency of pesticides in the water environment and alternatives thereto. The Secretary shall submit a report on such investigation to Congress together with his recommendations for any necessary legislation within two years after the effective date of this subsection."

On page 72, line 9, in lieu of "(j)" insert "(k)".

Mr. NELSON. Mr. President, in a recent grim scenario, a noted ecologist, Dr. Paul Ehrlich, projects the end of the

that killed the Government leaders of South Vietnam, was it? It was assassination among leaders which was how power was achieved in South Vietnam.

Mr. HUGHES. The strange thing is that political assassinations in South Vietnam are not the policy even now, so the political assassination of Diem was unusual.

Mr. YARBOROUGH. Not the policy of what government?

Mr. HUGHES. It does not seem to be the policy of the Vietnamese people. They use prisons and jails, but they have not had a taste for political assassination.

Mr. YARBOROUGH. They do not take people out, line them up against the wall, and shoot them, do they?

Mr. HUGHES. That is called execution.

Mr. YARBOROUGH. They do line up people in villages and shoot them when they are found to be sympathetic to the Vietcong.

Has the Senator read an article published in the Wall Street Journal, describing how people are taken out and shot without a trial?

Mr. HUGHES. Yes; and I also read a clipping just yesterday, reporting that General Ky had indicated that, if the inflationary spiral continued, the businessmen who were contributing to it might be sent before a firing squad and shot.

Mr. YARBOROUGH. I want to commend the Nixon administration for controlling inflation by reducing jobs, and not killing people, as is done in Vietnam.

I wish to express my commendation of the Senator for his leadership in submitting the resolution. Is the Senator familiar with the fact that during the so-called election in South Vietnam, anyone who wanted the war to be settled was not permitted to vote? If one was in favor of settling the war, he was disfranchised. In order to vote, he had to certify that he wanted to continue the war.

Mr. HUGHES. Yes; I am aware of the fact that anyone who proposed neutrality or did not advocate the policies of the government was not permitted to vote.

Mr. YARBOROUGH. So the very few who were permitted to vote were the ones who supported General Ky.

We read news releases about the great numbers of people in Vietnam who turned out to vote for the administration, when, as a matter of fact, they had already been disfranchised because they wanted to settle the war.

Mr. HUGHES. I have heard the distinguished Senator from Texas describe what happened in some villages to people who were thought to be sympathizers with the Vietcong.

Mr. YARBOROUGH. I do not think Americans ought to support assassinations. I think it was wise that the charges against the Green Berets were dropped. I participated in the war crimes trials following World War II, trials which were conducted under the rules established by the Americans. We supported the rules that were laid out for us. The higher-ups were tried first. If assassinations had been committed, we were to follow the rules that were made for trials in Germany and Japan, and try those high in authority first.

If we are going to spend the lives of our people, we ought not to spend them in support of a government which does not follow the basic rules of humanity.

On the floor of the Senate a few days ago, I mentioned the rumors that are rampant in South Vietnam. They were told to me by a number of Americans last November and December, when I was over there. I was told that Marshal Ky's wife was getting a rice plantation in her own name. I do not know if the rumors are true, but I hope that some committee of the Senate, whether the Committee on Armed Services or the Committee on Foreign Relations, will investigate this charge. If true, we ought to know it; if not, the rumor ought to be laid to rest. The rumor was told to me by Americans in Vietnam.

Stories are told of favoritism and of the rapid accumulation of vast wealth by some of the district chiefs, I think they are called. They are not called by the title "governor" because the French used that title. In one instance, a Cabinet officer was sent from Saigon to become the chief of a province.

If the wife of Marshal Ky has obtained a rich rice plantation in South Vietnam, as I have been told she has, that is something about which the American people are entitled to know. I hope that a committee of the Senate will investigate it and determine whether we are permitting the leaders of that country to pile up wealth while we are paying for the conduct of the war.

If we are supposed to be supporting basic democracy, I think we ought to be supporting basic democracy, and not a couple of dictators who are getting rich from this war.

Every time a South Vietnamese newspaper criticizes Thieu and Ky, the operations of that newspaper are suspended. There should be an end to censorship of the newspapers and a granting of liberty among them and a granting of freedom to those who are held as political prisoners. We should not continue to support with our blood and money, any government that does not follow the principles of democracy.

Mr. HUGHES. I thank the Senator from Texas for his penetrating insights into the problems of government in South Vietnam. Since becoming a Member of the Senate, I have listened to him as he has presided as chairman of the Committee on Labor and Public Welfare. He has fought for adequate programs in the fields of health and education and the well-being of the people of America. After listening to the testimony of almost every agency of the Government, we realize that the funds for these programs are so scarce that we cannot obtain them, regardless of the fact that we recognize that they are not being done, because we are spending $3 billion a month in this tragic conflict and are basically supporting a government that does not have the support of its own people. Certainly it does not seem to be the moral thing to do under this set of circumstances.

In recapitulation and in conclusion, I merely wish to say that I think we are all concerned with and share the agonies of our President, Mr. Nixon, during these trying times, when he has been seeking a way to peace. We attribute to him the same desires that all of us have to bring this tragic conflict to an end. But I know that many among the American people feel that when a request is made to remain silent for 60 days more; when there are no signs on the horizon, visible or invisible, that anything material is being done; while we continue to support a government in Saigon which apparently has the support of only 20 percent of the South Vietnamese people, which seems to be guilty of jailing over 20,000 people as political prisoners, which suppresses the press and political parties that advocate neutrality or disagree with the government in Saigon—while we continue supporting a government of this kind, we cannot reasonably hope to make a breakthrough in negotiations.

So, Mr. President, again I submit that, if this moratorium is to be seriously considered, the President of the United States, reenforced by this sense of the Senate resolution, could take the proper steps, during this 60-day period, to make a major breakthrough for peace. At the same time, this does not conflict with the calls for cease fire. It does not conflict with any proposed plan of disengagement of troops, whether it be 100,000 by December or 200,000 by the end of the year. It does not even conflict with the request for total disengagement that has been made by some Members of this body. But it is, in my opinion, a progressive step in the right direction that can be taken with little effort on the part of our Government. It would be a major breakthrough, in my opinion, in our negotiations and in our relationship with the people of South Vietnam. It could result in the saving of thousands of lives, tens of thousands of injuries, the heartache of the Vietnamese people and the heartbreak of the people of our country as we tend to destroy ourselves from within while we are so horribly engaged with this soul-draining conflict without.

Mr. President, I thank the distinguished Senators from Texas, California, Missouri, and Idaho, who have joined in this discussion with me this morning.

I yield back whatever time I have remaining.

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

Mrs. SMITH of Maine. Mr. President, a week ago on September 30, 1969, I informed the President of the United States that I did not feel that I could support the Haynsworth nomination and that I hoped Judge Haynsworth would request that the nomination be withdrawn.

I wrote the President:

> Lest my silence at the Leadership meeting this morning be misleading, I feel obliged to tell you that I do not feel that I can support the Haynsworth nomination. I felt very strongly against the Fortas nomination for reasons very similar to those on the Haynsworth nomination. I do not believe that I can adopt a double standard which would be applied against his Democratic predecessor and for nominee Haynsworth because he was nominated by a Republican President.

I feel that there is much more opposition to the Haynsworth nomination among Republican Senators than is generally realized.

I would hope that Judge Haynsworth would himself resolve the situation which has become embarrassing to many Republican Senators by asking you to withdraw his name from nomination.

Mr. President, I feel that any nominee for the Supreme Court of the United States—and most particularly for the seat vacated by the resignation of Mr. Fortas under the conditions under which he resigned—should be free from suspicion.

However unfair and however unwarranted, Judge Haynsworth is not free from suspicion. There is considerable public doubt about him.

Next to ending the war in Vietnam, one of the most important objectives of the administration should be to reestablish confidence in the Supreme Court and the judiciary.

The Haynsworth nomination will not help restore or reestablish such desperately needed confidence in the Supreme Court and the judiciary.

To the contrary, it will further damage the public confidence in the Court.

Perhaps it is not valid to observe that how things look sometimes seems more important than how things really are—that appearance seems more important than fact.

But of one thing I am sure—that a judge cannot allow even the appearance of impropriety. The very canons of judicial ethics demand that a judge avoid impropriety and the appearance of impropriety.

The confirmation of the nomination of Judge Haynsworth would at best be a pyrrhic victory for the President.

These observations are not original with me nor exclusive with me.

They have clearly and pointedly been made to the President.

No one of us is perfect—none of us is without our own errors.

But I do not believe that the recognition of this should cause us to falter in striving for as much perfection as possible on a Supreme Court nomination.

Last year at this time when I was in the hospital, in response to the request of Senator GRIFFIN, I authorized pairing me against the Fortas nomination.

Now, a year later, I agree with Senator BAYH'S opposition to the Haynsworth nomination for the same basic and fundamental reason that I agreed with Senator GRIFFIN'S opposition to the Fortas nomination a year ago.

I do not believe in a double standard. Nor do I see a political justification for it or placing party loyalty ahead of conscience.

I am not a lawyer and I may very well be naive. But it has been my concept that the role, mission, duty, and work of a judge or Justice is to judge and to judge as wisely as possible.

The relation of the mere words of "judge" and "judgment" make crystal clear the imposition of exercising impeccable judgment on any judge not only with respect to his official duty and work on the bench but as well to his unofficial life, including his financial transactions.

I think that a Supreme Court Justice should be a person of impeccable judgment. Yet, Judge Haynsworth has admitted to some faulty judgment in his financial affairs as related to his judicial status.

To me, his admitted faulty judgment alone is sufficient for me to withhold my approval of his sitting on the highest court in the land where we must always strive for impeccable judgment.

Let us not forget that Justice Fortas was forced to resign because of his outside business transactions.

And in remembering that so recent matter, let us recognize that the amount of evidence that should be necessary to justify refusing a confirmation is much less than the amount properly required to justify demanding his resignation after one has been confirmed and served.

Mr. MANSFIELD. Mr. President, I can only say that, as always, the distinguished senior Senator from Maine has expressed her conscience as she sees things. No one is in doubt as to what her position is, and I commend her for the consistent course she has taken down through the years in carrying out her responsibilities—and they are great—and her duties as a Senator of the United States.

Mrs. SMITH of Maine. Mr. President, I thank the majority leader from the bottom of my heart for his kind remarks. He has always been so very generous.

WATER QUALITY IMPROVEMENT ACT OF 1969

The PRESIDING OFFICER (Mr. ALLEN in the chair). Under the order of the Senate, the Chair lays before the Senate the unfinished business, which will be stated.

The ASSISTANT LEGISLATIVE CLERK. A bill (S. 7) to amend the Federal Water Pollution Control Act, as amended, and for other purposes.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate today.

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

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

Mr. MANSFIELD. I yield.

Mr. KENNEDY. Mr. President, I understood the Committee on the Judiciary had scheduled a meeting earlier today. A number of members of that committee from this side of the aisle were prepared to meet and consider what I think all of us realize is one of the most important measures to come before the Committee on the Judiciary, the nomination of Judge Haynsworth. I think it is extremely appropriate that these meetings take place and proceed in an orderly and responsible way, that questions which are raised be raised within that committee, and if additional time is necessary, the committee should make that determination.

I think it is extremely important for Members of this body to realize that the postponement or delay of that meeting was not at the suggestion of Members from this side of the aisle. When we hear so much talk and read so much about delays of action by Congress, it is appropriate to mention at this time that delay in the committee meeting this morning was not at the suggestion of Members from this side of the aisle.

I am hopeful that meetings will take place expeditiously and that we can get on with the business of the nomination.

Mr. MANSFIELD. Mr. President, has the unanimous-consent request been agreed to?

The PRESIDING OFFICER. Yes.

Mr. MANSFIELD. Mr. President, for the information of the Senate I have dispatched a telegram to all Democratic members of the Committee on the Judiciary asking them to be present at 10 o'clock tomorrow morning, when the next meeting of the committee will be held. It is my understanding that the distinguished minority leader, the Senator from Pennsylvania (Mr. SCOTT), will make the same request of the Republican membership. It is our hope that this matter will be faced up to and disposed of one way or another, so that the Senate can fulfill its responsibility and get on with the various matters of business which are at hand.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar.

The PRESIDING OFFICER. Is there objection?

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

AMBASSADORS

The assistant legislative clerk proceeded to read sundry nominations of Ambassadors.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations of Ambassadors be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations of Ambassadors are considered and confirmed en bloc.

DISTRICT OF COLUMBIA COUNCIL

The assistant legislative clerk read the nomination of Henry S. Robinson, Jr., of the District of Columbia, to be a member of the District of Columbia Council.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

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

charitable deduction for Federal income tax purposes to a donor creating such a qualified foundation. Further, the foundation will be exempt from taxes for the duration of its 25-year life. But, at the specified time, the property must pass into the public domain.

This rule would provide a better balance between the interests of the public and private concerns. True, it may not be adequate treatment. It still grants significant tax benefits to wealthy individuals, I acknowledge, purely and practically because of such wealth, and it still provides a generous time during which their own wishes can have absolute priority in terms of expenditures for the public benefit, neither of which benefit is practically available to persons of ordinary means. But it also insures the funds will not be frozen for all time to come into a mold predetermined alone by the donor. At an appropriate time, there will be an opportunity for society of that day to reassess the priorities to which these funds should be directed. And should this not be?

Some donors of foundations have recognized the efficacy of my view that a specific termination date should be set for foundations. In 1928, Julius Rosenwald directed the dissolution within 25 years of the Julius Rosenwald Fund. In a letter to his trustees, he wrote:

I am not in sympathy with this policy of perpetuating endowments and believe that more good can be accomplished by expending funds as Trustees find opportunities for constructive work than by storing up large sums of money for long periods of time. By adopting a policy of using the Fund within this generation, we may avoid those tendencies toward bureaucracy and in a formal or perfunctory attitude toward the work which almost inevitably develop in organizations which prolong their existence indefinitely. Coming generations can be relied upon to provide for their own needs as they arise.

I concur in the philosophy expressed by Mr. Rosenwald. I am willing now to grant by law an appropriate, fixed period of time for the furtherance of the donor's wishes. But thereafter control should pass to the living.

THE HAYNSWORTH AFFAIR

Mr. PELL. Mr. President, standards of conduct in government must be above the standards observed in other segments of our community. The people rightfully expect that some actions tolerated or permitted in the private sector will not be condoned in public service.

And, within the government, I believe, it is particularly important that the highest standards of conduct be observed by the judiciary, for those who are called upon to pass judgment must themselves be above reproach. And, indeed, among all men in government, the Justices of our Supreme Court should be called upon to demonstrate the nicest sense of ethics.

It is not just a question of doing right or wrong, for certainly wrongdoing cannot be tolerated. But for men in whom the highest trust is placed, even the appearance of a lack of sensitivity to ethical considerations must be avoided. If our country is to feel the confidence it should in the probity of our judicial system, then it is incumbent on each Justice to follow the course of Caesar's wife.

This is the standard that must be applied in considering the nomination of Judge Clement Haynsworth. Thus far no evidence has been brought to my attention that demonstrates actual wrongdoing or evil intent. But the record does show an absence of that nice sense of ethics which I believe should be required of all Justices of the Supreme Court.

For this reason, I oppose the confirmation of Judge Haynsworth to be a Justice in our Supreme Court.

BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE

Mr. PELL. Mr. President, last week, J. Sinclair Armstrong made a very telling statement before the Senate Appropriations Committee on behalf of Business Executives Move for Vietnam Peace.

Mr. Armstrong has had a singularly responsible and successful record in Government, where his last position was Chairman of the Securities and Exchange Commission, and in private business, as executive vice president of the United States Trust Co. of New York.

Mr. Armstrong has been in the forefront of the growing legion of businessmen concerned with the waste and drain upon our national vigor which is being produced by the Vietnam war.

He believes that it is up to Congress to rescue our country from the dilemma which it is in, and help the executive branch of our Government do what should be done.

I ask unanimous consent that this cogent statement be printed in the RECORD at this point.

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

BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE

(Statement of J. Sinclair Armstrong, on behalf of Business Executives Move for Vietnam Peace, before the Senate Appropriations Committee, September 25, 1969)

Business Executives Move for Vietnam Peace is an organization of 2,600 owners and executives of American business corporations in forty-nine states who seek by open and lawful means to bring about an end of U.S. participation in the War in Vietnam.

We commenced our activity in September, 1967, spurred by several members of the Senate, who asked us, amid all the groups crying out against the U.S. bombing and fighting in Vietnam, "Where are the businessmen?"

We are executives and owners of American business corporations. The men in our group have great responsibility for management of wealth, operation of business, provision of employment, and an evergrowing concern and responsibility for our communities and our country.

My own business experience is in law and finance, and includes four years of service as Commissioner (two as Chairman) of the Securities and Exchange Commission, two as Assistant Secretary of the Navy for Financial Management, and ten in my present position as Executive Vice President of the United States Trust Company of New York (for whose official views I do not purport to speak on this occasion).

As executives and owners of American business, our numbers are small, but we notice an expansion of interest in our cause and an increase in our membership this year. As the War which America repudiated in 1968 continues full of fight through 1969, there is little evidence of progress in negotiations with the governments and fighting organizations involved on either side.

As business executives, we see the War as unwinnable. As financiers, we see the destabilization of our domestic and international finances that it has brought about.

As citizens in our home communities, we see the blight that its excess costs visits on us in curtailment of resources for housing, education, health facilities, mass transport facilities, and productive employment.

As taxpayers, we feel the burden of its cost—the surtax, recently re-enacted—and the proposed repeal of the tax credit for investment in capital equipment by which goods are produced and America is kept modern.

We see the enormous cost of restrictive monetary and fiscal measures, and the record high interest rates—7½% on U.S. Treasury Notes—and curtailment of availability of credit, with the resulting drastic curtailment of vital housing and other construction.

We feel the inflation, the monthly increases in the cost of living, steadily up half of one per cent a month, with no end in sight.

In my testimony before the Defense Sub-Committee of the Committee on Appropriations of the House of Representatives on June 9 (which appeared in the Congressional Record, June 18, 1969), I mentioned the destabilizing effect of the excessive Vietnam and other defense costs, and predicted that, if they continued, there might have to be direct wage and price controls and allocation of materials.

Several days later, the Secretary of the Treasury mentioned this possibility. After that, President Nixon said "no" to wage and price controls. But how else, except by curtailment of war spending, can inflation be curtailed? Tight money and surtax have not succeeded.

A wise leader of organized labor, George Meany, recently returned to the wage and price control theme. Neither he, nor the President, nor we Business Executives believe that that course would be good for America. The economics of the situation tell us that the Vietnam War should be ended now, in the vital interests of our free American society.

THE APPROPRIATION REQUEST FOR SOUTHEAST ASIA OPERATIONS

The Budget of the U.S., FY 1970, pages 73 and 74, states $23,025 million as recommended budget authority ("NOA") for "special Southeast Asia" and $25,733 million (including $336 million "economic assistance") outlays for special Southeast Asia in FY 1970, and military personnel in Southeast Asia, 639,000 in FY 1970.

Secretary of Defense Clifford's Defense Budget and Posture Statement, delivered to the Congress in January of this year, which has not been changed by Secretary Laird so far as we know, calls for the level of operations and personnel requested in the FY 1970 Budget document, for Southeast Asia. Nor do we know whether any budget changes have been made since the President's recent troop withdrawal decisions. We are advised that no action in the House Committee has yet been taken.

Business Executives Move for Vietnam Peace urge this Committee to reject the request for NOA of $23 billion and rescind obligational authority heretofore granted to spend $25.73 billion on the Vietnam War in FY 1970.

We urge this Committee to hand this request back to the Administration, and to require a new estimate based on a planned, phased, complete withdrawal from Vietnam of all U.S. forces beginning at once.

We do not have sufficient detailed data nor any staff to estimate precisely what this reduced amount should be. In view of the di-

SENATE—*Monday, October 13, 1969*

The Senate met at 10 o'clock a.m. and was called to order by the Acting President pro tempore (Mr. METCALF).

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Eternal Father whose word declares: "It is a good thing to give thanks unto the Lord, and to sing praises unto Thy name, O Most High: to show forth Thy loving kindness in the morning and Thy faithfulness every night." We adore Thee in the beauty of the world, in the goodness of the human heart, in the faithfulness of friends, and in Thy thought within the mind. Our pause is our prayer and Thy presence is the answer. As the days of a new week open, invest Thy servants in this body with wisdom and grace sufficient for their tasks. Above differences and divisions, above conflict and confusion, may they know the deeper unity of those whose minds are stayed on Thee. Anoint the people of this good land with Thy spirit that they may help open for all men the gates of the kingdom everlasting whose Builder and Maker is God. Amen.

REPORT OF A COMMITTEE SUBMITTED DURING ADJOURNMENT

Under authority of the order of the Senate of October 9, 1969, Mr. NELSON, from the Committee on Labor and Public Welfare, reported favorably, on October 10, 1969, an original bill (S. 3016), to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, to authorize advance funding of such programs, and for other purposes, and submitted a report (No. 91-453) thereon, which bill was placed on the calendar, and the report was printed.

THE JOURNAL

Mr. KENNEDY. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, October 9, 1969, be dispensed with.

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

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that on October 10, 1969, the President had approved and signed the following acts:

S. 713. An act to designate the Desolation Wilderness, Eldorado National Forest, in the State of California; and

S. 2462. An act to amend the joint resolution establishing the American Revolution Bicentennial Commission.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed the bill (S. 1242) to amend the Communications Act of 1934 by extending the provisions thereof relating to grants for construction of educational television or radio broadcasting facilities and the provisions relating to support of the corporation for public broadcasting, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had disagreed to the amendments of the Senate bill (H.R. 4148) to amend the Federal Water Pollution Control Act, as amended; agreed to the conference by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. BLATNIK, Mr. JONES of Alabama, Mr. WRIGHT, Mr. FALLON, Mr. CRAMER, Mr. HARSHA, and Mr. GROVER were appointed managers on the part of the House at the conference.

The message further announced that the House had passed a bill (H.R. 8449) to amend the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

The bill (H.R. 8449) to amend the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, was read twice by its title and referred to the Committee on Commerce.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair recognizes the Senator from Kentucky (Mr. COOK) for a period of not to exceed 1 hour.

Mr. KENNEDY. Mr. President, will the Senator yield, without losing his right to the floor?

Mr. COOK. I yield.

Mr. KENNEDY. I thank the Senator.

WAIVER OF CALL OF THE CALENDAR

Mr. KENNEDY. Mr. President, I ask unanimous consent that the call of the legislative calendar, under rule VIII, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. KENNEDY. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate today.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. KENNEDY. Mr. President, I ask unanimous consent that, following the remarks of the senior Senator from New York (Mr. JAVITS), there be a period for the transaction of routine morning business and that statements in relation thereto be limited to 3 minutes.

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

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

Mr. COOK. I yield.

Mr. McGOVERN. I thank the Senator.

THE VIETNAM MORATORIUM

Mr. McGOVERN. Mr. President, the Vietnam moratorium scheduled for Wednesday of this week will, in my judgment, prove to be the greatest nationwide outpouring for peace ever experienced in this country; but it is important that it not be confused with the senseless violence on the part of so-called radicals that took place in the city of Chicago last week.

The Wednesday moratorium was conceived and organized by the finest young people in this Nation. It is a national town meeting of conscience against the destructive war in Vietnam. It is the peaceful, constructive, and patriotic expression of dissent in this Nation. It is joined by millions from every political persuasion; and, by every account, it reflects the judgment of most of the American people. No one should confuse the Wednesday moratorium with the kind of mindless, destructive activity which took place last week in Chicago. The moratorium seeks to end violence, not to expand it; it seeks serious discussion, not the screaming of slogans; it believes in the decency and good sense of the American people, not the shallow ideology and viciousness of recent demonstrations in the parks and streets of Chicago.

(At this point Mr. McGOVERN assumed the chair.)

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

Mr. COOK. Mr. President, as a firm supporter of the confirmation of Judge Haynsworth, I welcome Senator BAYH's "bill of particulars" which he released to the press Wednesday afternoon. Both the opponents and the supporters of Judge Haynsworth can now stop dealing with ghosts, rumors, and innuendos and address themselves to what the judge's principal foes conceive to be the reasons for opposing his confirmation.

I have carefully reviewed the bill of particulars, and my studied conclusion is that the mountain of opposition has

labored, and given forth a mouse of justification. The principal item in the bill is a rehash of the new time-worn details of Carolina Vend-A-Matic and the Darlington Corp. case—a criticism that was exploded by the chairman of the American Bar Association Committee on Judicial Selection, and by the leading authority on judicial disqualification in the country, during the very first week of the hearings before the Senate Judiciary Committee. Another charge reiterated in the bill of particulars is the claim that Judge Haynsworth should have disqualified himself in several cases in which he held stock in a parent corporation, and a subsidiary of the parent was a party litigant before his court. Unfortunately, instead of carefully analyzing the very real problems that exist in this area, Senator BAYH has contented himself with stating the bald conclusion that Judge Haynsworth's refusal to disqualify himself was a violation of the statute and of the Canons of Ethics. I find this conclusion wholly unsupported, either in reason or in precedent.

Finally, analyzing as carefully as I can that section of the bill entitled "Demonstrated Lack of Candor," I can only say that I am left with the firm feeling that any lack of candor there may be is not that of Judge Haynsworth.

I think the Senate Judiciary Committee, and the Senate as a whole, is entitled to something more than just rhetoric on this matter, and I would therefore like to take up these three principal charges in the bill of particulars in detail.

1. CAROLINA VEND-A-MATIC

This history of Carolina Vend-A-Matic has been told and retold both in testimony before the Senate Judiciary Committee, and in media coverage of the nomination of Judge Haynsworth. The best answer to Senator BAYH's rehash of these same facts in his bill of particulars is to be found in the statements of two witnesses who testified before the Senate Judiciary Committee in connection with its hearings on the nomination:

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. (Testimony of Lawrence E. Walsh, Chairman of the American Bar Association Committee on Judicial Selection, and himself a former federal judge, Transcript, Hearings before the Senate Judiciary Committee, Nomination of Honorable Clement F. Haynsworth, hereinafter called "Transcript", p. 243.)

The second witness, John P. Frank, probably the leading authority on the subject of judicial disqualification in the country, rejected the argument now revived by Senator BAYH with these words:

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 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 and do his job as well as he could. (Transcript, 199–200.)

Senator BAYH's purportedly factual discussion of Carolina Vend-A-Matic contains several statements which can only be described as disingenuous.

(a) 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.

The obvious import of this statement is that the fact that Judge Haynsworth regularly attended meetings of the board of directors, and voted for slates of officers through the years, tends to support the conclusion that he knew he was carried on the corporate records as a vice president of the corporation until 1963. Anyone who has had any familliarity with closely held corporations and the methods by which they conduct their business, will not be overly impressed by this logic. But more important, it is undisputed that Judge Haynsworth submitted a written resignation of his position as a director of Carolina Vend-A-Matic in October 1963, pursuant to a resolution of the Judicial Conference of the United States disapproving of judges holding either directorships or offices in corporations organized for profit. If he had realized that he was carried on the corporate books as a vice president at this time, is there any doubt that he would also have resigned his office as vice president?

He goes on to state:

(b) "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 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 on the profit sharing trust."

There is no requirement of judicial conduct that a judge owning an interest in a business be completely inactive in that business. The statement with respect to Judge Haynsworth's activity in the affairs of Carolina Vend-A-Matic was originally made in the context of the 1963 investigation conducted by Chief Judge Sobeloff, and was directed to the issue of whether Deering-Milliken personnel in charge of granting concessions to vending machine companies might have known of Judge Haynsworth's connection with Carolina Vend-A-Matic, and tended to favor it for that reason. Judge Sobeloff concluded that this was emphatically not the case, and none of the facts contained in Senator BAYH's statement contradict that conclusion in the slightest. Since they do not bear on that conclusion, they can only be described as red herrings, which tend to prove or disprove nothing in connection with Judge Haynsworth's judicial conduct while on the court of appeals for the fourth circuit.

He proceeded to say:

(c) "In 1957, after Judge Haynsworth assumed the bench, the gross sales of OVAM and its subsidiaries increased tremendously."

Mr. President, at this point I ask unanimous consent to have printed in the RECORD two letters, one addressed to the Senator from South Carolina (Mr. HOLLINGS) and the other addressed to the chairman of the Committee on the Judiciary, the Senator from Mississippi (Mr. EASTLAND), from the president of the largest vending machine company in South Carolina, who emphatically states that he does not know of any instance when Judge Haynsworth ever involved himself in the acquisition of business for Carolina Vend-A-Matic.

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

ATLAS VENDING CO., INC.,
Greenville, S.C., September 5, 1969.

HON. ERNEST F. HOLLINGS,
Senate Office Building,
Washington, D.C.

DEAR MR. 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 af 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 his 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.

ATLAS VENDING CO., INC.,
Greenville, S.C., October 6, 1969.

Re: Judge Clement F. Haynsworth, Jr.

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

DEAR SENATOR EASTLAND: Sometime ago I wrote to Senator Thurmond and to Senator Hollings about the slanders which are being circulated in the press about Judge Haynsworth and Carolina Vend-A-Matic Company. I am disappointed that those letters did not get into the record of the hearings, as I am now informed. I am so disturbed about the matter, however, that I, at least, want you to know about it.

I have been in the vending business in Greenville for many years. I operate complete food vending services in many industrial plants. Many of them are textile plants, for that is still the principal industry in the area. A number of my installations are in plants affiliated with Deering-Milliken.

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 unique to it. My own business experienced comparable growth. A vending business in Spartanburg, just thirty miles to the West, had similar experiences. It is simply the case of having a service to offer at a time of a rapidly rising demand for that service.

While all of the vending services in this area have prospered, the competition has been keen. I competed with Carolina Vend-A-Matic for locations in textile plants and other industrial plants. Sometimes I got the business; sometimes they got the business; sometimes somebody else got it.

The practice in the area was to make these awards on the basis of open bidding. The business was awarded after a careful comparison of the bids. Of particular importance was the location of the plant in relation to the vending company's service centers and the existence and location of a commissary operated by the vending company. If, considering all of these factors, an appraisal of the bids would show that I was the one in position to render the best service; I got the business; if not, it went to the bidder who was.

This business 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. 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 operated in an honest and honorable fashion. They did a good job and were tough competition, but I and the other competitors had nothing to complain about it.

I do resent all of the aspersions being cast upon the industry as a whole, upon Carolina Vsnd-A-Matic, and the attempts to reflect upon Judge Haynsworth's character and reputation. I have known him since we were boys together. He is an honorable man fully deserving the very high reputation he has enjoyed until some people with their very unjustified slanders have attempted to impair it.

I would be very happy to come to Washington to discuss this matter with you and the members of the Committee, or with anyone else with whom you would like me to talk, but I do think that someone should speak up and tell the truth in the face of all of the misinformation being circulated in the press.

Yours very truly,

ALEX KIRIAKIDES, Jr.,
President.

Mr. COOK. Mr. President, one may hope that this is not the sort of reasoning process which will commend itself to the Senate Judiciary Committee, or to any other deliberative body which seeks to proceed in a rational manner.

Insofar as the six other cases involving purported customers of Carolina Vend-A-Matic referred to in Senator BAYH's statement, the conclusion is inescapable that the judge was equally under a duty to sit in these cases as he was in the case involving Darlington Corp. It is worth noting parenthetically that the inclusion in this group of cases of the Kent Manufacturing Corp. appears to have been a mistake. There appears to be no connection between Kent Manufacturing Corp., a Maryland corporation which manufactures fireworks, and was the litigant referred to by Senator BAYH, and the Kent Manufacturing Co., a woolens manufacturer in Pennsylvania which operated the Runnymeade plant in Pickens, S.C.

I turn now to Senator BAYH's claim that Judge Haynsworth should have disqualified himself in five cases in which he sat during his 12 years as a judge of the court of appeals, because, according to the "bill of particulars," "he had a substantial stock interest in litigants before him." One of these cases is the Brunswick case, to which I will come in a moment; the others are *Farrow* v. *Grace Lines, Inc.*, 381 F. 2d 380 (1967), *Merck* v. *Olin Mathieson Chemical Corp.*, 253 F. 2d 152 (1958), *Darter* v. *Greenville Community Hotel Corp.*, 301 F. 2d 70 (1962), and *Donohue* v. *Maryland Casualty Co.*, 363 F. 2d 442 (1966). Senator BAYH does not say what he means by "a substantial stock interest in litigants"; but I think it important to present to the Senate precisely what the facts were in each of these cases. In two of them—Grace Lines and Donohue—the judge did not hold stock in the party litigant, but he held a small amount of stock in a corporation which in turn had a controlling interest in the litigant. In Merck, I have been unable to find even this type of connection between a litigant and any company in which the judge held shares. Here are the facts with respect to these five cases:

Senator BAYH claims that Judge Haynsworth had a substantial interest in the Greenville Community Hotel Corp. when that corporation appeared before his court in 1962. In 1962, Judge Haynsworth had absolutely no interest in the Greenville Community Hotel or in any company having any interest in that corporation. On April 26, 1956, one share of the Greenville Community Hotel Corp., worth $21, was transferred to Judge Haynsworth so he could be a director of that corporation, a position he held until he went on the bench in 1957. On New Year's Day 1958, he received a check for 15 cents for the 1957 dividend. Thinking he no longer owned the one share, he sent the check to Alester G. Furman, Jr., who had originally transferred the one share to him. Furman returned the check and Judge Haynsworth listed it on his tax return. The share was later transferred to Furman who sold it on August 1, 1959, for the same $21. Yet Senator BAYH claims Judge Haynsworth had a substantial interest in the corporation in 1962.

Senator BAYH also charges that Judge Haynsworth had a substantial interest in Brunswick Corp. when it appeared before his court in 1967. Both Judge Winter and Judge Haynsworth testified before the committee that the court of appeals agreed on the disposition of Brunswick Corp. against Long on November 10, 1967. While the written opinion in Brunswick had not yet come down, it is difficult to see how he had any substantial interest in the outcome of the case. Whether Brunswick won or lost the case could not possibly have made any material difference to its stockholders.

Brunswick had outstanding 18,479,969 shares of common stock. If the full $90,000 of future rents for all 7 years of the unexpired term of the lease had been recovered by the plaintiff, it would have only received $90,000 which is less than ½ cent per share of Brunswick's 18,479,969 shares of stock outstanding. This, as was pointed out in the Judiciary Com-

mittee, would translate into one-half of 1 cent per share on the 1,000 shares of stock owned by Judge Haynsworth, or the grand total of $5.

Senator BAYH claims that Judge Haynsworth should have disqualified himself in 1967 in Farrow against Grace Lines, Inc. because of his substantial interest in one of the litigants. Judge Haynsworth owned no stock in Grace Lines, but he did hold 300 shares of the parent corporation, W. R. Grace & Co. Grace Lines, Inc. was one of 53 subsidiaries owned by W. R. Grace & Co., and it contributed less than 7 percent of the parent company's 1967 revenue of $1,576,000,000. In this same year W. R. Grace & Co. had 18,252,335 shares of common stock outstanding. Judge Haynsworth's 300 shares gave him a .00001 interest in the common stock of this company. Even if the plaintiff's claim of $30,000 against Grace Lines had been awarded, the effect of that judgment on a company with a yearly revenue of over a billion and a half dollars would have been extremely minute. Assuming that the common stockholders were held solely liable for this amount, such a judgment would have reduced the value of Judge Haynsworth's entire holdings by a grand total of 48 cents.

Judge Haynsworth had no direct interest in either of the litigants in Donohue against Maryland Casualty. He did own 67 shares of common stock and 200 shares of preferred in American General Insurance Co., a corporation in which Maryland Casualty was one of at least 12 subsidiaries. It is of course difficult to measure the effects of a judgment against the subsidiary of a corporation such as American General with total consolidated assets of $888,857,336, total income of $356,602,892, and a consolidated net profit of $26,672,196. It is highly doubtful that an adverse judgment would have any sufficient effect on Judge Haynsworth's fractional interest in such a mammoth corporation. Indeed, Judge Haynsworth's interest amounted to 0.0059 percent of the 3,279,558 outstanding shares of preferred and 0.0015 percent of the four and a half million shares of common stock.

Finally, Senator BAYH suggests that Judge Haynsworth should have disqualified himself in Merck against Olin-Mathieson Corp. because he owned shares in Monsanto Chemical Corp. The only connection between Olin Mathieson and Monsanto I have found in public records is remote—

Olin-Mathieson was formed in 1954 by a merger of Olin Industries, Inc., with Mathieson Chemical Corp. Mathieson Chemical was formed in 1892 as Mathieson Alkali Works, Inc., a producer of various chemical products. In September 1929, Mathieson Alkali Works sold its small organic chemical plant located at Newark, N.Y., to Monsanto Chemical Co., for 6,490 shares of Monsanto stock. At the time, Monsanto had 398,286 shares of stock outstanding. Monsanto dismantled the plant and moved it to St. Louis. During 1929, Monsanto stock was traded between 96 and 101. Monsanto stock has since split several times. I have been unable to determine if Olin-Mathieson still owns the shares received by Mathieson Alkali from Monsanto in 1929. If it does, then Olin-Mathieson and Judge Haynsworth both own stock in Monsanto—and not by any fair use of words can Judge Haynsworth be said to own an interest in Olin-Mathieson.

I think it is vital that we consider these cases in some depth, in the context of the nearly 3,000 cases in which Judge Haynsworth sat during the 12 years that he was a judge of the court of appeals. Indeed, discouraging as the campaign of rumor, innuendo, and slander against Judge Haynsworth has been, I think that many thoughtful people are seriously concerned about the allegations of "conflict of interest," and I think that perhaps there is an opportunity for some constructive action by both the Senate Judiciary Committee and the Senate as a whole in exploring this subject in connection with the confirmation of Judge Haynsworth. I would suggest that there are two different points of view on this question of "conflicts of interest"—what might be called a layman's point of view or the commonsense point of view, on the one hand, and the lawyer's point of view on the other. I do not mean to suggest that these should necessarily reach different conclusions; indeed, I would suggest quite the opposite. But I do suggest that both methods of approach to the question can contribute to the discussion, and to the ultimate resolution of the issues which confront us.

Let us start with the layman. What do we want of our judges?

First, we want no bribery, no corruption, and no improper use of judicial influence. There has not only been none here, but there has not been even the slightest hint of it, and Senator BAYH's bill of particulars so states. I will therefore not dwell longer on this point.

But we want more than this from our judges. We do not want them to be in a position where it might reasonably be thought that their decision in a particular case is influenced by the possibility of personal gain resulting from deciding the case one way, as opposed to deciding it another way. We do not think that members of the Federal judiciary, given life tenure and income, sworn to uphold the Constitution and to faithfully enforce the laws, would in fact be influenced in this manner, but we do not want them put in a position where any question can arise. This is the principle of "conflict of interest" about which we have heard so much during the confirmation hearings.

If we now analyze these cases upon which Senator BAYH relies in terms of these commonsense principles, I do not think that anyone can seriously doubt that Judge Haynsworth must be given a clean bill of health. He not only was not in fact influenced by any personal interest in deciding the cases, but no reasonable person could think that he was influenced by such interest.

Now let us turn to the legal approach to conflicts of interest. And, make no mistake about it, we deal in an area where there is a governing statute, where the American Bar Association has promulgated canons of judicial ethics, and where there are decided cases. Senator BAYH's bill of particulars limits itself to stating conclusions. To deal with a question in this way is virtually useless; like so many other areas of the law, careful analysis is required.

First of all we have a governing statute, section 455 of title XXVIII, United States Code. On the question of disqualification for interest, that statute reads as follows:

> Any Justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest . . .

Now, there are several things that are worth noting about this language. In the first place, the basis for disqualification is not a substantial interest in a litigant, but a substantial interest in the case itself. As a matter of original inquiry, one would think that a judge considering whether or not he should disqualify should take into consideration not merely the amount of his interest in the litigant, but the potential effect on the litigant of a decision one way or another in the case.

The only case I can find bearing directly on the point is *Lampert* v. *Hollis Music, Inc.*, 105 F. Supp. 3 (1952), in which a judge of the eastern district of New York stated that where the amount of stock in a litigant held by the judge was minimal, disqualification was not required under the statute.

I do not think any competent lawyer would dispute the conclusion that if we dealt only with the language of the Federal statute, and the Lampert case, Judge Haynsworth would not have been required to disqualify himself in any of these cases we are discussing.

However, the American Bar Association Canons of Judicial Ethics speaks, not in terms of the judge having a substantial interest in the case, but instead of not "performing or taking part in any judicial act in which his personal interests are involved." Since we do not find the word "substantial" modifying "interests" in this language from canon 29, it is certainly fairly arguable from the language itself that a much smaller interest would require disqualification under canon 29 that would require disqualification under the Federal statute. I add that these canons were reviewed, reestablished, and printed only last year—not in 1957, 1958, 1961, or 1962, but in 1968, after these so-called violations occurred.

This brings us right up against a point which Judge Walsh alluded to in his testimony before the committee, but on which I have seen almost no public discussion since that time. It is raised by the very natural question,

> If the American Bar Association has imposed a stricter standard for disqualification than that imposed by the federal statute, why shouldn't federal judges adhere to the stricter of the two standards?

I think the natural tendency of all of us at this point is to feel, in effect, that "nothing is too good for our boys," and that therefore the very strictest standard of disqualification is none too strict for Federal judges. My considered judgment is that this natural initial reaction is entirely wrong, but that it is so very natural that it has tended to distort the entire debate on disqualification. Participants of the discussion on both sides

have looked upon judicial disqualification as if it were at least in part a matter of morality, and that therefore the more a judge disqualified himself, the more upright and honorable the judge was.

But at least in our Federal system, this is not so. We have it on the authority of several Federal courts of appeals that a judge is obligated to sit in any case in which he is not disqualified by law. There are very good reasons for this rule: disqualification can have a disruptive effect on the normal process of trial and appellate review of law suits, and is by no means a value which is to be preferred over all other values in our judicial system. The law as developed in the Federal cases not only does encourage judges to bend over backward to disqualify themselves in a case by reason of interest, but it most emphatically requires each judge to decide as objectively as he can whether or not he is disqualified in any particular case. To the extent, then, that there is any conflict between the Federal statute and the American Bar Association Canon of Ethics, the Federal statute must prevail.

Senator BAYH concludes, without giving us the benefit of his reasoning, that Judge Haynsworth violated canon 29 when he sat in these cases. I am not at all sure that I agree with that conclusion. Formal opinion No. 170 of the American Bar Association states that a judge shall not sit in a case in which he owns stock in a party litigant. In three of the cases we are discussing here—Farrow, Merck, or Donohue—Judge Haynsworth did not own stock in a party litigant. And in Greenville Community Hotel, the judge did not own such stock at any time during the litigation.

But one may ask, Is not ownership of stock in a corporation which in turn has a controlling interest in a party litigant not the same as the case in which the judge owns stock in the litigant itself? No opinion from the American Bar Association Ethics Committee has passed on this point, and the principal case in the field, *Central Pacific Railway Co. v. Superior Court*, 296 Pacific 883, dealing with the State statute phrased in terms similar to the prohibition of canon 29, has held otherwise.

I suggest that there are very practical reasons for drawing some sort of a line between ownership in a party litigant, and ownership of a corporation which in turn controls a party litigant. For a judge to determine whether or not he owns stock in a corporation which is a party litigant in his court is a relatively easy matter; for him to determine whether or not he owns stock in a corporation which in turn owns stock in another corporation which is a party litigant in his court may be far more difficult.

Furthermore, the effect of an adverse judgment on a subsidiary corporation may be but a drop in the bucket so far as the parent corporation is concerned. For example, the New York Times recently stated that W. R. Grace & Co.—in which Judge Haynsworth held 300 shares at the time he sat in a case involving Grace Lines, Inc., its subsidiary—has a total of 99 subsidiaries in the United States and in foreign countries.

How do we make sense out of all of this? If there is one point I would like to make today, it is that the question of disqualification is not an easy one, with the governing rule so plain that he who runs may read. Reasonable people—reasonable lawyers—indeed, reasonable judges—could reach diametrically opposite conclusions in a particular fact situation. Another point which I have already made will bear repeating—in the federal system, no merit badges are given to the judge who reaches over furthest to disqualify himself in a doubtful situation. Decision in a disqualification case is just like any other decision that involves the application of governing principles of law to a particular fact situation; the judge calls it as he sees it, without any preference for one result as opposed to another.

Judge Haynsworth can be subject to legitimate attack for failure to disqualify himself, in my opinion, only if his failure to do so in a particular case represents an unreasonable application of these standards. The fact that another judge might, in the same situation, have gone the other way sheds no light on the issue of what was the proper conclusion.

On the question of whether Judge Haynsworth can be faulted for failing to disqualify himself for interest in the Grace Line and the Donohue cases, I suggest that the answer is a resounding "No."

In view of the fact situations outlined above relating to the Merck case and the case of Darter against Greenville Community Hotel Corp., Senator BAYH's charges with respect to these cases can only be described as trivial.

With respect to the judge's purchase of stock in the Brunswick case, he has frankly confessed to a lapse of memory, and I think all concur in his judgment that his purchase of the stock at the time he did was an error. While he did not utilize information coming to him in the judicial capacity for purposes of speculation, his purchase of the stock at the time he did, without further explanation from him, could have given rise to the appearance of such an improper utilization of judicial information.

And in the case of canon 26, which proscribes utilization of such information, there is no countervailing requirement which requires him to hew as close to the line as possible. In purchasing stock, he must give full latitude not only to the proscription of canon 26, but to the appearance that would be created by conduct which does not itself violate the canon.

However, remembering that this was a lapse of memory, not of morality, and that it must be placed in context of 12 years on the Federal bench, participating in nearly 3,000 decisions, it would require more of a perfectionist than I am, or than I think more of my fellow Senators are, to suggest that Brunswick is a reason for voting against confirmation.

Finally, I turn to the charges of "demonstrated lack of candor."

Senator BAYH's charge of "demonstrated lack of candor," suggesting as it does conduct bordering on perjuring, or at least an attempt to conceal damaging facts, is a most serious one. Upon analysis, however, reasonable people may well conclude that if there is a "demonstrated lack of candor," it is not that of Judge Haynsworth.

Paragraph I of this portion of Senator BAYH's statement is entitled "Denial of Active Participation in the Business of Carolina Vend-A-Matic." However, the two quotations from the judge's presentation to the Senate Judiciary Committee make it crystal clear, in the very context quoted by Senator BAYH, that the judge was addressing himself to his participation in the securing of new vending machine locations for the company, and to his detailed knowledge of specific locations of vending machines. Such an inquiry, as evidenced by the question of both chairman and Senator TYDINGS, was undoubtedly material in considering the question of whether the judge should have disqualified himself in the Darlington Corp. case, since one of the claims against Judge Haynsworth was that he might have let the prestige of his office be used to influence those who had control over the award of vending machine sites.

However, when we come to the "fact" under this heading, the fact proven is not that Judge Haynsworth knew anything about vending machine sites, but instead that he regularly received director's fees from that corporation until October 1963, and that the board of directors had passed a resolution 2 months after the judge's ascension to the bench stating generally that directors had been active in obtaining new locations for the company's vending machines. Judge Haynsworth freely volunteered to the committee that he had received director's fees, and so the fact that he did so can scarcely be urged as showing a "lack of candor" on his part. The quotation from the corporate resolution, referring to directors generally, would not be accepted by any fair-minded man as contradicting the judge's express and detailed statement that he, at least, played no part in the obtaining of new business sites.

I have already dealt with the substance of paragraph II, under the heading of disqualification generally. Whatever questions of interpretation may be raised by the question of whether minor stockholding in a parent corporation requires disqualification when a subsidiary is a party litigant, that inquiry is not advanced hy arguing whether a witness' particular form of expression can be stretched to include a subsidiary corporation, as well as one in which stock is directly owned.

Senator BAYH's paragraph III statement gives the impression that Judge Haynsworth, on September 17, 1969—during the very time that the hearings were going on before the Senate Judiciary Committee—testified before a subcommittee of the Judiciary Committee that he had not retained his directorships in Carolina Vend-A-Matic and the Main Oak Corp. after he ascended the bench in 1957. However, a cursory examination discloses that the quoted testimony, referred to by Senator TYDINGS in his examination of Judge Haynsworth

on September 16, was actually given by Judge Haynsworth before Senator TYDINGS' subcommittee on June 2, 1969. Placed in this context, before any issue had arisen in connection with the Supreme Court nomination, a confusion of dates of resignation is certainly understandable.

Lastly, I wish to touch upon Senator BAYH'S charge that Judge Haynsworth violated canon 26, which prohibits the making of investments in "enterprises which are apt to be in litigation in the court." The bill of particulars cites several cases, and one can only infer from it that Senator BAYH believes that if in fact a litigant does come before a judge's court, whatever the probabilities of its doing so might have been prior to the filing of the case, canon 26 is thereby automatically violated. Such a reading of the canon is demonstrably nonsense. It would mean that a judge who sought to disqualify himself for interest in a case would be acting too late to save his ethical reputation, since the mere fact that a party litigant in which he had an interest was before his court meant that he should have anticipated the arrival of the litigant, and sold his stock before that day arrived. Indeed, Senator BAYH'S expansive construction of the canon would have it violated in the case of a judge of the Court of Appeals for the Fourth Circuit when in fact the litigation takes place in the second circuit. More should not be necessary to show the frivolous nature of this charge.

We have since the time of Judge Haynsworth's nomination witnessed a wave of opposition to his confirmation, couched in terms of "conflicts of interest," but motivated far more by disagreement with some of the decisions he has rendered as a judge of the Court of Appeals for the Fourth Circuit. Yet, I know that some of my fellow Senators, while not questioning his decisions, have been genuinely troubled by these vague and ill-defined allegations of "conflict of interest." I have done my best to analyze these charges as scrupulously as possible, and I have now presented to you the conclusions which I believe the record supports. I think Senator BAYH'S bill of particulars was a significant development in the debate over Judge Haynsworth's confirmation, because it has finally enabled those of us who support him to focus on particular charges, subject them to the light of reason, and thereby show how little substance there is to them. I think the Senate as a whole will conclude, just as the Judiciary Committee concluded the other day, that the bill of particulars should be dismissed, and Judge Haynsworth confirmed to the high office to which he has been nominated.

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

Mr. COOK. I yield.

Mr. THURMOND. Mr. President, I commend the able and distinguished Senator from the great State of Kentucky for the magnificent presentation he has made, and for the devastating answer he has given to those who oppose confirming the nomination of Judge Haynsworth for the Supreme Court. I hope every Member of this body will read his speech. It answers every conceivable question that could be raised against Judge Haynsworth, and shows him to be, just as those of us who come from South Carolina know him to be, a man of character and integrity, a man who is incorruptible, a man who lives by a high code of ethics, and a man who will make this country an able and distinguished Supreme Court Justice.

The distinguished Senator from Kentucky is to be commended for his courage in taking the stand he has taken. He sees here a man charged wrongfully, and has attempted to answer the charges; and I say he has answered them fully, totally, and completely. But it takes courage to stand up against some of the forces opposing Judge Haynsworth—which include some of the most powerful forces in America today. But right is right, and right will prevail.

Those who know Judge Haynsworth best have the greatest respect for him as a man, as a lawyer, and as a distinguished judge. The members of the South Carolina bar know him to be a man of high ethics and unimpeachable character, and a man who, before his appointment to the circuit court of appeals, was one of the outstanding lawyers in the United States.

Judge Haynsworth has made an enviable record upon the circuit court of appeals. In doing so, he has not pleased some of the forces which oppose him. Of course not. His decisions have been for them and against them. He has traveled the middle of the road. He has been objective. He has been neutral, so to speak, in taking either side of a philosophy.

The fact that the county officials, of their own volition and at no one's request, have endorsed this distinguished lawyer and judge to be a member of the Supreme Court, when they have to run before the people, and 98 percent of them know their very political lives are at stake, to my mind speaks very highly for Judge Haynsworth. The members of the Fourth Circuit Court of Appeals, none of whom other than Judge Haynsworth come from South Carolina, have unanimously endorsed him. Even since these attacks have been made upon him, they have studied the record on the alleged conflicts of interest and the alleged violations of the code of ethics, and have unanimously, every one of them, endorsed him. These are outstanding men in this Nation, and outstanding lawyers. They would not put their personal reputations on the block if they did not feel that an injustice was being done to this fine lawyer and distinguished judge.

Moreover, the American Bar Association, upon reading and learning about the various charges brought against this distinguished gentleman, went back in session, I believe yesterday, and considered categorically every charge made against him. They have turned them all down, and reiterated their previous position that Judge Haynsworth's appointment should be confirmed.

Mr. President, I again commend my distinguished friend and colleague from Kentucky, with whom I have the pleasure of serving upon the Committee on the Judiciary, and to say to him that the stand he is taking is a high stand, a stand on the high road, and a stand for statesmanship and truth.

Mr. HOLLINGS. Mr. President, will the Senator from Kentucky yield?

Mr. COOK. I yield to the junior Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I wish to express my personal gratitute for the stand taken by the distinguished junior Senator from Kentucky, in the light of the record made before him. I allude, of course, to the significance of the timing of this particular stand by a Senator who, for the good of this body if for no other reason might well be disposed to let this matter pass without comment.

Specifically, the Senator from Kentucky took his stand at a time when the chairman of the Democratic Party has taken a party position against the confirmation of this appointment. He takes his stand at a time when certain segments of the leadership in his own party have requested the President to withdraw the appointment, and at a time when far more senior, and highly respected, Members of this body have joined in that request for withdrawal.

Therefore, the Senator from Kentucky could not have taken the stand he has taken lightly. I am sure that, on the contrary, having sat as a member of the Committee on the Judiciary and listened to all the witnesses, and having reviewed the record, his conscience would not permit him to sit silent longer.

He has gone into every facet of this case. He is interested, as am I, in public confidence in the U.S. Supreme Court. I am sure this distinguished Senator would feel as I do that if a competent, outstanding appointment were made from his State, and subjected to charges of wrongdoing loud and long; and if it were a fact that he had been subjected to such charges without exploring the truth, without getting into the facts, he would resolve that to allow that situation to go by the board unchallenged would be demeaning to the Court itself, and, more than anything else, to the reputation of the U.S. Senate as the greatest deliberative body in the world.

So, I express my admiration for the courage of the Senator from Kentucky.

Specifically the Senator referred in his statement to the increase in sales of the Carolina Vend-A-Matic Co. I will make only a few comments. To refer to the record, at the time that Judge Haynsworth was asked about this matter, he answered, "I am a lawyer and not a salesman."

The inference and the innuendo is that after the judge was elevated to the bench, by the use of his influence he increased the sales of the vending company. It is an absolutely false statement.

The fact is otherwise. From 1949 to 1963, I traveled hundreds of thousands of miles in the United States seeking new industry for South Carolina. You name the State, and I was there. We obtained $1 billion in new industry and many thousands of new jobs as a result.

At no time did Judge Haynsworth ever confer with me with respect to any industry in South Carolina. He had served as an attorney prior to that time. However, in 1957 he had left his firm and became a member of the Fourth Circuit

Court of Appeals. Many new industries and jobs were secured prior to and during his tenure on the bench and never did he have any role. Additionally, the 1954 decision was being felt by industry in the South with respect to segregated feeding facilities. The industry in toto did away with what we used to call the stoke wagons that would carry around soda pop, sweetbreads, and everything else to those employees of industries. It was an approach to integrated feeding.

The result was that—and not just when the judge went on the bench—that every vending company increased its sales in South Carolina.

I thank the Senator from Kentucky for including the letters written to both the Senator from Mississippi (Mr. EASTLAND) and me by Alex Kiriakides, Jr., of Atlas Vending Co., Inc., the major competitor of Carolina Vend-A-Matic, which contain the true historical facts on the matter of the growth of all vending business in South Carolina.

One would hope that Senators and mature men would confine themselves in the making of their judgment on the facts themselves and not on innuendos.

The fact is that at no time was any unethical conduct or influence exerted on the part of Judge Haynsworth with respect to the vending business. It was a matter of competitive bidding.

That is the only thing in the record. The Senator from Indiana says that Judge Haynsworth went on the bench and the sales increased; ergo, the judge used his judicial capacity to influence the sales. It is a completely false statement.

If the Senator from Kentucky would please refer to the section of the "bill of particulars" entitled "Demonstrated Lack of Candor," authored by Senator BAYH. This section suggests conduct bordering on perjury, and is a most serious charge.

For the past several weeks, has the Senator, as a participating member of the Committee on the Judiciary, ever had the feeling that Judge Haynsworth was not leaning over backward toward a full disclosure of all information to the Judiciary Committee?

Mr. COOK. As a matter of fact, at all times he gave us everything he could. There was some discussion and an apparent feeling on the part of the distinguished Senator from Indiana (Mr. BAYH) that he was not getting all he wanted. However, I can only say that when we are calling for corporate records of a corporation that the judge has had nothing to do with since the early sixties, it is not possible to get all the books and records unless the committee subpenas the records. Without subpena, people are not going to give the committee everything it wants. Judge Haynsworth had nothing to do with the business at that time.

In talking about Carolina Vend-A-Matic, if Judge Haynsworth had been a better and more intelligent investor, when he sold his interest in Carolina Vend-A-Matic in 1964 for, I think it was, $450,000—and we all understand that is a tremendous amount of money—he would have kept the stock in the new corporation, ARA, because the same holdings today that he sold for less than a half million dollars would have been worth $1,650,000 in today's market.

Mr. HOLLINGS. Is it not a fact, with respect to the matter of insensitivity being charged to the judge, that up until the 1963 Judicial Conference which adopted a resolution restricting appellate judges from participating as directors and officers in publicly held corporations, that many judges served as officers or directors of publicly held corporations until the fall of 1963?

Mr. COOK. It is a fact that many judges had to retire from such positions in major corporations at that time.

Mr. HOLLINGS. Senator, is it not a fact that in 1957, due to his sensitivity, Judge Haynsworth resigned from his post as an officer-director of publicly held corporations and only retained his position in two closely held private corporations plus one small trusteeship?

Mr. COOK. The Senator is correct.

Mr. HOLLINGS. Mr. President, is it not a fact that when the policy came from the Judicial Conference with respect to not holding posts as officer or director, because of the sensitivity of Judge Haynsworth, he resigned as officer and director of all publicly held corporations and also sold all of his stock at a price which reflects a loss in today's market of $1 million?

Mr. COOK. The Senator is correct.

Mr. HOLLINGS. Is it not a fact that in 1963, due to the sensitivity of Judge Haynsworth, after Judge Sobeloff and his group had fully investigated and exonerated the judge concerning the accusations with respect to lack of propriety, disqualification, and even bribery, in the Carolina Vend-A-Matic matter, at the behest of Judge Haynsworth, he said, "No. I want you to also refer it to the Justice Department."

Mr. COOK. The Senator is correct. I might suggest to the Senator and to the others who would listen to the debate that I am not sure where we go from here.

I am not sure whether we should say to the judges of the United States, "Sell all your stocks. Don't hold any." Perhaps the logical thing to do is to tell them, "If you have money, invest it in U.S. bonds."

Now at the district level, a large number of the cases coming before the court involve the United States as a defendant. Suppose someone were to file suit claiming that this country had misused its authority. The result would be that all of the certificates and bonds would be put in jeopardy.

Would we then have to find someone who could sit on such a case because all of the judges would have invested in bonds and would not be able to sit?

Mr. HOLLINGS. The Senator is correct. With respect to an appellate body, the Senator served in a judicial branch of our Government as an outstanding judge. As an appellate judge, is it not a fact that one of the complaints we have as trial attorneys in going up on appeal to the circuit court of appeals does not concern the holding of a stock interest by a judge, but the general persuasion where they jockey the panels where we find, for example, that three corporate judges have been placed on the panel to hear a corporation matter?

Mr. COOK. Well, it has been known to happen; yes.

Mr. HOLLINGS. That has happened to me, prior to Judge Haynsworth taking over in that district.

Was he not praised by the Senater from Maryland (Mr. TYDINGS), working on his Subcommittee on Improvements in Judicial Machinery, as a leader toward developing the random panel selection in the fourth circuit?

Mr. COOK. Yes.

As a matter of fact, let me cite an example.

Mr. HOLLINGS. I wish the Senator would elaborate on that, for the benefit of Senators.

Mr. COOK. I should like to give an example, because I think it is interesting.

We checked the records when he sat on these cases, and examined the charges of the various representatives of the AFL–CIO.

But I might suggest that had they looked at when Judge Haynsworth sat on Farrow against Grace Lines, they would have had found that if he had removed himself from that case, he would have to be assigned to two labor cases. And had he done so, the charge probably would have been made that he had gone out of his way to remove himself from insignificant cases to put himself on cases involving labor unions.

Mr. HOLLINGS. Is that not the best authority and the best testimony that he had a duty to sit on the so-called Carolina Vend-a-Matic case; that there was no option; that he had a duty to do so?

Mr. COOK. If I may correct the Senator—he should have sat on Darlington Mfg. Co. against NLRB.

Mr. HOLLINGS. Finally, with respect to appearances, they are merely impressions as gained from some or a few of the facts. That is all an appearance is. Is it not true, that when all the facts are in, no longer does the appearance subsist, but we refer to all the facts as that exist? And is that not our duty as Senators? Because people can raise questions and blow smoke and make charges, is it not our duty, as Senators, to look behind that and see all the facts and get the truth, rather than sit back and say that because of all these appearances his effectiveness is ruined? Is it not our duty to review and find these facts and bring the truth to this body, so that we can do justice not only to this appointment but also to this body and to the Supreme Court?

Mr. COOK. That is so.

Mr. HOLLINGS. I appreciate the Senator from Kentucky doing that this morning.

Mr. COOK. I say to the Senator from South Carolina that, oddly enough, there are many fields, particularly the fields of civil rights, in which Judge Haynsworth and I do not have a great deal in common. But this has nothing to do with the decision the Senate must render. Our authority is based upon the authority to advise and consent as created by the Constitution. The authority to appoint was, of course, given to the President. If it is the responsibility of this body to now decide that a person should be selected on the basis of whether he fits their ideological conceptions and not whether he is qualified,

then I say we have destroyed that authority in the President. Rather than destroy it in this case, let us face it the way we should face it. If we feel that it is now our responsibility to pick a candidate because he is a liberal or because he is a moderate or because he is a conservative, then let us place before this body a constitutional amendment to place in the Senate of the United States the authority to appoint members of the Supreme Court of the United States. Consideration was given to placing this authority in the Senate but was decided against.

I might suggest that if we now say that because this country is moving in one direction or another, we must deny a man this seat because he does not ideologically fit in that pattern, then I ask the American people, "Is not every facet of the American society entitled to be represented on the Court," even though I may personally disagree with him?

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

Mr. COOK. I yield.

Mr. KENNEDY. How does the Senator conceive our responsibility? Are we supposed to be just a rubberstamp to the President?

Mr. COOK. Not at all.

Mr. KENNEDY. The Constitution clearly points out that this is a question of advise and consent. Would the Senator not agree with me that there is a different standard that should be applied in terms of the judiciary than should be applied, say, to Cabinet officials, whose term is, in effect, coterminous with that of the President of the United States? Does the Senator not agree with me, therefore, that the kind of review we would give in a judicial appointment, and the standard we would apply, would be different?

Mr. COOK. I agree.

Mr. KENNEDY. So I gather, from what the Senator has said, that the function of the Senate is not to be just a rubberstamp. Would the Senator not agree with that as well?

Mr. COOK. I agree with that.

Mr. KENNEDY. Therefore, I gather from the thrust of the Senator's argument that we have a responsibility to exercise our own, independent judgment. Is that not correct?

Mr. COOK. That is correct.

But I would say to the Senator that, if that be the case, declare it on that basis, and every man should stand up and declare it on that basis. But one should not use another motive or another reason to go around the fact that one wants it declared on an ideological basis; and if one does, he should honestly take that position.

The PRESIDING OFFICER (Mr. HOLLINGS in the chair). The time of the Senator from Kentucky has expired.

Mr. ERVIN. Mr. President, I ask unanimous consent that I may ask one question of the Senator from Kentucky and make a short statement.

Mr. DOLE. Mr. President, I yield 5 minutes of my time to the Senator from Kentucky.

Mr. ERVIN. I ask the Senator from Kentucky if the so-called bill of particulars, known as the Bayh bill of particulars, does not consist largely of conclusions rather than facts.

Mr. COOK. It deals totally with conclusions.

Mr. ERVIN. And is it not honeycombed with conclusions that are not supported by the evidence taken before the committee?

Mr. COOK. It is.

Mr. ERVIN. I should like to make this statement: I think the Senator from Kentucky expressed my only misgiving concerning Judge Haynsworth, and that is the fact that he did not have a perfect memory and that when he purchased the Brunswick stock, he was forgetful of the fact that the Brunswick case had been argued and decided some 6 weeks before, but the opinion had not been written and had not been handed down.

I spent 15 years of my life in discharging what Walter Malone, the poet judge of Memphis, Tenn., called judging one's fellow travelers to the tomb. I spent 2 years as judge of a criminal court. I spent 7 years as a judge of the North Carolina Superior Court, which is our court of general jurisdiction and which tries most important civil and criminal cases. I spent more than 6 years as an associate justice of the Supreme Court of North Carolina. In these various capacities, I decided or participated in the decision of thousands of cases.

As a member of the supreme court, I spent many weeks studying many cases and writing opinions on them. Out of all these thousands of cases, if my life depended on it, at this moment I could not name more than a dozen or so of the litigants. I can remember the points of law involved. And this is perfectly natural, because judges—especially judges of appellate courts, who never see the parties litigant—are interested only in the points of law involved. As a consequence, they do not retain in their minds the names of the litigants.

As a result of my own experience, it is perfectly understandable to me why Judge Haynsworth had this unfortunate lapse of memory. That is the most that can be said about it. It did not affect his decision. The decision had already been made, and it was altogether concurred in by every member of the court of appeals, as well as by two U.S. district court judges—one who had heard it originally, and one who sat on the court of appeals and helped to decide it.

Mr. COOK. Certiorari was denied by the Supreme Court, also.

Mr. ERVIN. I want to commend the able and eloquent Senator from Kentucky upon a most accurate and illuminating exposition of what the testimony revealed in respect to the charges made against Judge Haynsworth on conflict of interest and ethical grounds.

Mr. BAKER. Mr. President, I ask unanimous consent that I may proceed for not to exceed 5 minutes.

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

Mr. BAKER. Mr. President, may I take this brief opportunity to commend the distinguished junior Senator from Kentucky for a most thoughtful and searching and painstaking analysis of a most difficult problem which confronts the Senate in performing its constitutional function, the problem of whether to advise and consent to the nomination of an Associate Justice of the Supreme Court by the President of the United States.

In these brief moments, I have no desire to restate the splendid points made by the junior Senator from Kentucky. I would make just these observations, because I know them firsthand.

Mr. President, I know the junior Senator from Kentucky to be a junior member of the Committee on the Judiciary and a member of the freshman class of 1969. I know him to serve with great diligence. I know him to be a most conscientious, thorough, and painstaking legislator. I know firsthand some of the dilemma he faced in trying to reach his judgment and conclusion in this case. I am bold enough to suggest it was not an easy task for a conscientious Member of this body. I know he listened carefully to the testimony before the Committee on the Judiciary. I know at times he had doubts. I know at times he was concerned about some of the charges and allegations that were made. I know that on occasion he was incensed in his private way about some of the innuendo that flowed from some of the charges leveled here and elsewhere.

But, Mr. President, I have observed today the product of the deliberations of a great man, and certainly a great colleague. Rather than taking a rigid position based on superficial reasons, or colored reasons determined by philosophical and ideological slant, our most illustrious and distinguished colleague did what I commend all of us do, and that is to examine in detail and depth these "appearances" of impropriety. In my judgment, we should get to the bottom of the barrel and find out with what Judge Haynsworth is being charged and what the facts are, rather than running with the pack or deciding the matter on some liberal or conservative bias, let alone from some geographical bias.

I believe we should all do as he has done. We should make the painful, searching analysis that leads us to an objective judgment. I think we should stop this business of hiding behind the cliche of appearances of impropriety because the appearances of impropriety dealt with in the canons of judicial ethics are created by the person himself and not by a Member of this body. I may create an appearance of impropriety by my words and phrases but I suggest there is no impropriety that has been perpetrated by the distinguished designee for this high post.

Justice Holmes once said, and I believe that all of us would agree he served with great distinction on our High Court:

> Lawyers and legislators have the unhappy faculty of devoting their entire adult life to the proposition of shoveling smoke.

I do not impugn the motives of any of my colleagues in their diligent and inquiring prosecution of this question of whether or not we should advise and consent to the confirmation of the nomi-

nation of Judge Haynsworth. Nor do I say that they are shoveling smoke. I rather say we must at all costs guard against it because in the discharge of this constitutional responsibility, in the discharge of this higher duty we have created, as a result of the debate in the Fortas nomination, we cannot afford to shovel smoke. We have to look at the facts and never have the facts been more cogently, clearly, and relatively presented on this issue than has been done this morning by the Senator from Kentucky.

I commend the distinguished Senator.

Mr. HRUSKA. Mr. President, I ask unanimous consent that I may proceed for 5 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears no objection, and it is so ordered.

Mr. HRUSKA. Mr. President, I endorse what has been said by several of our colleagues with reference to the distinguished part the junior Senator from Kentucky is taking in the consideration of the nomination of Judge Haynsworth. He has been perhaps the most faithful in attendance at the sessions during the 8 days of hearings before the Committee on the Judiciary. He has shown by his questions during the hearings a sincere desire to bring out all the facts in a fair way, not out of context. He did not use suspicion or innuendo, or take matters outside of the record in which they were contained. Instead he has made an effort to elicit and have recorded all the facts. The remarks made here this morning likewise show him to be a man who devoted a great deal of study to the facts of this case and to the historical background against which they must be considered.

Mr. President, the so-called bill of particulars has been answered on at least two occasions already. It is going to be answered on future occasions because when the cold analysis of reasoning and all of the facts are applied to that alleged bill of particulars, it will be found to consist of some things taken out of context, of some taken outside of the hearing record, of inaccuracies of statement, and some of bold and erroneous conclusions.

I would not want to detract one iota from the sincerity, diligence, and the integrity of the distinguished junior Senator from Indiana in his efforts to oppose this nomination. Unfortunately, however, I cannot accept the bulk of the conclusions and information of the bill of particulars as being founded in fact and fair interpretation of facts. In due time in connection with other matters, I shall explain in detail the reasons.

Reference has been made to the canons of ethics again and again as grounds for attacking this nomination, and reference will be made in the future. This issue should be answered. These canons of ethics, that are recited so often here, have been in existence between 40 and 45 years. Why is it that in 1963 that the Judicial Conference of the United States had to approve and promulgate a rule flatly saying no member of the Federal Judiciary shall sit on a board of directors or occupy any other office in an corporation engaged in business for profit? It was because the canons of ethics in that regard were so unclear and ambiguous that it remained for the Judicial Conference in 1963 to clarify them.

Let us consider that title 28, section 455, which prohibits a Federal judge from participating in any case in which he has a substantial interest. Why was that amended in 1949 to make it applicable to appellate judges? Up until that time it applied only to trial judges. The court did not deem the canon sufficient to apply to such situations, and the Congress stepped in to deal with it definitely and without equivocation.

It remained for the Congress and the firm hand of the Judicial Conference of the United States to offer judges some degree of certainty. Until then ambiguity impaired the ability to perceive the rule. This question will be explored further, but I shall suggest now that this reflects upon the ways in which the canons of ethics have operated.

In order to create an illusion of rectitude, key phrases are being chanted again and again in discussion of the nomination. References are made to "appearances of impropriety," and "every judge must be beyond approach." Still another is, "He should avoid giving reason for suspicion of misusing the power of his office." The inference is that the nominee has failed in all these respects.

No man can be without appearance of impropriety, nor can he be beyond reproach, nor can he be above suspicion, if the deficiency is to be found solely in accusations and charges without reference to whether they are true or untrue. If they are untrue and without foundation, merit, or relevance, I submit that they cannot be used to put a man into a state of reproach or put him under suspicion, or to give him the appearance of impropriety.

When we get through with this bill of particulars, it will be seen that such is the case with most of the allegations in that bill.

It would be grossly unfair to subscribe to the idea that the mere making of a statement puts a man under suspicion or reproach. We cannot refrain from testing the veracity, fairness, and applicability of the attacks, charges, diatribes, and accusations. If, merely because they have been asserted, attacks make any nominee guilty, or disqualify him, then the canons of ethics, standards of ethics, standards of good behavior have become instruments of persecution. In fact, it would be a fair bid to reinstate the institution of witch-hunting or witchcraft which I thought we had gotten rid of 300 years ago.

I know of no better way to illustrate this than to point out that canon 25 is quoted in the bill of particulars. It says that a judge should avoid giving grounds for any reasonable suspicion that he is utilizing the power or prestige of his office unfairly and improperly.

Then the fantastic conclusion is reached that the rise in gross sales of the Vend-A-Matic Co., after Judge Haynsworth assumed the Federal bench, justified the suspicion that the prestige of his office was used to promote the well-being of that corporation.

The record contains no evidence to this effect. There is no reference made by critics to the fact that the vending machine business in the past 15 years has been one of the fastest-growing businesses in America. There is no reference to the fact that there are other vending machine companies in that same area that prospered in as great or greater a measure as the Carolina Vend-A-Matic.

Since when are we to make a judgment on the basis of such a suspicion?

If we are governed by such attacks and upon the suspicion that they create, then indeed, we are defying the most fundamental proposition of our jurisprudence; namely, that a man is not guilty until he is proved to be guilty.

Although this presumption of innocence resides in our criminal laws, let me suggest that there are some sanctions even more cruel than 90 days, 6 months, or 1 year in jail. There is an effort to apply sanctions here in these proceedings of confirmation which are more cruel than the jail sentence or the fine; namely, casting discredit upon a judge who has served with honor and respect for 12 years on the circuit bench and before that was engaged in an honorable and highly respected career as a practioner of the law.

Viewing innuendoes, suspicions, reproaches, which are sought to be foisted upon him without proper factual backing, I should think that many men would rise up in righteous indignation and declare that the Senate of the United States should not be a party to any such proceeding, that it is unjustified and not factual.

Mr. President, once more I commend the Senator from Kentucky (Mr. COOK) for the fine job he has done in pointing out the facts and uncovering errors. His efforts will certainly be elaborated upon in greater detail in the days ahead.

Mr. GOLDWATER. Mr. President, I was amazed, yesterday afternoon, to be told by one of the press organizations in this country to comment on a story in Newsweek magazine which infers that I would oppose the appointment of Judge Haynsworth.

I merely want to put the record straight. I have no idea where they gathered that information because I have been going across this Nation for the past week or so making speech after speech, and going on television, where I have backed Judge Haynsworth all the way.

I think this is purely a political objection which has been raised to him, which I have so stated across America.

Mr. President, I merely wanted the opportunity to reaffirm on the Senate floor the fact that I have always supported Judge Haynsworth and I intend to support him.

I ask unanimous consent to have printed in the RECORD some remarks I had prepared on the Newsweek article.

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

It is nothing new in my experience—and I am sure the same goes for the majority of my colleagues—to find it necessary from time to time to put the record straight after some of our more enthusiastic and

partisan ax-grinders of the press represent our alleged views.

Last night I was amazed to have a reporter call and tell me that *Newsweek* magazine was carrying a story quoting me to the effect that I had called President Nixon and urged him to withdraw the nomination of Judge Haynsworth for Associate Justice of the United States. This is the last issue on which I ever thought my views might be mistaken.

For the past two weeks newspapers, magazines, radio stations and TV commentators have been calling my office every day and asking how I planned to vote on the Haynsworth nomination. The press representatives whom I talked to were told that I supported the President's nominee 100% and would vote for his confirmation on the Floor of the Senate. The same answers were given to reporters and commentators and other interested citizens who inquired of my staff members on how I would vote.

Where *Newsweek* magazine dreamed up the quotes they attributed to me in their magazine which is out today I do not know. I merely want my colleagues to know that they were made up out of the whole cloth and are completely untrue.

Mr. GRIFFIN. Mr. President, regardless of the judgment which any Senator may finally reach with respect to the nomination of Judge Haynsworth, no Senator who listened here today could help but be impressed by the presentation of the distinguished junior Senator from Kentucky (Mr. COOK).

As he knows, because we have discussed our views in private, I do not agree with all his arguments, or all his conclusions; but that does not lessen or diminish my great respect for the dispassionate, thoughtful, and logical presentation he has made. He has proven himself to be a brilliant advocate as well as an able and distinguished Senator.

Mr. FANNIN. Mr. President, it has been my pleasure to note the excellent presentation made this morning by the Senator from Kentucky (Mr. COOK). He has done a masterly job of putting cogency in harness with the facts he has marshaled, and I believe his judicial experience and objective approach to the issue confronting us will stand as a model of reason.

Particularly, I respect his lack of invective against those with whom he disagrees. It is unfortunate that this mood is not universally shared by several Senators who are in opposition to the President.

In addition, I think the RECORD should bear an outstanding brief prepared by Mr. Clark Mollenhoff, deputy counsel to the President. Mr. Mollenhoff is widely known and respected in Washington as a newsman and a lawyer. He is the recipient of the coveted Pulitizer Prize for excellence in his field.

Mr. Mollenhoff, who shares the confidence of many in this Chamber, has assembled the record of a most comprehensive and thorough investigation into the charges that have been leveled at Judge Haynsworth. The conclusion Mr. President is inescapable. Critics of the President, still smarting from the public embarrassment they suffered over the unfortunate Fortas affair last year, have seized upon almost nonexistent and insignificant events as a convenient stick with which to beat the President and his supporters. This has, in fact, been privately admitted to me and to members of my staff by some of the most vocal critics of the President.

In order that we all may have the benefit of this well-researched and calmly reasoned information, I ask unanimous consent that the report by Mr. Mollenhoff be printed in the RECORD.

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

EXPLANATION OF THE HAYNSWORTH CASE

(By Clark R. Mollenhoff, Deputy Counsel to the President)

GENERAL POSTURE POSITION

There is no justification for a comparison of the activities of Judge Clement F. Haynsworth with those activities of former Justice Abe Fortas, that resulted in Fortas submitting his resignation. Those who contend there is any similarity in the ethical questions raised in connection with Judge Haynsworth and Justice Fortas simply have not done their homework on the facts. Last May, the American Bar Association, in a letter to Senator John J. Williams of Delaware, made a finding that Justice Fortas acted "clearly contrary" to the canons of judicial ethics in his dealings with financier Louis E. Wolfson.

The A.B.A. in the letter to Senator 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. Wolfson.

Fortas resigned without making a public disclosure of all the facts in this matter.

By contrast, the Haynsworth nomination has been supported by the A.B.A. and his handling of the Darlington case has been defended by the A.B.A. and other leading authorities on judicial conflicts of interest problems.

(See detailed statement on Judge Haynsworth and Justice Fortas.)

This statement is being issued to focus attention on important aspects of the Haynsworth controversy that have been overlooked or given too little attention. There has been wide circulation of false statements, outrageous charges and innuendoes regarding Judge Clement Haynsworth that have represented the most vicious character assassination effort in the last 20 years.

The clearest example of the use of false statements and innuendoes was the nine-page "bill of particulars" circulated by Senator Birch Bayh. Efforts to counter this inaccurate and distorted document have been only partly successful because of the hit-and-run tactics used by Senator Bayh, and because of the lack of interest of many newsmen in pursuing the details of the factual, the legal and the ethical questions involved.

It is unfortunate that there has been so little interest in presenting the full factual details essential to exposure of the false charges and vicious innuendoes leveled against Judge Haynsworth by Senator Bayh and others. (This is a sharp contrast to the aggressive manner in which many rightfully pursued the exposure of a few irresponsible legislators 15 or 20 years ago.)

Only one network and one local television commentator have exhibited an interest in a depth discussion of the cases and issues made available through the White House during the last week. Coverage of Senator Marlow Cook's "bill of correction" was much too abbreviated for full understanding of the "inaccuracy and misrepresentation" that Senator Cook characterized "an unjustified attack upon a public official unparalleled in recent American history."

Senator Bayh has refused to debate his charges with Senator Ernest Hollings, of South Carolina, on national television. Senator Hollings has repeatedly issued the challenge to Senator Bayh to meet him in debate on the Haynsworth case "in the name of fair play and in the interest of the good name of the Senate." If Senator Bayh has any faith in his case, he should not reject this opportunity for a confrontation on the issues with Senator Hollings.

Judge Haynsworth has revealed his financial holdings in a detail that has few if any parallels in the history of judicial confirmations. Fair play dictates that each area of controversy be explored in full detail with continued emphasis on the testimony of those who have testified or expressed public confidence in Judge Haynsworth.

In judging the fitness of Judge Haynsworth and the validity of the charges leveled by Senator Bayh, there should be emphasis on these points:

1. President Nixon has examined the allegations against Judge Haynsworth and in a letter to Senator Hugh Scott has stated: "There is nothing whatsoever that impeaches the integrity of Judge Haynsworth. There is no question as to his competence as a Judge. There is no proper faulting of his posture vis-a-vis civil rights or labor. It would be very wrong to allow unfounded allegations to deny this country the distinguished service of Judge Haynsworth on the Supreme Court."

2. On Friday, October 10, 1969, the six other judges of the Fourth Circuit, with full knowledge of the Bayh charges, stated their "unshaken confidence" in the ability, the honesty, and the integrity of Judge Haynsworth. Those judges are Simon E. Sobeloff, Herbert S. Boreman, Albert V. Bryan, Harrison L. Winter, J. Braxton Craven, Jr., and John D. Butzer.

3. 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." The public doubt has been created to a large extent by the continued circulation of false and misleading statements, and irresponsible accusations.

4. The spokesman for the American Bar Association and also a leading authority on judicial conflicts of interest have stated that Judge Haynsworth under the standard federal rule should not have disqualified himself, and had a duty to sit on the so-called Darlington cases. Senator Bayh has continued to rehash the Darlington cases and similar cases despite the views of the A.B.A. and of a leading authority. (There are in fact three Darlington cases, and in only one of these cases did Judge Haynsworth grant the relief requested by the company. As Senator Cook noted: "In the final and determinative Darlington case, Judge Haynsworth concurred in the decision in favor of the union.")

5. Senator Cook has fully and adequately answered the Bayh allegations that Judge Haynsworth should have disqualified himself in at least five cases because of a "substantial" stock interest in the litigant. Examination of the records shows Bayh's charges represent gross distortion of the term "substantial" interest. Detailed examination of the facts demonstrates the absurdity of even the suggestion of illegal or unethical conduct by Judge Haynsworth in these cases. (See the accompanying information sheets for details on these cases.)

6. Senator John J. Williams, of Delaware, has exploded the so-called Bobby Baker aspects of the case as unfounded "guilt by association." There is no substance to the charges. There were three superficial contacts between Judge Haynsworth and Bobby Baker, the last one in September, 1958—five years before the Bobby Baker scandals broke into the open.

CAROLINA VEND-A-MATIC

The Bayh charges of a conflict of interest involving customers of Carolina Vend-A-Matic represent *a rehash of an issue that has already been rejected* by the testimony of a representative of the American Bar Association, as well as by John P. Frank, a leading authority on conflicts of interest.

Senator Bayh's repetition of this charge is no more than a continued insinuation that the increased profits of Carolina Vend-A-Matic were in some manner tied to Judge Haynsworth's elevation to the Fourth Circuit Court of Appeals.

Former Federal Judge Lawrence E. Walsh, chairman of the A.B.A. Committee on Judicial Selection, has 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."

Senator 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 Judge Haynsworth was a federal judge.

It can be stated that there is no evidence that Judge Haynsworth ever did one thing to solicit business for Carolina Vend-A-Matic. In fact, all of the evidence is to the contrary.

Judge Haynsworth testified that he did nothing to promote or solicit business for the food vending firm, and that the management of the business was left in the hands of Wade Dennis. That testimony is unchallenged.

The corroboration of Judge Haynsworth's testimony is impressive:

1. *Chief Judge Sobeloff* conducted an investigation in 1963 to determine the validity of an allegation that Deering-Milliken personnel in charge of granting concessions to vending companies might have known of Judge Haynsworth's connection with Carolina Vend-A-Matic and tended to favor it. Judge Sobeloff concluded *this was emphatically not the case,* and there are no facts in Senator Bayh's statement that contradict that conclusion in the slightest.

2. *Attorney General Robert F. Kennedy* reviewed that case and agreed with the Sobeloff opinion. *Attorney General John Mitchell* reviewed it and had the same view.

3. *Wade Dennis,* who became General Manager of Carolina Vend-A-Matic in 1967, 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."

4. The Dennis statement is supported by the letter from the *leading competitor, Alex Kiriakides, Jr., of Atlas Vending Company, Inc.,* of Greenville, South Carolina.

Kiriakides of Atlas Vending has written a letter to the Senate Judiciary Committee stating his concern over what he called "the slanders which are being circulated in the press about Judge Haynsworth and Carolina Vend-A-Matic." Kiriakides makes these important points:

a. 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."

b. His own business, Atlas Vending, experienced comparable growth, as did others in the area.

c. 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.

d. The business was not developed on the basis of any one 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."

e. "Carolina Vend-A-Matic under the direction of Mr. Wade Dennis operated in an honest and honorable fashion," Kiriakides said. He is willing to speak up to stop the "unjustified slanders" of Judge Haynsworth.

Senator Bayh has not produced any evidence to contradict this record. If he has it, he should have produced it.

The same principle applies to Bayh's contentions that there was some "conflict of interest" in Judge Haynsworth sitting on cases involving six other "customers" of Carolina Vend-A-Matic. The Bayh cases follow:

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 Runnymeade, a subsidiary of Kent, in 1961, totaled $21,323.63.

(It is worth noting that the inclusion of Kent Manufacturing Corporation in this group was a mistake. There is no connection between Kent Manufacturing, a Maryland corporation which manufactures fireworks which was the litigant mentioned by Senator Bayh, and the Kent Manufacturer in Pennsylvania which operated the Runnymeade plant in Pickens, South Carolina.)

3. Textile Workers Union of America v. Cone Mills Corp, 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 $100,000.

5. Leesona Corp v. Cotwool Mfg. Corp., Deering Milliken Research Corp., and Whitin Machine Works 308 F2d 895 (1962) CVAM gross sales to Deering Milliken in 1962 totaled $50,000.

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.

We agree with Senator Cook's commente on these cases:

"*Kent Manufacturing Corporation* v. *Commissioner of Internal Revenue* should be summarily dismissed because as I pointed out CVAM had never had direct or indirect business dealings with the litigant Kent Manufacturing Corporation or with any other company or individual associated with that company. This serious yet completely untrue accusation is another of the tactics used to discredit Judge Haynsworth by publication of false information.

"There are two *Textile Workers Union of America* v. *Cone Mills Corporation* cases listed by the "Bill of Particulars." *In both of these cases Judge Haynsworth voted against the company and in favor of the union.*

"There are also two *Leesona Corporation* v. *Cotwool Manufacturing Corporation* cases listed. In both, *only procedural questions* were raised, and Judge Haynsworth merely affirmed the District Court's decision which required the proceedings which had been begun in South Carolina to wait until a related case in Massachusetts had been concluded.

"In *Homelite* v. *Trywilk Realty Company, Incorporated,* Judge Haynsworth did rule in favor of the company allowing it to rescind a lease agreement made with Trywilk Realty since the *realty company had fraudulently represented to Homelite* that the partially constructed building leased by it had sewer connections.

The conclusion is inescapable that Judge Haynsworth had an equal duty to sit on all of these cases involving purported customers of Carolina vend-a-matic as in the Darlington Corporation case. There is no reason to believe that the testimony of the ABA or of such leading "conflicts" experts as John Frank would be any different on any of these cases.

FIVE CASES OF "SUBSTANTIAL INTEREST"

Bayh's charge that there are "at least five cases" in which Judge Haynsworth held a financial interest "substantial enough" to require disqualification under 28 USC 455 and to "constitute impropriety" under the canons of judicial ethics.

1. Brunswick Corp. v. Long 392 F2d 348 (1967)

A technical mistake. The Circuit Court unanimously agreed to a disposition of the case on all issues on November 10, 1967. While the written opinion did not come down until February 2, 1968, it is difficult to see how Judge Haynsworth could have had any substantial interest in the outcome of the case when he bought stock in December, 1967.

Whether Brunswick won or lost the case could not possibly have made any material difference to its stockholders, and I have heard no allegation that there was any manner in which Judge Haynsworth could have enriched himself unjustly through this stock purchase.

Senator Cook noted the insignificance of the case (even if the whole $90,000 had been recovered). It would have been less than one-half cent per share on Brunswick's 18,479,969 shares of outstanding stock or less than $5 on the 1,000 shares of stock Judge Haynsworth purchased.

2. Farrow v. Grace Lines, Inc. 381 F2d 380 (1967)

There was no substantial interest in the litigant, Grace Lines. There was no direct interest in the stock of the litigant, Judge Haynsworth held 300 shares of stock in W. R. Grace & Co., and Grace Lines was one of 53 subsidiaries owned by W. R. Grace. Grace Lines contributed less than seven percent to the parent company's 1967 revenue of $1,576,000,000.

An award of the entire $30,000 demanded would have been insignificant. Assume the whole judgment, and assume common stockholders liable, it would have reduced Judge Haynsworth's holding by 48 cents. In fact, it was a $50 judgment by a lower court jury that was simply upheld by a unanimous opinion in the Fourth Circuit.

3. Merck v. Olin Mathieson Chemical Corporation 253 F2d 156 (1958)

Senator Bayh suggested that Judge Haynsworth was engaged in illegal and unethical conduct in taking part in a case in which he had a "substantial interest" in one of the litigants. The truth is that Judge Haynsworth never owned any Merck stock and never owned any Olin Mathieson stock. Bayh now says his staff researcher misread a business transaction, and that this charge "is an error."

4. Darter v. Greenville Community Hotel Corp. 301 F2d 70 (1962)

See the memorandum attached noting that Judge Haynsworth had no stock in Green-

ville Community Hotel Corp. in 1962, and had held no stock since 1958.

The case of the Greenville Community Hotel Corporation demonstrates the absurdity of Senator 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.

Senator Bayh charged that Judge Haynsworth had "a substantial interest" in the Greenville Community Hotel Corporation at a time that the Corporation came before his court in 1962.

We can state categorically that Judge Haynsworth had absolutely no interest in the Greenville Community Hotel Corporation or in any company having any interest in that corporation in 1962. The facts are:

On April 26, 1956, before the Judge was on the Court, one share of the Greenville Community Hotel Corporation stock worth only $21 was transferred to Judge Haynsworth so he could be a director of that corporation. He held that position until he went on the bench in 1957. On January 1, 1958, a short time after he went on the bench, he did receive a check for 15 cents for the 1957 dividend.

Judge Haynsworth, thinking he no longer owned that one share of stock, 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. That share was later transferred to Furman, who sold it on August 1, 1959, for $21. Yet, here in October of 1969, Senator Bayh is charging that Judge Haynsworth had a substantial interest in the corporation in 1962, is in violation of the law, and is engaged in what he contends is "impropriety." Either Senator Bayh did not know all the facts when he made his statement and was lax if not irresponsible in making the charge, or he knew the facts and deliberately distorted.

This is only one of the thoroughly absurd charges that have been made by Senator Bayh and other critics. Each of these cases will be dealt with in detail in the days ahead. It should be apparent to anyone who examines this charge that Senator Bayh and other critics are grasping at straws. It is unfortunate that they have filled the air with so many charges that it is difficult to get through with an explanation demonstrating the lack of substance in each of the alleged "conflict of interest" cases.

5. Donohue v. Maryland Casualty Co. 363 F2d 442 (1966)

6. Maryland Casualty Company v. Baldwin 357 F2d 338 (1966)

(Note: Both cases five and six involve Maryland Casualty Company.)

This sixth case was added after Senator Bayh was forced to admit error in using the cases of Merck v. Olin Mathieson Chemical Corporation and Darter v. Greenville Community Hotel Corp.

Senator Bayh contends that Judge Haynsworth held a substantial interest in American General Insurance Co. and should have disqualified himself in both cases in which Maryland Casualty Company was a litigant, because it is a subsidiary of American General Insurance.

Judge Haynsworth did own 67 shares of common stock and 200 shares of preferred stock in American General Insurance Company, a corporation in which Maryland Casualty was one of at least twelve subsidiaries.

It is difficult to measure the impact of a judgment upon a corporation with total assets of $888,857,336, total income of $356,602,892, and consolidated net profits of $26,672,196.

There is doubt if an adverse judgment could have any significant effect on Judge Haynsworth's fractional interest in such a mammoth corporation. Senator Cook has pointed out:

"The Judge has only .0059 percent of the 3,279,559 shares of preferred stock, and an even smaller .0015 percent of the 4,500,000 shares of common stock."

In all of these cases, we have nothing from Senator Bayh except the general contention that he believes there was "a substantial interest" in a litigant that violated the federal law, 28 USC 455, and required disqualification.

Unless Senator Bayh is holding back some important evidence, it would appear that all of his so-called "new charges" are devoid of substance.

He states there is no charge of dishonesty on the part of Judge Haynsworth. He says the question is not whether Judge Haynsworth is dishonest, but simply whether Judge Haynsworth meets "the demanding ethical standards required of an Associate Justice of the Supreme Court." If there is lack of candor, it is not on the part of Judge Haynsworth. If there is lack of public confidence in the judiciary it is not because of any acts by Judge Haynsworth.

If there is lack of confidence in the judiciary it is rather because of the elevation of Abe Fortas to the Supreme Court. If there is lack of confidence in the present nominee, it is because of the perfidy of those who have made false accusations and who continue to circulate false information about Judge Haynsworth.

JUDGE HAYNSWORTH AND JUSTICE FORTAS

When future historians of the Supreme Court of the United States come to write about the nomination of Judge Haynsworth to that court, they are bound to conclude that one of the most important facts in connection with the nomination is that it was made only three months after the resignation of Justice Fortas from the Supreme Court. Because of that fact, it was inevitable that Judge Haynsworth would be subjected to the most microscopic scrutiny to determine whether he should be confirmed as a justice of the court. So long as that scrutiny is confined to matters which genuinely relate to his qualifications to be a Supreme Court justice, and does not degenerate into reckless character assassination, one cannot quarrel with this result.

But one must have the most serious quarrel with those who say that because accusations were made against Justice Fortas, and he resigned, that therefore since accusations have been made against Judge Haynsworth, he should not be confirmed. If our Anglo-American system of justice means anything, it means that a man is judged by facts which are either proven or can reasonably be inferred, and not on the basis of accusations alone. Because of this, the case of Justice Fortas differs significantly from the case of Judge Haynsworth.

Life magazine last spring printed an article indicating that Justice Fortas, while a member of the Supreme Court of the United States, had received a substantial payment from the Wolfson Family Foundation, whose guiding genius was Louis Wolfson. Although Justice Fortas returned the money that he had received approximately a year after he had received it, during the intervening period of time Louis Wolfson had been investigated by the Securities and Exchange Commission, and indicted on numerous criminal charges by a federal grand jury in New York. It was further revealed that the money paid to Justice Fortas had been paid pursuant to a contract which had called for payments to him of $20,000 a year for the remainder of his life, and for additional payments of $20,000 per year after his death to Mrs. Fortas so long as she should live.

Justice Fortas issued a statement to the effect that the money was paid him for assistance that he would render to the family foundation and its charitable activities during the summer recess period of the Supreme Court, but that because of the press or work, he had found that he was unable to discharge this obligation, and therefore returned the money. He further stated, in his letter to Chief Justice Warren, that although Mr. Wolfson had on several occasions sent him material relating to the former's problems, and had discussed them with Justice Fortas, the latter had not interceded or taken part in any legal matter affecting Mr. Wolfson.

Title 18, § 205, provides in part as follows:

"Whoever, being an officer of the United States in the Executive, Legislative, or Judicial Branch of the Government . . . otherwise than in the proper discharge of his official duties—

(2) acts as agent or attorney for anyone before any department, agency, court, court-marshall, officer . . . in connection with any proceedings, application, request for a ruling, or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

shall be fined not more than $10,000 or imprisoned for not more than two years, or both."

By reason of all of these facts, Senators on both sides of the aisle called for an explanation from Justice Fortas. Feeling that the two statements issued by the Justice did not adequately dispel legitimate concern as to whether there might have been a violation of this criminal statute, the typical public reaction, both inside and outside of Congress, was "explain or resign".

Justice Fortas chose to resign, and therefore any fully inquiry into the circumstances of the Wolfson transaction became moot. The ultimate resolution of the question was made, not by the Senate, but by Justice Fortas himself.

In the case of Judge Haynsworth, charges have been made that he failed to disqualify himself in cases before his court in which he had a "substantial interest". Title XXVIII, § 455 of the United States Code provides as follows:

"Any Justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest . . . 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, like Justice Fortas, has been asked by the Senate Judiciary Committee to explain the circumstances surrounding these charges.

Unlike Justice Fortas, however, Judge Haynsworth has made the fullest sort of disclosure, not merely of facts and records involving his judicial activities in any way, but of facts and records pertaining to private business transactions whose connection with his judicial activities would appear to be remote at best. In fairness to Justice Fortas, it should be pointed out that the confirmation hearing of Judge Haynsworth before the Senate Judiciary Committee is a readily available forum in which the facts and circumstances can be fully investigated, while no such forum was readily available to Justice Fortas. This difference, however, results from the fact that Judge Haynsworth is a nominee to the Supreme Court requiring confirmation by the Senate, while Justice Fortas was a sitting Justice of the Supreme Court at the time the charges against him were made.

It is thus not accurate to speak of an "appearance of impropriety" in the Fortas case, and a similar "appearance of impropriety" in the Haynsworth case. The resignation of Justice Fortas prevented any examination into, or resolution of the "appearance of impropriety" in his case. Judge Haynsworth's furnishing of voluminous records does permit a

careful and factual resolution of the charges against him on their merit.

Finally, the charges made against Justice Fortas were quite different from those made against Judge Haynsworth.

Under all the circumstances, Justice Fortas was called upon to explain a situation which might involve a violation of a criminal statute. It is not unreasonable for the public to insist that holders of high office not only refrain from violating the criminal law, but also either avoid the appearance of violating it, or be prepared to explain themselves when such appearance is present.

Judge Haynsworth has been charged with failing to disqualify himself when required to by statute—a statute which not only does not impose any criminal penalties, but requires a careful judgment by a judge in each case where it might be applicable. At least three Courts of Appeals 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. A judge interpreting the disqualification statute may not "bend over backwards" and disqualify himself in cases where it might "appear" that he should do so, even though upon analysis he were to conclude that he should not.

Therefore, while it may not be enough for a judge to show that upon careful legal analysis he has not violated a criminal statute, even though he "appeared" to have done so, a judge is required to sit in a case in which he is not disqualified, even though upon superficial analysis it might appear that he is in fact disqualified.

The PRESIDING OFFICER. Under the order of last Thursday, the Chair now recognizes the Senator from Kansas (Mr. DOLE).

SENATE RESOLUTION 271—SUBMISSION OF A RESOLUTION CALLING ON NORTH VIETNAM TO END THE WAR

Mr. DOLE. Mr. President, ending the war in Vietnam is the Nixon administration's prime concern. President Nixon has repeatedly stated that our limited but fundamental objective is to assure the people of South Vietnam the basic right to determine their future free from outside interference.

Publicly and at the Paris talks, the United States has offered proposals to bring peace and self-determination, and we have expressed willingness to discuss any other proposals having the same objectives.

The United States has proposed, and agreed to accept the results of free elections organized by joint electoral commissions, composed of representatives of both sides under international supervision.

We have offered to negotiate a supervised cease-fire to diminish the intensity of the conflict. In the absence of such a cease-fire, new orders have gone out to American field commanders to minimize military and civilian allies' casualties, to gear combat actions to enemy actions, and to adopt a policy described by General Wheeler as one of "protective reaction." We have called for a mutual withdrawal of all non-South Vietnamese troops, which action by their side need not be formally announced. We have commenced reduction of the U.S. presence in South Vietnam by removing over 60,000 U.S. troops—this is 20 percent of our combat troops and 12 percent of the total allied troops. Future withdrawals will be considered based on three criteria: progress in the Paris talks, military progress in the war, progress in Vietnamization of the war.

It is time for North Vietnam to respond to these initiatives. The United States is waiting. The world is waiting, and the people of Vietnam, North and South, have been waiting and suffering for 30 years. The time has come for peace. In the name of peace, I shall introduce a resolution later today calling on the Government of North Vietnam and the National Liberation Front to enter serious negotiations to end this war.

This resolution urges the Government of North Vietnam and the National Liberation Front to:

First. Acknowledge that a just and mutually agreed settlement is the best hope for lasting peace;

Second. Show at the Paris peace talks the same flexibility and desire for compromise which the allies have clearly demonstrated over the past year;

Third. Agree to direct negotiations between representatives of the National Liberation Front and of the Government of the Republic of Vietnam, as proposed by the latter;

Fourth. Withdraw their insistence on allied surrender through their demand for the overthrow of the Government of the Republic of Vietnam before genuinely free elections could be held—and I think a very important point in this resolution;

Fifth. Provide information on the status of U.S. prisoners of war held in North Vietnam and by the National Liberation Front, and give evidence that these prisoners are being treated humanely in accordance with the provisions of the Geneva Convention.

Mr. President, by passing this resolution, the Senate can make known to the Government of North Vietnam and the National Liberation Front that this country is determined to negotiate a settlement in Vietnam.

We can convince Hanoi that there is nothing to be gained by waiting and waiting and waiting, and that they should proceed to a negotiated settlement.

Mr. President, we all want peace and an end to this tragic conflict. As President Nixon has said:

> The people of Vietnam, North and South alike, have demonstrated heroism enough to last a century. They have endured an unspeakable weight of suffering for a generation.

They deserve a better future.

We ask the North Vietnamese and the National Liberation Front to show a sign of concern for the people of Vietnam. We ask that they demonstrate that they care about a better future for all Vietnamese.

In this spirit, I ask the Members of this body—who have not done so—to join me in calling for an affirmative response from the North Vietnamese Government and the National Liberation Front.

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

Mr. DOLE. I yield to the Senator from Colorado.

Mr. DOMINICK. I congratulate the Senator from Kansas. I have the pleasure of being a cosponsor of this particular resolution. I think it is a very worthwhile effort. If I may say so to the Senator, it strikes me that all we have heard up to date has been from people who are, in general, critical of either the United States or the South Vietnamese, and are not critical of the North Vietnamese or the Vietcong. I think this has been totally without balance.

For example, I received a letter from my son who said, "Why don't we hear more about what has happened at Hue?"—where, when they went to that city, the ancient capital of Vietnam, they found graves dug in which the Vietcong, in the process of taking over during the Tet offensive, had literally buried people alive in mass graves; had lined up others, hitting them with mattocks, and buried them. Over 2,500 people were murdered by the Vietcong in that offensive alone. But do we hear anything about that at all? Not a bit. We hear about the inhumanity of the South Vietnam, or the corruption, or the problems that we have with our own intervention.

It seems to me we must do something to restructure a good deal of the thinking that has gone on; to recognize that we have gone one step after another in an effort to try to get a negotiated peace. We have not yet been able to reach it.

I may say to the Senator from Kansas that I have a statement on this matter myself. I know that, prior to my giving it, other Senators would like to make comments on the Senator's resolution.

I certainly hope that what the Senator from Kansas has done here today, and those of us who have joined with him, both Democrats and Republicans, will bring a focus of attention on some of the problems we have with the other side, which has remained intransigent and which has been unwilling up to the present time to make any kind of concessions toward getting to a peace, which is what we all want.

Therefore, I again congratulate the Senator from Kansas.

Mr. DOLE. I thank the Senator from Colorado. There has probably been a false impression created in this country about what has happened in the Senate as a result of the recent flurry of withdrawal resolutions. I certainly have no quarrel with anyone's desire to end this conflict. But we only help Hanoi when it is said that only the United States should do something or that only the South Vietnamese should do something. It is my hope this resolution will alert the American people to the fact that some of us recognize that North Vietnam is the enemy and it is time they reacted to the U.S. initiatives.

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

Mr. DOLE. I yield.

Mr. COOPER. Mr. President, I am not a sponsor of the resolution of the distinguished junior Senator from Kansas. I am not a sponsor of any of the many resolutions which have been proposed regarding the war in South Vietnam. As a member of the Foreign Relations Committee, I hope I can view each one of them objectively.

Since 1965 I said time after time on

lent their prestige to the moratorium can properly be asked if this is the program they endorse. Many of these sponsors were involved in the fight for the minority plank at the Chicago convention which specifically said the war "will not be ended by military victory, surrender or unilateral withdrawal by either side."

It might be well for those men to explain Wednesday when and why they concluded that their opposition to unilateral withdrawal was wrong. It would be even more useful if they could explain why a one-dimensional plan to pull out troops is any more likely to be wise policy than the one-dimensional plan that sent the troops in. Have we not learned yet to examine the political consequences of military decisions?

Third, and most important, what about the method of the moratorium? Is it compatible with the maintenance of representative democracy or does it substitute the rule of the street?

The sponsors say the name "moratorium," rather than "strike," was chosen to emphasize that the protest is to be peaceful and noncoercive. It is a nice distinction. The noncoercive feature may be almost invisible to the thousands of students whose colleges will shut down Wednesday. If the moratorium continues, as planned, for two days in November, three days in December, and so on, it will more and more come to resemble the general strike so familiar to European politics.

And if it succeeds in its aim, what is to prevent other majorities or sizable minorities in the country from using the same technique to force their views on agencies of the government? The moratorium sponsors say Vietnam is an extraordinary issue, but they must know it is not the only issue which agitates millions of people.

One wonders what the moratorium sponsors would say if Billy Graham were to ask all the parents who want prayers restored to public schools to withdraw their children from school for one additional day each month until the Supreme Court reverses its school-prayer decision.

Suppose pro-prayer teachers agreed to meet the pupils in private homes on moratorium days to discuss "the overriding significance of religion in human life." Would the Vietnam moratorium sponsors cheer? What would they say if landlords and real estate men opposed to integrated housing declared a moratorium until Congress repeals the open-housing law?

My view, just to be clear, is not that the Vietnamese moratorium is un-American, illegitimate, meanly partisan or personally vindictive in its motivation. My view is that it is an ill-timed, misdirected protest, vague in its purpose and quite conceivably dangerous in its precedent.

As was said last week, its immediate result may be the breaking of the President. In the serious weakening of his power to negotiate peace or to achieve any of the other purposes for which he was elected, its longer term effects may be to subvert a system of democratic government I happen to believe is worth preserving.

ORDER OF BUSINESS

Mr. BYRD of Virginia. Mr. President, I ask unanimous consent that I may be permitted to speak for not to exceed 12 minutes.

The PRESIDING OFFICER. Without objection, the Senator from Virginia is recognized for not to exceed 12 minutes.

NOMINATION OF HON. CLEMENT HAYNSWORTH TO SUPREME COURT

Mr. BYRD of Virginia. Mr. President, the Senate is again called upon to give its consent to the nomination of an Associate Justice of the Supreme Court.

The consent of the Senate, required under article II, section 2, of the Constitution, is a vital element in the system of checks and balances which is built into our constitutional system.

We are a Nation governed by three independent and coequal branches. This separation of authority and interaction of the three branches at the Federal level has allowed us to exist as a free Nation for almost two centuries.

The selection of a Justice for the Supreme Court is a prime example of the operation of our system of checks and balances. The executive branch has nominated a candidate to the highest court of the land. The Senate now has the duty under the Constitution to confirm or deny this nomination.

I submit that this duty to examine Supreme Court nominations is a most solemn one. It is the very nature of the court that makes this choice so important. The decisions of the Supreme Court are not reviewable by any higher tribunal.

Added to this is the fact that, assuming his good behavior, a Justice serves a lifetime appointment. Once appointed to the Court, a Justice answers to no one except his conscience.

It is for this reason—a lifetime appointment—that the Senate has a duty to weigh carefully every possible aspect of a prospective Associate Justice.

I feel my vote on any nomination for the Supreme Court is one of the most important I will ever cast. Only 100 times since 1789 has the Senate confirmed an Associate Justice to the Supreme Court. In this same period of time, 22 nominations failed to receive Senate approval or were withdrawn, only two occurring during this century.

In five of the seven nominations to the Supreme Court since 1956, confirmation has been by voice vote. This suggests that the Senate has given inadequate attention to its power of confirmation over Supreme Court Justices.

This is not the only area in which the Congress—both the Senate and the House of Representatives—has abdicated its constitutional responsibility. If we are to maintain our system of government and protect individual liberty, then the Congress must reassert its constitutional prerogatives. It must assume its rightful place as a coequal branch of the Federal Government.

When the Senate fails to give adequate attention to a Supreme Court nomination, it fails in its constitutional duty to make certain the men on the bench have the requisite knowledge and integrity—and requisite concept of the judicial role.

It is said that we are a Government of laws—not men. But only men can interpret the laws. We ask nine men to tell us what the law is—to interpret the law in light of constitutional requirements and safeguards.

The quality of the Court is determined by the quality of each individual appointed. This places an even greater burden on those who must cast a vote for or against confirmation. Every nominee must be carefully measured against the same measuring stick.

I have tried to measure each nominee by the same standards—his legal qualifications and attainments, his judicial philosophy, his adherence to the constitutional doctrine of separation of powers, and what role he would have the Supreme Court play in our constitutional system.

The role which the Supreme Court has assumed in the last 15 years under Earl Warren has greatly disturbed me.

When the Senate confirmed Warren Burger as the new Chief Justice of the United States, I felt we had taken a step in the right direction. That is a direction away from the philosophy embraced by the majority of the Warren court.

It is my personal belief that the majority of the Warren court led this country on a dangerous path. These Justices—not infrequently only five of them—were determined to establish the Court as a superlegislature. They substantially reduced public confidence in the Court in the process.

I submit that without public confidence, the Supreme Court loses its effectiveness. As Hamilton noted in the Federalist Papers speaking on the new Federal Judiciary:

> It may truly be said to have neither *force* nor *will*, but merely *judgment*.

Mr. Justice Frankfurter expressed much the same thought in one of his opinions when he said:

> The court's authority—possessed of neither the *purse* nor the *sword*—ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the court's complete detachment from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements.

I have opposed confirmation of men to the Supreme Court whose philosophy I believe would lead them to join with the former majority of the Warren court and continue to plunge into political waters, rather than remain on the constitutional beaches. Every political plunge weakens public confidence in the judgment of the Court.

When I speak of public confidence, I do not say that it is the function of the Court to decide each case by weighing public opinion. That clearly would be wrong.

But I do say that it is unwise for the Court to forge ahead in social movements outside of the confines of the case before it, and in areas which properly are legislative.

It is unwise to cast aside judicial self-restraint.

It is unwise to legislate from the bench.

It is unwise to disregard judicial precedent in the interest of an immediate attractive result; precedent is a touchstone of continuity with the past which allows the law to develop and grow with our Nation.

It is unwise for the Court to lose sight of its proper role in our constitutional government. If the members of the Court want to legislate, they should submit their names to the will of the people on a regular basis.

I do not maintain that there should be no change in the law. It is important that the law remain meaningful in the context of a changing society.

But change is not desirable when it occurs in "legislative" opinions handed down by the Supreme Court.

Change must occur within the context of our constitutional system, which for nearly 200 years has provided for three coequal branches of government.

An independent judiciary is the bulwark against legislative usurpation; the Senate in its role of advising and consenting to nominations is the bulwark against judicial usurpation.

In my deliberations on appointments to the Supreme Court, I place a high priority on the philosophy they entertain as the proper role of the judiciary in our federal system.

This brings me to the nomination of Clement F. Haynsworth, of South Carolina, to be an Associate Justice of the Supreme Court.

I have given this nomination long and careful consideration. My analysis has focused on his legal philosophy, his personal qualities, and his professional qualifications.

It is wise, in my opinion, to look to the ranks of the judiciary for an Associate Justice. It is especially wise to look to the Federal judiciary for a judge experienced in the workings of the federal system.

Nomination of a sitting judge also affords an opportunity to discover his judicial philosophy through his written opinions.

Judge Haynsworth has served on the fourth circuit court of appeals for 12 years. His decisions during this period exhibit a feeling for the legal problems peculiar to a federal system.

As a federal circuit judge, Mr. Haynsworth has realized that the role of an appellate court is to review the decision of the lower courts and not to substitute the judge's own personal feelings.

It is also encouraging to read language of judicial restraint in an opinion. Language limiting the court's decision to precise legal issues appears with frequency in Judge Haynsworth's opinions.

I cannot help feeling that much of the extremism of the Warren court, and subsequent erosion of public confidence, could have been avoided had the Court limited itself to deciding the issues, and left the question of social change to the proper branch of the Government.

Judge Haynsworth's opinions indicate an adherence to a sound philosophy, a philosophy which says the judiciary properly functions only in its own sphere as defined by the Constitution. I feel he would not take the Court into executive and legislative areas.

In the area of criminal law—in which I often felt the Warren majority placed the rights of the criminal above the rights of peaceful, law-abiding citizens—Judge Haynsworth's opinions reflect a reasoned approach. He is aware of the need to protect the accused in the pretrial stages, yet he would not adhere to the unreasonable restraints placed on the police who are charged with protecting all citizens.

Personal qualities of the nominee are as important as his professional qualifications. His character, integrity, and moral fiber, will surely be reflected in the quality and independence of his thoughts on the bench.

I think it is healthy for judicial nominees to be the subject of close scrutiny by the Senate Judiciary Committee, and for the subject of judicial ethics to be opened to the public.

It is good for our constitutional system when the Senate reasserts its constitutional power and gives more than pro forma ratification to the nominations submitted by the President.

I am pleased that the Senate Judiciary Committee held long and thorough hearings on this nomination. The committee met for 8 days and heard testimony from individuals and organizations holding different points of view as to Judge Haynsworth's qualifications. After long consideration, the committee by a vote of 10 to 7 approved the nomination of Judge Haynsworth.

Three charges are made against Judge Haynsworth:

The AFL–CIO charged that he is anti-labor. It cited eight cases where he ruled contrary to the wishes of the AFL–CIO.

But the Senator from North Carolina (Mr. ERVIN) read into the RECORD 22 cases where Judge Haynsworth had decided in favor of labor unions. I do not regard the charge that Judge Haynsworth is anti-labor as being valid, nor substantiated by the facts.

No political interest group has the right to insist that every Supreme Court Justice should decide every case in their favor.

Nominees should be analyzed to determine whether or not they are fundamentally honest and have the intellectual integrity to render their opinions on the basis of what they consider to be valid, constitutional precepts.

The second charge levied against Judge Haynsworth is that he is "anti-Negro." The facts submitted to the Senate Judiciary Committee do not bear out such a charge, unless the mere fact that a person is a South Carolinian automatically puts him in the anti-Negro category.

A study of Judge Haynsworth's judicial record shows that he has scrupulously followed the Supreme Court's mandate in regard to school integration. It is true that Judge Haynsworth has not been a crusader; but to my way of thinking, crusading is not a proper judicial function.

The third charge made against Judge Haynsworth has to do with the ownership of certain stock.

When the charges were first made, I was disturbed as to whether or not the judge knowlngly compromised his judicial position. I explored this possibility carefully and consulted at some length with outstanding members of the legal profession in whom I have confidence.

I was impressed, too, by the testimony of an attorney from Judge Haynsworth's hometown, who long has been an opponent of Judge Haynsworth's philosophy and who testified that he preferred that Judge Haynsworth not be appointed to the Supreme Court because he is not "liberal enough."

But this hometown attorney testified in regard to the South Carolina judge:

He is absolutely honest. He has impeccable integrity. I would believe his word about anything.

A Chicago Tribune editorial of October 7, 1969, made what I feel to be a valid point in regard to this nomination. It stated:

Respectable liberals frankly acknowledge that nothing in the Judge's record justifies a vote against confirmation.

The Washington Post, for example, has misgivings about the nomination of Judge Haynsworth, and is unhappy about it, but editorially concluded:

There is no valid reason on the basis of the present record for the Senate to deny the President his choice.

The New York Times, bitterly anti-Haynsworth, reached a similar conclusion.

I feel that there has been no evidence presented justifying a valid charge that the judge acted to advance his own interest. It would appear that the most valid charge that could be made against him in regard to stock transactions would be that of inadvertence and lack of attention to detail.

I am convinced that Judge Haynsworth is a man of the highest integrity, one who is well schooled in the law, one who possesses judicial temperament, and one who is fair and conscientious in rendering judicial opinions.

In my judgment, Judge Haynsworth's qualifications have been well established.

It is vitally important, I feel, that there be a reversal of the role the Supreme Court has assumed during the past 15 years.

From the time of former Chief Justice Warren, there has been an erosion of our constitutional system. The Supreme Court has usurped power to which it is not entitled.

Judge Haynsworth's record gives evidence that he holds a judicial philosophy which will help restore a balance to the Supreme Court.

Judge Haynsworth's record gives evidence that he supports a return of judicial restraint to the Supreme Court.

Judge Haynsworth's record gives evidence that he feels the Supreme Court should not seek to establish itself as a superlegislature.

The Supreme Court in recent years has gone too far to the left. If public confidence in the Court is to be restored, there must be a better judicial balance.

President Nixon's appointment of Warren Burger as Chief Justice and Clement Haynsworth as Associate Justice should help restore confidence in the Court by helping to restore balance to the Court.

I shall cast my vote in favor of Judge Haynsworth's confirmation.

Mr. President, I ask unanimous consent that a telegram addressed to Judge Haynsworth under date of October 9, 1969, be printed in the RECORD.

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

RICHMOND, VA.

HON. CLEMENT F. HAYNSWORTH, JR.
U.S. State Circuit Judge,
Greenville, S.C.:

Despite certain objections that have been voiced to your confirmation, we express to

you our complete and unshaken confidence in your integrity and ability.

SIMON E. SOBELOFF,
HERBERT S. BOREMAN,
ALBERT V. BRYAN,
HARRISON L. WINTER,
J. BAXTON CRAVEN, JR.,
JOHN D. BUTZNER.

THE PRESIDENT'S TASK FORCE ON THE PHYSICALLY HANDICAPPED

Mr. DOLE. Mr. President, today President Nixon announced formation of a highly significant group which probably will go largely unnoticed in the media, and therefore to many Americans whose lives may be deeply affected.

It is the President's Task Force on the Physically Handicapped. It has been established "to review what the public and private sectors are now doing for handicapped Americans, and to make recommendations as to how best to achieve maximum help for affected individuals." In addition, the task force will consider how greater public awareness and community action might be stimulated.

TASK FORCE MEMBERS

Members of the Task Force are distinguished Americans whose involvement and experience will contribute much to the work of the group.

I can vouch for one member personally. He is Dr. Hampar Kelikian of Chicago's Wesley Memorial Hospital—a man who has been very influential in my life.

The other members are: Dr. Ralph E. DeForest, Task Force chairman, directors, Department of Postgraduate Programs, American Medical Association, Chicago, Ill.; W. Scott Allan, assistant vice president, Liberty Mutual Insurance Co., Boston, Mass.; Dr. Robert L. Bennett, medical director, Georgia Warm Springs Foundation, Warm Springs, Ga.; Lawrence W. Binger, director of personnel services, Minnesota Mining & Manufacturing Co., St. Paul, Minn.; Dr. Kelikian; John W. Melcher, director, Bureau for Handicapped Children, State of Wisconsin, Madison, Wis.; Mrs. Genevieve H. Schiffmacher, assistant commissioner, Department of Labor and Industries, Commonwealth of Massachusetts, Boston, Mass.; Alfred Slicer, director, Division of Vocational Rehabilitation, State of Illinois, Springfield, Ill.; Lawrence Smedley, assistant director, AFL–CIO Department of Social Security, Washington, D.C.; Dr. William A. Spencer, chairman, Department of Rehabilitation, Baylor College of Medicine, Houston, Tex.; Dr. S. Daniel Steiner, medical director, General Motors Corp., Detroit, Mich.; Mrs. Spencer Tracy, president, board of directors, John Tracy Clinic, Los Angeles, Calif., and Henry Viscardi, Jr., president, Human Resources Center, Albertson, Long Island, N.Y.

VALUE OF PRESIDENT'S TASK FORCE

In my first major Senate speech earlier this year, I urged the President to create a similar task force because I am convinced America's public and private sectors can better help achieve independence, security and dignity for the person with handicaps. My distinguished colleague from Vermont (Mr. PROUTY) has also been very instrumental in the creation of the Task Force.

I hope the President will see fit in the near future to appoint a Task Force similar to the one announced today to appraise and recommend programs and efforts for those with mental handicaps.

Well executed, these two Task Forces could provide authoritative guidance to the administration and Congress as they develop programs and allocate funds and to the agencies, as they implement.

They could also provide new incentive and direction to private and voluntary groups to better aim and gage their efforts.

Undoubtedly, the biggest benefits will be realized by this country's 42 million physically, mentally, and emotionally handicapped persons themselves.

Mr. President, some 42 million Americans suffer from handicaps—physical, mental, and emotional. I recognize that many Members of the Senate have long been in the forefront of helping those individuals.

I point out as one of that group of 42 million that not many, I would guess, of the 42 million are looking for handouts. They are looking for programs that might make them self-sufficient, might give them a certain sense of dignity, and the opportunity to achieve in America as all Americans do.

Let me again say that I commend President Nixon for this start. I commend those outstanding individuals who will be serving on the task force, and I wish them well in their very difficult task.

WITNESS UNPARALLED ACHIEVEMENTS

Mr. President, we have all witnessed the unparalled achievements of medicine, science, education, technology, and related fields. The Government has been relatively successful in terms of numbers assisted, basic research performed and the movement of increasingly large numbers of persons into more productive, satisfying channels. The private sector—with its emphasis on the creativity, concern, and energies of the people—has performed Herculean tasks; in fundraising, employment, research, public opinion, rehabilitation, and through professional organizations and groups for the handicapped themselves.

WE HAVE TO DO BETTER

But these same forces and others must do better because they can do better. We must assure each individual with handicaps that he can become as active and useful as his capacities will allow.

SOME OF THE PROBLEMS

Today many handicapped persons lead lives of despair and loneliness. Many feel they could become more self-sufficient and contributing members of society with the proper tools and encouragement. Some are disillusioned and disaffected by the very programs created to help them.

They cite such reasons as income—too low or too high—place of residence, specific handicap or handicaps, knowledge of and referral to existing personnel and facilities, insufficient comprehensive planning for their total needs and little community awareness and action for both the disabilities and abilities of the handicapped.

Their problems are often compounded because of inadequate funding to develop needed guidelines, statistical data, quality programs and sufficient, effective professional staffing.

And sadly—if not surprising to some—there never has been a major overall effort to try to determine if public and private money currently expended is doing the job as effectively, efficiently, and economically as possible.

Today the President has demonstrated he recognizes the Nation's handicapped merit top-level attention.

If they are to do a creditable job, the challenge at hand for members of the Task Force on the Physically Handicapped is monumental. It is a challenge which must be met and mastered if we are to help the handicapped, one of our Nation's greatest unmet responsibilities and untapped resources.

ACID MINE DRAINAGE IN APPALACHIA

Mr. RANDOLPH. Mr. President, the New York Times and its news service, in a copyrighted article on Monday, October 13, 1969, by Ben A. Franklin, reported:

> The Nixon administration has delayed for nearly a month the transmission to Congress of a government report indicating a need for increased spending to remedy water pollution by the coal mining industry.

The Times dispatch, which was carried in several Monday morning newspapers in West Virginia, indicates that the printing cost of the report, entitled "Acid Mine Drainage in Appalachia," was "about $10,000." But, according to the Times, "staff work on the report and contracts for research by scientists selected by the National Academy of Sciences ran its total cost up to about $700,000" before 3,000 printed copies of the 126-page document were placed in storage September 12 and had been held there until released this morning.

"Technical difficulties in transmittal" were ascribed by a White House staff member as reasons for placing the 3,000 copies in storage, rather than giving them prompt distribution, The Times correspondent wrote.

But, Mr. President, it does seem that the Nixon administration has been holding back from Congress this Government report indicating the seriousness of water pollution from acid mine drainage and stressing the need for a large increase in expenditures to overcome this cause of pollution.

Notwithstanding, Congress is aware of the seriousness of the problem and of the high costs of solving it. Actually, the withholding from circulation of the report, which was prepared under the Appalachian Regional Commission's authority, does not improve the administration's chances of influencing Congress to provide smaller and smaller appropriations for water pollution control. Such tactics serve to stimulate Congress to look closer at the facts and to act more determinedly to provide the funds neces-

not exceeding five hundred thousand dollars if a corporation or fifty thousand dollars if any other person."

The letter, presented by Mr. HRUSKA, is as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., September 29, 1969.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: There is enclosed for your consideration and appropriate reference a legislative proposal "To increase criminal penalties under the Sherman Antitrust Act."

This proposal would increase from $50,000 to $500,000 the maximum fine which may be imposed upon a corporation for a criminal violation of the Sherman Act. (15 U.S.C. 1 *et seq.*) These violations involve principally price-fixing, boycotting, allocation of customers, and allocation of territories. It would effect no change in the fine with respect to natural persons.

The maximum fine for violations of the Sherman Antitrust Act was increased to $50,000 in 1955. Since that time the assets and profits of corporations have increased dramatically, while the purchasing power of the dollar has decreased greatly. Consequently, the basic purpose of such a fine—to punish offenders and to deter potential offenders—are frustrated because the additional profits available through prolonged violation of the law can far exceed the penalty which may be imposed. The $50,000 statutory maximum makes fines in criminal antitrust cases trivial for major corporate defendants.

To maintain the intended effect of the maximum fine established in the 1955 amendment to the Sherman Act, which is related to corporate profits of fourteen years ago, the increase is obviously needed.

It is also needed as an additional tool with which to combat organized crime. The increased penalty will constitute a more effective deterrent against the invasion or conduct of legitimate business by criminal organizations in ways which violate the antitrust laws.

This proposed increase would be of valuable assistance in the effective enforcement of the Sherman Act in regard to large corporations without placing an undue hardship upon small business enterprises. There is no minimum fine provision and the courts and this Department would continue to exercise discretion in the imposition and the recommendation of fines.

The Department of Justice urges the prompt enactment of this important measure.

The Bureau of the Budget has advised that there is no objection to the submission of this proposal from the standpoint of the Administration's program.

Sincerely,

JOHN N. MITCHELL,
Attorney General.

Mr. HART. Mr. President, I am pleased to join with the Senator from Nebraska in cosponsoring a bill to increase the penalty in criminal cases under the Sherman Antitrust Act against corporations from $50,000 to $500,000.

Penalties for criminal antitrust violations have long been too low to be an effective deterrent or to adequately punish the offender.

In 1944, Mr. Justice Jackson observed:

> The antitrust law sanctions are little better than absurd when applied to huge corporations engaged in great enterprise. (*U.S. v. South-Eastern Underwriters Ass'n.*, 322 U.S. 533, 591 at note 11).

Today there are many more huge corporations and their sizes have been greatly enlarged since 1944. This has been due largely to the merger movement since World War II—first horizontal and vertical mergers and, now, conglomerates.

Not only have capital assets tremendously increased but so also have net dollar profits. What deterrent effect can a fine of $50,000 have on a corporation with capital assets of over a billion dollars?

A penalty of that amount to a corporation with a net income over $100 million is like an overtime parking ticket to the average automobile driver. Many corporations have net incomes of more than $100 million, running as high as $1.75 billion by General Motors and $1.25 billion for Standard Oil of New Jersey.

Mr. President, I commend my distinguished colleague from Nebraska and the administration for offering this bill. It should increase the effectiveness of our antitrust laws as a deterrent to harmful economic concentration, and as such, should help decrease the burden on the Department of Justice and the courts created by antitrust prosecutions.

Yet, this bill does not lessen the need for my bill, S. 2156, which is pending in the Finance Committee.

S. 2156 would reverse Revenue Ruling 64-224, issued July 24, 1964, by the Internal Revenue Service. The ruling allowed electrical equipment manufacturers to deduct as a business expense treble damages awarded in a price-fixing suit.

It appeared to me then, and it appears to me now that the ruling was not well founded in law, passed onto the public part of the cost of penalty and destroyed the primary purpose of giving treble damages instead of simple damages to those injured.

It appears that the treble damage provision was intended to encourage private suits as an aid to enforcement of the antitrust laws. In fact, according to testimony received by the Senate Antitrust and Monopoly Subcommittee, private enforcement is becoming more effective than Government prosecution. The IRS ruling seriously dilutes the effectiveness of this approach in that the penalty paid by the defendant has been reduced by about one-half.

While an increase in the criminal penalty will aid antitrust enforcement, it will not correct the burden placed on the public Treasury by the IRS ruling.

Equally important, increased fines will not affect cases in which the Justice Department does not prosecute criminally. In fact I believe only 40 percent or less of the total antitrust actions filed in recent years were criminal cases, although the Sherman Act is primarily a criminal statute.

Therefore, the use of private antitrust suits should be encouraged rather than discouraged.

S. 2156 would restore the effectiveness of this approach by reversing IRS ruling 64-224. It would make two-thirds of the damages paid subject to income tax.

The bill also removes two-thirds of the damages received by the plaintiff from gross income. The purpose of this provision is to restore an inducement for private action which was believed by most antitrust experts to be the law prior to 1955. However, in *Glenshaw Glass Co. v. Commissioner*, 348 U.S. 426, the Supreme Court, in a ruling involving the income tax statute, decided against a plaintiff who deducted antitrust damages from gross income. S. 2152 would restore this inducement to prospective plaintiffs.

Mr. President, I hope the bill increasing the criminal penalty maximum will be passed. I also urge the Finance Committee to make S. 2152 a part of the omnibus tax bill. We need both bills to establish a balanced deterrent and meaningful penalties in the fight against growing economic concentration.

THE NOMINATION OF JUDGE HAYNSWORTH

Mr. HRUSKA. Mr. President, I should like to discuss some of the aspects of the upcoming debate on the nomination of the Honorable Clement F. Haynsworth, presently a judge of the fourth circuit court, to be Associate Justice of the Supreme Court.

During colloquy on confirmation yesterday, a question was posed by one of our colleagues as to the line of demarcation between the power of appointment by the President and the role of the Senate in advising and consenting to a nomination by the President of a Justice to the Supreme Court.

I found upon reviewing the debates and the hearings in 1967 on the nomination of Justice Thurgood Marshall that there was some good, pertinent debate on this question.

First, I read a statement made by me on the subject during the hearings:

> In common with other members of the Judiciary Committee, I have received many letters, some pro and some con. Often the proposition has been expressed that the nominee is far too liberal for the writer of the letter and is the basis for opposing his nomination. There has been contention from time to time that we should preserve on the Supreme Court some balance between the so-called liberals and the so-called conservatives.
>
> I am not sure what those terms (liberal and conservative) mean, since they are meaningless until a decision attaches to a particular case. In the Supreme Court, that scope will be great, that range will be wide. However, the nominating power lies with the President of the United States; and if it is his desire to appoint someone he considers liberal, that is his prerogative. If he wants to appoint someone he considers conservative, that is also his prerogative.
>
> I do believe that we, as members of the Judiciary Committee, should inquire into the integrity, the competence, and the record of a man, and primarily on that basis, decide whether he is suitable for service on the Supreme Court. I have gone over the file of the hearings that were conducted when the nominee was considered for the circuit court, and later for Solicitor General. I have also studied his biographical data; and I have come to the conclusion that when the proper time arrives, I shall cast a vote in favor of his confirmation to be an Associate Justice of the U.S. Supreme Court.

In the hearings and during the floor debate, I observed that the political philosophy as well as the ideology possessed by that nominee was not what I would prefer if I were to make a first choice for that office. Nevertheless, the nominee

having satisfied the requirements of the advice and consent procedure, I stated that it would be my intention to vote for him. And, in fact, I did vote for his confirmation.

In response to letters from constituents and others who objected, my general reply was that it was for the President to make an appointment and choose the philosophy and ideology and that if anyone disapproved of the nomination on that basis, he should make it his business to vote for a new and different President. And millions of people in America did just that last fall. And we now have before us a nominee with a different philosophy.

Having applied the rule that the power of appointment is in the President during the 8 years of an administration not of my political party, I do believe it would be only fair that that same rule be applied now that there has been a change in the political party in the White House.

However, I read now from the floor debate on August 30, 1967, in which the senior Senator from Massachusetts (Mr. KENNEDY) participated with reference to the confirmation of Associate Justice Thurgood Marshall:

I know that there have been questions raised during the course of the afternoon about the temperament and judicial philosophy of Judge 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 really interested in knowing whether the nominee has the background, experience, qualifications, temperament, and integrity to handle this most sensitive, important, and responsible job. Mr. President, I think that Thurgood Marshall has demonstrated that he does have these qualifications and qualities.

In addition, as Senators, we bear a considerable responsibility to the President. The President is charged under the Constitution with sending to the Senate, for the advice and consent of the Senate, all nominations for the Supreme Court. I think it is important to realize that every one who votes against Judge Marshall's nomination this afternoon is also suggesting by his vote that the President has not really met his responsibility in making this recommendation and suggestion to the Senate and to the American people.

The responsibility of the President is quite clear; he has exercised it and exercised it well I believe. Our responsibility for advising and consenting to this nomination is also clear, and I am sure we will meet it.

That was a portion of the argument used by the senior Senator from Massachusetts on August 30, 1967.

I again suggest that this type of reasoning and this attitude regarding the power of appointment which resides in the President of the United States should be followed now in the year 1969 just as faithfully and just as willingly as it was in 1967 with Justice Thurgood Marshall, as it was before that with Arthur Goldberg, and as it was on a previous occasion when Justice Fortas was approved as associate justice of the Supreme Court.

Mr. President, it would be well to consider in some detail the case for nomination and confirmation of Judge Haynsworth.

The case consists of two basic parts. The first is the impressive volume of evidence which shows Judge Haynsworth to be a man of impeccable integrity, sound judicial temperament, and of the highest professional competence. The second part of the case consists of the total destruction of the attacks made upon him.

The Senate will not formally take up the nomination for some days. In the meantime it is likely that the debate, already begun, will continue. It is my hope that the Senate will approach this issue in a way consistent with its constitutional responsibility to advise and consent.

We now have available, in printed form, the transcript of the Haynsworth hearings before the Judiciary Committee. It contains 762 printed pages. This record is the one on which a majority of that committee voted to report the nomination to the Senate. We shall soon have the majority and minority reports.

So I venture the hope that each Senator, whether or not he has already taken a public position on this matter, will study the hearing record most carefully and most thoroughly. It is vain to hope that the controversy over this matter can be confined to the Senate where the responsibility for decision lies. There will still be press conferences and news releases and television and radio interviews. My only plea is that between now and the time the Senate considers the Haynsworth nomination, such activities and such expressions be related to facts.

That volume of hearings shows a number of things. It shows that Judge Haynsworth has the complete confidence of the President of the United States who nominated him. There was the initial expression of support and of confidence when the nomination was made; and there was later a letter to the minority leader of the Senate reaffirming that confidence. The President reviewed the record as it had developed, so that he was current with the situation before he reaffirmed his support. This record also shows that Judge Haynsworth has the support of the present Attorney General of the United States, just as he had the "complete confidence" of an earlier Attorney General, Robert F. Kennedy.

The American Bar Association, through the chairman of its Standing Committee on the Federal Judiciary, testified:

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.

The ABA rated him high in judicial temperament, and lawyers and Federal district judges in his circuit "put him right at the top of those who would be eligible" for appointment to the Supreme Court. The bar reiterated its position this past Sunday after it had reviewed all of the attacks which have been made on the judge.

There is a considerable amount of similar testimony favoring Judge Haynsworth, all from persons of outstanding competence to speak on the issue.

The record also contains quite a few surprises for those whose knowledge of the hearings came from the television news programs or the headlines in the papers: For example, the South Carolina civil rights lawyer's colorful and sincere testimony to Judge Haynsworth's integrity; the statement by the liberal Arizona lawyer-teacher-author, a distinguished authority on judicial ethics, who argued that Judge Haynsworth had a clear duty to sit in the so-called Darlington case; and the statement of the Wisconsin law professor, who was primarily responsible for the original HEW school desegregation guidelines, in which he said Judge Haynsworth "will make a first-rate associate justice."

The printed hearings contain the testimony of Judge Haynsworth himself and his response to the questions of each member of the committee who cared to ask them. For over 113 pages, the nominee patiently and painstakingly addressed himself to a wide variety of lines of inquiry. Those 113 pages deserve reading by every Senator.

Finally, the hearing record contains the statements of the attackers of Judge Haynsworth. These attacks fall generally into three areas: First, he is anti-civil rights; second, he is anti-organized labor; and, third, he is unethical.

Senator COOK and I have already analyzed, in letters and memorandums dated October 6 and October 9 the attacks on Judge Haynsworth's decisions in civil rights and labor cases.

Today we have sent to all Senators a memorandum dealing with Judge Haynsworth's ethical standards.

Mr. President, I ask unanimous consent that the letter of transmittal, signed by the junior Senator from Kentucky and myself, be reprinted in the RECORD at this point.

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

OCTOBER 15, 1969.

Honorable
U.S. Senate,
Washington, D.C.

DEAR SENATOR: Enclosed is the third memorandum which we promised to furnish to all Senators concerning the nomination of Judge Clement F. Haynsworth, Jr., to be Associate Justice of the Supreme Court. It deals with his proven record as a judge of high ethical and moral standards

There have been many a tacks upon Judge Haynsworth's conduct, and we know that these attacks have troubled many of our colleagues. After reviewing the law, the canons, and the facts, however, we are certain these doubts will be resolved in Judge Haynsworth s favor.

It has been said that a nominee who has been so vigorously attacked should not sit on the court because his selection may reflec unfavorably on the Court. Unfounded accusations alone cannot disqualify an otherwise qualified man. Nothing can be more repugnant to our fundamental sense of justice. Rejecting a nominee who has done no wrong, merely because accusations have been made, cannot hring credit to the Senate or to the Court.

The materials we have furnished you, together with the printed hearing record, establish three essential facts: Clement Hayns-

worth is a scholarly, practical judge who will be an outstanding addition to the Supreme Court; he is a man who demonstrates no bias toward any litigant but decides each case with absolute intellectual honesty; he is an ethical and moral judge.

As we have said in our two previous letters, we urge that you consider the whole record before making your decision.

With kind regards.

Sincerely,

ROMAN L. HRUSKA,
U.S. Senator.
MARLOW W. COOK,
U.S. Senator.

Mr. HRUSKA. Mr. President, there have been accusations of improper conduct leveled against Judge Haynsworth. Some accusations were made during the hearings and some were made after. The press has given wide coverage of all the attacks. Day after day, the accusations were repeated on the Senate floor, on television and radio, and in the newspapers and magazines.

Then, in common with my colleagues, I began receiving a few letters from constituents who had been deluged with this coverage. Some of them said: "Where there is smoke, there must be fire." Several suggested that the judge's reputation had been so sullied that it would only bring discredit on the Court now to confirm him, regardless of the ultimate truth of the accusations.

Let me suggest, Mr. President, if the Senate would ever dare allow the reputation of a distinguished jurist to be ruined and a nominee possessing outstanding qualifications to be rejected because of accusations that have so little basis in truth, this body will have violated every principle for which it stands. The Senate would be shamed, the Court would be shamed, and the Nation would be shamed.

Mr. President, we must look to the law and to the facts. We must allow Judge Haynsworth to be judged, himself, on the basis of the entire record.

I do not suggest for a moment that we should confirm a man who does not meet the highest ethical standards. That is why the Senate must carefully review each of the accusations against him. I have done so and I am confident that Judge Haynsworth has met his duty under statute and canons.

CAROLINA VEND-A-MATIC

Mr. President, there is no rule, law, or canon that says a judge cannot invest in business enterprises or own stock. Unless we are now, in 1969, going to create a new rule applicable to conduct in 1964, the Senate must concede that there is no validity whatever to the accusation that Judge Haynsworth violated any canon by participating in ownership of the business of Carolina Vend-A-Matic.

The judge himself was absolutely candid about his relationship with this company. He stated that he attended the weekly luncheon meeting of the board of directors. He participated in the discussions. He concerned himself with the financial health of the corporation. This is all in the hearing record.

He did not, and he so stated under oath, participate in soliciting business for Carolina Vend-A-Matic. In 1964 Judge Sobeloff affirmed that Judge Haynsworth had not sought business for the company.

He made a wise investment in Carolina Vend-A-Matic. He got in on the ground floor of an infant and increasingly prospering industry. When his company and its competitors grew amazingly, he profited from it. There is no violation of the canons of ethics here.

I have authority for my position. Judge Sobeloff and the circuit judges of the fourth circuit who reviewed Judge Haynsworth's association with Carolina Vend-A-Matic and the company's association with the Darlington Manufacturing Co. in 1964, expressed complete confidence in the judge.

The American Bar Association established there was nothing improper about his relationship with this company.

John P. Frank testified as an expert on legal disqualification: Judge Haynsworth not only was not legally disqualified because of his association with Carolina Vend-A-Matic, he had a duty to sit.

This analysis applies to the Darlington case and any other case coming before the court which involved a litigant doing business with Carolina Vend-A-Matic.

SUBSTANTIAL INTEREST

Judge Haynsworth, at no time, has violated 28 U.S.C. sec. 455 or the Canons of Judicial Ethics, or ABA Formal Opinion 170. There have been accusations to the contrary, but they do not stand up to critical analysis.

Three cases involve subsidiaries of companies in which Judge Haynsworth owned stock: Farrow against Grace Lines, Inc., 381 F.2d 380 (1967); Maryland Casualty Co. against Baldwin, 357 F.2d 338 (1966); Donohue against Maryland Casualty Co., 363 F.2d 442 (1966). 28 U.S.C., sec. 455 says a judge shall disqualify himself where he has a substantial interest in the case. There was no substantial interest in these cases. Any interest clearly was de minimis. The Grace case involved a $50 judgment. As the holder of 300 shares, 1/60,000 of the parent company, W. R. Grace, the actual impact of the case on Judge Haynsworth cannot be measured. Assuming the worst conceivable result in the case, the impact on the judge would have been $0.48.

Judge Haynsworth had stock in the parent company of Maryland Casualty Co.: 200 preferred shares, 59/1,000,000 of those outstanding, and 67 common shares, 15/1,000,000 of those outstanding. Again the impact is so small it cannot be measured.

There is no opinion of the ABA stating that this sort of negligible interest in a parent of a litigant is grounds for disqualification. Formal Opinion 170 does not reach this point. And the California Supreme Court concluded a judge was not disqualified when it ruled on the point in Central Pacific Railway Co. against Superior Court, 296 Pac. 883 (1931).

Judge Haynsworth and Judge Winter both testified that they look to the canons of the ABA for guidance in ethical questions. They also stated and no one can disagree, that Federal statute lays down the basic rule. That rule, as interpreted by the courts, is that a judge must sit unless he is disqualified. Judge Haynsworth was not disqualified.

The case of Brunswick Corp. against Long, represents, as the distinguished Senator from Kentucky (Mr. COOK) said on Monday, a lapse of memory, not morals. Judge Haynsworth purchased Brunswick stock before the formal opinion in the case had been handed down. He did nothing wrong, he performed no discretionary act proscribed by ABA Opinion 170. Clearly, however, it would have been better not to have bought the stock. Judge Haynsworth agrees wholeheartedly.

Having purchased the stock before remembering that the case was not formally concluded, Judge Haynsworth acted reasonably under the circumstances. A three-judge panel had heard the case, studied the briefs, and made their decision. It was clear cut. There was no doubt as to the outcome. No one had been deprived of justice. To disqualify himself at this point would have meant a rehearing, appointment of a new panel, rescheduling of the case, and so forth. It simply was not worth it. In the Subcommittee on Judicial Improvement, of which I am a member, we have hearings every year or every 2 years on the problems of crowded court dockets and the shortage of judges. We had hearings on a bill to provide more circuit judges, and that became law in 1968. We had hearings on intercircuit assignment of judges to fight backlogs. This year we had hearings on a bill to provide more district judges.

We must afford the time, money, and manpower to see that justice is done. We cannot afford the luxury of bending over backwards to avoid the most remote accusations of conflict of interest. These are the reasonable guidelines Judge Haynsworth followed.

PENSION AND PROFIT-SHARING PLAN

Mr. President, I turn now to the pension and profit-sharing plan, upon which there has been an effort to base complaints against the nominee.

In 1962 Congress passed a disclosure law covering pension and profit-sharing plans having 25 or more employees. The purpose was to insure that the employees and beneficiaries know the status of the fund and the use the money was put to.

The fund set up by Carolina Vend-A-Matic, of which Judge Haynsworth was a trustee, furnished a description of the plan to participants at the inception and gave an annual statement of accounts to them.

There was no filing of a one-page short form description of the plan with the Department of Labor. As most of my colleagues who are familiar with this sort of business operation know, a trustee would not be involved in the preparation and filing of such reports in the normal course of business. That is a clerical matter to be handled by whoever is keeping the records.

This administrative failure could not be considered a violation of the penalty provisions of the law, 29 U.S.C. sec. 308. Penalties are provided for willful failure

to comply. It will be strictly construed. In fact, the reported cases deal only with the refusal of administrators of plans to give the information to employees when it has been demanded by the Department of Labor. That is not the case here.

FACTUAL ERRORS IN ACCUSATIONS

I have been dealing so far with the actual facts as produced in the record. My purpose is to remove the innuendo and suspicion that have arisen from an understanding of only a part of the record.

In addition, however, there are factual accusations made subsequent to the hearings that are demonstrably false. I will cover them briefly.

It was charged that Judge Haynsworth held a substantial interest in litigants in Merck against Olin Mathieson Chemical Corp., 253 F. 2d 156 (1958) and in Darter against Greenville Community Hotel Corp., 301 F. 2d 70 (1962). I understand that everyone has conceded these charges were in error.

But here is a new and additional error in charges made in the bill of particulars "Judge Haynsworth endorsed notes for the corporation in amounts as high as $501,987. Some of the notes were endorsed after he assumed the bench."

Mr. President, Judge Haynsworth testified that he did endorse notes on behalf of the corporation to secure credit for the corporation at a time prior to the time that it had earned a credit rating that would allow it to stand on its own feet. He also was indefinite as to the precise amount of loan endorsed.

That is understandable. In 113 pages of testimony, it would be difficult to draw on one's memory for transactions that had occurred 6 or 7 years ago, or 10 years ago.

I have a notarized affidavit of T. C. Cleveland, Jr., executive vice president for the western region of the South Carolina National Bank. That clarifies the issue.

Mr. President, I ask unanimous consent that this affidavit be printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HRUSKA. Mr. President, I read from that affidavit:

> The company had been started with a minimum of capital and its tangible assets consisted primarily of vending equipment, which, in my opinion, had little resale value. Until its credit worthiness was proven by an history of ability to service its installations and produce profits, I felt it was entitled to no bank credit, except upon the endorsement of its principal stockholders, who, at that time, were Eugene Bryant, Robert E. Houston, Jr., W. Francis Marion, Christie C. Prevost, and Clement F. Haynsworth, Jr.
>
> On that basis a succession of loans were made to Carolina Vend-A-Matic Company on the endorsement of its principal stockholders, though by 1957 the Bank had agreed that it would look to each endorser only for his pro rata portion of the total amount of each loan.
>
> The last such endorsed loan was made on January 25, 1960 in the amount of $14,000. That loan was repaid on February 16, 1960, and there were no further loans made to Carolina Vend-A-Matic Company until June 9, 1961. By that time Carolina Vend-A-Matic Company's proven success in the operation of its business established its own credit rating and all of the loans made thereafter were without endorsement of any of the stockholders.
>
> Altogether the Bank made some fifty-six loans to Carolina Vend-A-Matic Company, though many of these loans were renewals of existing balances. The largest balance of endorsed loans ever outstanding was $55,550 on February 19, 1961.

Mr. President, I do not charge there has been any effort to mislead or misrepresent when the bill of particulars reads, "Judge Haynsworth endorsed notes of the corporation in amounts as high as $501,000." That I would not do, because the Senator from Indiana is a highly respected Member here. He is an honorable gentleman. He would engage in no form of chicanery or misrepresentation. I would accord him every bit of sincerity and honesty and diligence in his efforts to prosecute the case he has. However, here is an error that is tenfold. It was not over $500,000. It was $55,000.

I have an idea that one of the reasons why the mistake was made—an honest mistake, I would assume, with every fair intendment—was that this figure was confused with the cumulative total of loans made from time to time.

That was one possibility. But there is another possibility, and I come to that now.

When the junior Senator from Kentucky pointed out the tenfold error in the statement of endorsed notes, the newspapers reported the rebuttal attributed to the staff of the Senator from Indiana (Mr. BAYH) that the $501,000 figure came from the records of the Securities and Exchange Commission. That also appears to be an error, but it sheds some light.

Mr. President, as a lawyer, I have learned that the place to go for evidence is the place where the evidence can best be secured. Accordingly, a letter was addressed to the Securities and Exchange Commission. The Chairman of the Commission, Hamer L. Budge, replied in reply to a letter by me dated October 14.

I ask unanimous consent that my letter of October 13, 1969, to Chairman Budge, his reply and memorandum, and page 4 of the ARA filing be printed at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. HRUSKA. Mr. President, here is how I believe the error happened: This consolidated balance sheet shows that there is a total of corporate obligations of $303,000 in installments due within 1 year, and some $198,000 in installments due after 1 year. The total of those items is $501,000. But as the communication from the Securities and Exchange Commission discloses:

> While these filings indicate that Carolina Vend-A-Matic Company had indebtedness outstanding, there is no information that anyone other than the company is liable for such indebtedness.

This clearly shows that the SEC records showed only corporate liability and not that of the stockholders of that corporation.

Again, Mr. President, I acknowledge the good intentions of the author of that bill of particulars, but this error being as gross as it is, and being directed at trying to attack his nomination, is something that we should very much take into consideration in connection with the other demonstrated and proven inaccuracies in the bill of particulars.

Again I reiterate, Mr. President, that I am confident it was an honest mistake; but it was a mistake, and a grievous one.

All of us know the burden of the office which we try to discharge in this Chamber. We have to rely upon staff and others to assemble information for us. But nevertheless it was a mistake. However honest it might be, now, it seems to me, it should be dropped, or the mistake should be acknowledged, unless the author of the bill of particulars has some information which would refute the evidence to which I have just referred.

ETHICAL SENSITIVITY

Mr. President, Judge Haynsworth is a man who has displayed sensitivity to ethical problems throughout his service on the court. As I have discussed in regard to the accusations against him, he was neither unethical or insensitive. He followed the Federal law, canons and rules of court.

He is a man who, in 1957, resigned from all of his positions in publicly held corporations. He did not have to do that.

The rule of court prohibiting judges from holding memberships on boards of directors was not promulgated by the Judicial Conference of the United States until 1963. He resigned all of his directorships in publicly held corporations some 6 years earlier. Many Federal judges did hold directorships in such corporations. But he knew his name would be published in connection with financial statements and other public statements and he felt it was improper to be held out to the public in such a position while he was serving on the Federal court. Six years later, in 1963, the Judicial Conference agreed with him and passed a resolution that judges should not hold directorships.

In 1963, he also resigned from his position as director of two closely held corporations. This sort of organization had been included in the Judicial Conference resolution, and he readily complied.

He submitted all these facts concerning his posltion in one closely held corporation, Carolina Vend-A-Matic, to the judges of the court of appeals in 1963, and they were reviewed in the letter that was then written as a report of exoneration by the then presiding judge, Judge Sobeloff.

Judge Haynsworth was so sensitive to his position on the court that when his stock ownership in Carolina Vend-A-Matic became public knowledge, he took steps to dispose of it. That is a step no court, no statute, and no canon requires of a judge. Yet he was sensitive to his position. If one wishes to try to measure his sensitivity, he sold his interest for one-third of what it would be worth today. Had he continued in ownership of that stock until the present day, he would have obtained $1 million more for it than the price for which he sold it back there in 1964. And that increase was

not a speculative one. The vending business in 1963 was booming and could be expected to continue booming—not only for the Carolina Vend-A-Matic Co. and other companies in the Carolinas, but for companies all over the country. It was a good investment.

The judge was fortunate, as were many thousands of other people who invested in similar businesses.

Mr. President, that is what the record shows here. The nominee has conscientiously followed the ethical standards applicable to him. He has exhibited sensitivity to the ethical problems which confront a Federal judge. He has acquitted himself with dignity and honor.

I trust that the nomination will be considered by the Senate on the basis of the records as they have been corrected. The corrections are made reluctantly because we do not like to correct a record made by our colleagues unless there is sound and proper basis therefor. I hope and urge that favorable consideration be given to his confirmation.

Mr. President, I yield the floor.

EXHIBIT 1

AFFIDAVIT OF T. C. CLEVELAND, JR.

STATE OF SOUTH CAROLINA,
County of Greenville, ss:

Personally appeared before me T. C. Cleveland, Jr., who being duly sworn, deposes and says:

I am the Executive Vice President for the Western Region of The South Carolina National Bank, with my headquarters in Greenville. Earlier, I was in charge of the Greenville Branch of The South Carolina National Bank and, beginning in 1952, I was personally responsible for the approval of credit to Carolina Vend-A-Matic Company.

The company had been started with a minimum of capital and its tangible assets consisted primarily of vending equipment, which, in my opinion, had little resale value. Until its credit worthiness was proven by an history of ability to service its installations and produce profits, I felt it was entitled to no bank credit, except upon the endorsement of its principal stockholders, who, at that time, were Eugene Bryant, Robert E. Houston, Jr., W. Francis Marion, Christie C. Prevost, and Clement F. Haynsworth, Jr.

On that basis a succession of loans were made to Carolina Vend-A-Matic Company on the endorsement of its principal stockholders, though by 1957 the Bank had agreed that it would look to each endorser only for his pro rata portion of the total amount of each loan.

The last such endorsed loan was made on January 25, 1960 in the amount of $14,000. That loan was repaid on February 16, 1960, and there were no further loans made to Carolina Vend-A-Matic Company until June 9, 1961. By that time Carolina Vend-A-Matic Company's proven success in the operation of its business established its own credit rating and all of the loans made thereafter were without endorsement of any of the stockholders.

Altogether the Bank made some fifty-six loans to Carolina Vend-A-Matic Company, though many of these loans were renewals of existing balances. The largest balance of endorsed loans ever outstanding was $55,550 on February 19, 1961.

Judge Haynsworth on several occasions in the early history of Carolina Vend-A-Matic Company discussed its credit needs with me. He became a member of the Bank's local advisory committee and, later, a member of its subcommittee on loans. When he became a member of the loan committee, I distinctly recall his telling me that he would have nothing further to do with the matter of credit to Carolina Vend-A-Matic Company. He informed me that thereafter I should handle all such matters with Mr. Francis Marion on behalf of Carolina Vend-A-Matic Company and that as a member of the loan committee he would take no position upon approval or disapproval of credit to it. Still later, Judge Haynsworth became a member of the Bank's Board of Directors, a position from which he resigned after his appointment to the United States Court of Appeals for the Fourth Circuit. During all of that period Judge Haynsworth had nothing to do with the negotiation of or arrangements for the extension of credit to Carolina Vend-A-Matic Company, though until January 25, 1960 he continued to endorse the notes of Carolina Vend-A-Matic Company in his individual capacity.

On February 15, 1962, the Bank made a real estate loan to Carolina Vend-A-Matic Company to finance the construction of an addition to its warehouse. In 1964, when this real estate was distributed as a dividend in kind to the stockholders of Carolina Vend-A-Matic Company and the balance of its mortgage loan was paid off by the stockholders, upon Judge Haynsworth's instructions on April 20, 1964 his account was charged the amount of $2,911.73 to pay off his portion of the remaining balance of this mortgage note.

Attached to this affidavit are the Bank's ledger sheets reflecting all transactions with Carolina Vend-A-Matic Company other than the mortgage loan mentioned above. I believe that all of Carolina Vend-A-Matic Company's bank loans were handled by The South Carolina National Bank, though from time to time it bought equipment on conditional sales contracts or other credit arrangements with its vendors.

T. C. CLEVELAND, JR.

EXHIBIT 2

OCTOBER 13, 1969.

HON. HAMER L. BUDGE,
Chairman, Securities and Exchange Commission, Washington, D.C.

DEAR MR. CHAIRMAN: During the Senate consideration of the nomination of Judge Clement F. Haynsworth, Jr., to be Associate Justice of the United States Supreme Court, a factual issue has arisen which the records of the Securities and Exchange Commission may be able to resolve.

From the years 1957 to 1963 Judge Haynsworth was a director of Carolina-Vend-A-Matic, a South Carolina corporation. In 1964 this corporation was acquired by Automatic Retailers of America, Inc. As I understand the organization, the former Carolina-Vend-A-Matic operation is now a part of ARA Services, Inc.

It has been reported that the records of the Securities and Exchange Commission show that Judge Haynsworth was personally liable in the amount of $501,987 on notes he endorsed to secure credit for Carolina-Vend-A-Matic during the years 1957 to 1964. It would be appreciated if the accuracy of this figure could be verified. Further, it would be helpful if you could tell me whether this figure represents the cumulative personal liability of Judge Haynsworth or whether it is the highest amount of personally endorsed notes outstanding at any time. I would appreciate knowing specifically what was the highest amount of personal liability at any time if that information is available to you.

I propose to maks public the information given me as an important part of the debate and discussion on this nomination.

With kind regards,

Sincerely,

ROMAN L. HRUSKA,
U.S. Senator.

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., October 14, 1969.

Re Carolina Vend-A-Matic and ARA Services, Inc., formerly Automatic Retailers of America, Inc.

HON. ROMAN L. HRUSKA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: In response to your letter dated October 13, 1969 which requests verification of certain information relating to the endorsement of certain notes of Carolina Vend-A-Matic by Judge Clement F. Haynsworth, Jr., I am enclosing a memorandum prepared by our Division of Corporation Finance.

If I can be of any further assistance, please let me know.

Sincerely,

HAMER H. BUDGE,
Chairman.

MEMORANDUM PREPARED BY DIVISION OF CORPORATION FINANCE, SECURITIES AND EXCHANGE COMMISSION, WITH RESPECT TO SENATOR HRUSKA'S LETTER, DATED OCTOBER 13, 1969, TO CHAIRMAN BUDGE IN REGARD TO JUDGE CLEMENT F. HAYNSWORTH, JR.

ARA Services, Inc. (formerly Automatic Retailers of America, Inc.) has filed with the Commission, under dates of Maroh 16 and 20, 1964, as amendments to its registration statement No. 2-20395 under the Securities Act of 1933, information with respect to the transaction by which the shareholders of Carolina Vend-A-Matic Company, Greenville, South Carolina, exchanged their interest in that company for shares of ARA Services, Inc. Similar information was furnished in a current report on Form 8-K, filed May 11, 1964, under the Securities Exchange Act of 1934 and in New York Stock Exchange listing application No. A-21614, dated March 26, 1964. While these filings indicate that Carolina Vend-A-Matic Company had indebtedness outstanding there is no information that any one other than the company is liable for such indebtedness.

Carolina Vend-A-Matic Company has not made any filings under the statutes administered by the Commission. It does not appear that any such filing was required.

There does not come to mind any company other than those mentioned whose filings with the Commission might contain information about the subject of the inquiry.

Carolina Vend-A-Matic Co. and wholly-owned subsidiaries, consolidated balance sheet, December 31, 1963

ASSETS

Current assets:	
Cash	$156,409.74
Savings and loan association deposits	42,621.20
Accounts receivable	5,638.34
Inventory	89,706.26
Prepaid interest	46,507.33
Total current assets	340,882.87
Fixed assets (partly pledged):	
Buildings	78,075.99
Vending machines	1,126,249.12
Miscellaneous equipment	49,341.23
Autos and trucks	133,356.89
Office furniture and fixtures	31,488.62
Leasehold improvements	2,786.95
Subtotal	1,421,298.80
Less allowance for depreciation and amortization	641,355.30
Subtotal	779,943.50
Land	9,125.00
Subtotal	789,068.50
Other assets:	
Organization expense	1,070.00

Carolina Vend-A-Matic Co. and wholly-owned subsidiaries, consolidated balance sheet, December 31, 1963—Continued

ASSETS—Continued

Other assets:	
Sundry	1,050.67
Subtotal	11,217.49
Total	1,141,168.86

LIABILITIES

Current liabilities:	
Accounts payable	73,247.35
Commissions payable	27,815.97
Other accrued Expenses and sundry liabilities	16,050.61
Notes payable (installments due within 1 year)	$303,644.95
Provision for income taxes	97,315.06
Total current liabilities	518,073.94
NONCURRENT LIABILITIES:	
Notes payable (installments due after one year)	198,253.71
STOCKHOLDERS' EQUITY:	
Capital stock—par value $100.00 per share	12,700.00
Paid-in surplus	16,900.00
Earned surplus	395,241.21
Total	1,141,168.86

(The following colloquy, which occurred during the delivery of Mr. HRUSKA's address, is printed at this point in the RECORD on request of Mr. HRUSKA and by unanimous consent.)

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

Mr. HRUSKA. I yield.

Mr. HOLLAND. I wanted to comment on something the Senator just said, because there was a similar matter that came up when the nomination of Mr. Justice John Parker, the presiding judge of the same circuit court of appeals, was before this body.

I know, from having talked personally with two of the distinguished former Members of this body—both of whom are now no longer with us—who voted against confirmation of Judge Parker, that they felt that they had been misled by the propaganda, particularly by the propaganda coming from the labor organizations. One of them went so far as to say to me on two occasions—he was the distinguished former senior Senator from Georgia, Mr. George—that he regretted, more than any other vote he had cast since he had begun his service in the Senate, the vote that he had cast against the confirmation of Judge Parker.

It will be recalled that Judge Parker remained on the bench; he was not soured; he was not destroyed by those who sought to destroy him. He became recognized from one end of this Nation to the other as one of the more distinguished judges we had in our Federal judicial system. He was so recognized by the Supreme Court from time to time. Without allowing himself to be destroyed by those who had sought to assassinate his character, he simply went ahead and followed the course that he had followed up to the time of his nomination and up to the time of the rejection of his confirmation, and he made one of the outstanding records of any of the jurists of our day.

So I simply want to amplify the point just made by the distinguished Senator from Nebraska, that the Senate itself is under obligation to do the right things in this sort of case, to winnow the wheat from the chaff. And there is much chaff in the charges that have been made against Judge Haynsworth—so much chaff that I have not been able to find any grain at all, so far as the Senator from Florida is concerned.

I congratulate the distinguished Senator for calling attention to the fact that the Senate has a duty of supreme importance in a case of this kind, to make very sure that the detractors—and there are some in this case—have sound ground to stand upon. I have looked very hard into this case, and I have not found any such sound ground. I simply call attention to the Parker matter because it shows how far well-meaning Senators, from time to time, can be led astray from the doing of the thing which the evidence and the facts require should be done.

That happened in the Parker case. I certainly do not want to see it happen in the Haynsworth case.

I thank the Senator for calling attention to that point.

Mr. HRUSKA. I am grateful to the Senator for his remarks. I am sure students of the law and practitioners of the law generally, agree with the distinguished Senator from Florida when he says that Judge Parker was a brilliant jurist and that he established himself as one of the most respected members of the jurisprudence system during his time.

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

Mr. HRUSKA. I yield.

Mr. ALLEN. Mr. President, I wish to commend the distinguished Senator from Nebraska for the great speech he is making on behalf of Judge Haynsworth.

There has been a great barrage of propaganda, of insinuation, and of innuendo leveled against Judge Haynsworth. I think it is mighty fine that we are hearing speeches and arguments on the floor of the Senate in favor of the confirmation of Judge Haynsworth.

I do not believe the distinguished Senator from Nebraska was here earlier today when the senior Senator from Virginia spoke on behalf of the confirmation of Judge Haynsworth. He made an excellent presentation of the case for Judge Haynsworth. He pointed out that, even with this barrage of criticism by the press and the showing of only one side of the coin, two of the great newspapers in this country, the Washington Post and the New York Times—great by reason of being well known and having influence in some quarters—although they had been highly critical of Judge Haynsworth in their news columns they pointed out in their editorials that while they disapprove of the nomination of Judge Haynsworth, yet there was nothing in his record to indicate that the Senate should not give him the confirmation that his record entitles him to.

I think it is fine that we are hearing now the case for Judge Haynsworth, and I believe we are going to hear more and more on the floor of the Senate. I feel he is an outstanding jurist. I do not feel that anything has been brought out that would cast any aspersion on his honor, integrity, or ability.

It would occur to the junior Senator from Alabama that this is a barrage or smokescreen to hide, or to put in the background, the real difference and the real objection that the opponents of Judge Haynsworth's nomination have to him.

I would like to inquire of the Senator from Nebraska in these matters, and they were picayune instances of alleged conflict of interests, if there is not just as much duty on a judge to sit in a case where he should sit as it is to recuse himself in a case where he should not sit?

Mr. HRUSKA. The Senator is correct. That is a very firmly established point in our system of Federal jurisprudence. There is no question about it. I would be safe in saying that is the consensus of opinions written on the subject: That the duty to sit when a judge should not be disqualified is just as strong as the duty to disqualify himself if the conditions and circumstances are such to require disqualification.

Mr. ALLEN. I wish to ask the Senator from Nebraska his opinion on a particular matter. I notice that the American Bar Association has reiterated its support of Judge Haynsworth, and yet we hear very little about that reiteration of their approval. I wish to inquire of the Senator if we would not have heard a great deal in the press, through other news media, and here on the floor of the Senate, if they had withdrawn their approval of his confirmation?

Mr. HRUSKA. Or reversed their position on it.

Mr. ALLEN. Yes.

Mr. HRUSKA. There is no question about it. If that happened the general conclusion reached by a great many opponents of the nomination would be that the proponents might just as well fold up our tents and silently steal away. The fact is there is still a little carping about it. There is an effort on the part of the opponents to find out how many votes were cast against it.

I wonder if they are not satisfied with some of the 5-to-4 decisions of the Supreme Court.

I am confident and I believe the Senator agrees, that had the ABA decision been the other way we would have been deluged in this Chamber daily with the chorus, "Withdraw his name. Withdraw his name."

Fortunately, and I think rightly, they reaffirmed their stand. I call attention to the fact that when they acted, last Sunday, they had all of the present record before them, not only the record as a result of their own investigation of the man's character, services, and reputation, but the hearing record and all the attacks.

Mr. ALLEN. I think the Senator from Nebraska and the Senator from Ken-

tucky (Mr. COOK), in their letter to Senators and in the bill of corrections that they have filed in answer to the bill of particulars against Judge Haynsworth, have certainly refuted the charges that Judge Haynsworth is anti-civil rights and anti-organized labor.

I would like to ask the Senator from Nebraska whether even if it be true that he was biased and is biased in these two respects—and again I say that contention has been completely refuted—is it likely he would be any more biased than Mr. Justice Thurgood Marshall in connection with civil rights matters on the other side, or in the case of Mr. Justice Goldberg on labor matters?

Mr. HRUSKA. Why, of course not. All of us know both of those very distinguished members of the bar, and later distinguished members of the Supreme Court—in the one instance a man who dedicated virtually all of his professional practice and talents to pro-civil-rights cases, and in the other instance, a man who dedicated virtually his entire practice and career as a lawyer for so-called pro-labor-union cases—executed their judicial duties fairly. There is no question about it. And in this nominee there is not even that same monolithic restricted practice. He was in general practice. The analyses of his cases and opinions when he went to the fourth circuit clearly demonstrate he, too, decides fairly and without bias.

Mr. ALLEN. As a matter of information to the junior Senator from Alabama, I would like to ask the Senator from Nebraska when it is anticipated that the majority and minority reports of the Judiciary Committee will be filed?

Mr. HRUSKA. I have no exact information on that. The chairman of the Judiciary Committee, presumably, has a timetable in mind and maybe he has already announced it. It has not, however, come to my personal attention.

Mr. ALLEN. As soon as those reports are available, then the nomination will be brought to the floor of the Senate with the recommendations of the Judiciary Committee; is that not correct?

Mr. HRUSKA. That is correct.

Mr. ALLEN. And then we would anticipate a vote would soon take place on the nomination?

Mr. HRUSKA. Yes—we will begin debate in earnest. We are now engaged in only the preliminaries.

Mr. ALLEN. I thank the Senator from Nebraska very much for rendering a great public service in presenting the other side of the matter. We have heard so much from the anticonfirmation side that I think it is a distinct public service the Senator from Nebraska is rendering in presenting the case for confirmation.

Mr. HRUSKA. The Senator is very generous in his remarks. I am grateful for them.

Mr. ERVIN. Mr. President, will the Senator from Nebraska yield to me for a few questions?

Mr. HRUSKA. I am very happy to yield to the Senator from North Carolina.

Mr. ERVIN. I will ask the Senator from Nebraska if Congress itself has not prescribed the conditions under which a Federal judge should disqualify himself from sitting on a particular case?

Mr. HRUSKA. Of course, that is true. It is an interesting fact that the act passed by Congress in 1949, 28 U.S.C. 455, was an extension of an act of Congress that had been passed in earlier years. When passed in earlier years it applied only to trial judges. Then, in 1949, it was decided that it should also apply to members of the circuit courts. It was so amended. It does put the burden upon the judge and the court itself to determine whether there is a reason for disqualification. He must make that determination himself.

Mr. ERVIN. I will ask the Senator from Nebraska if the statutory law does not expressly provide that a judge shall, by implication, as his duty, sit in every case where he fails to find a disqualification exists?

Mr. HRUSKA. Yes, that is true.

Mr. ERVIN. So far as the so-called conflict of interest is concerned, does not the statute provide that a judge shall not disqualify himself unless he has a substantial interest in the outcome of the existing case?

Mr. HRUSKA. That is right.

Mr. President, I ask unanimous consent at this point, to have printed in the RECORD the text of section 455, in order that we can read for ourselves the plain language.

There being no objection, section 455 was ordered to be printed in the RECORD, as follows:

§ 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. (June 25, 1948, ch. 646, 62 Stat. 908.)

Mr. ERVIN. I should like to ask the Senator from Nebraska if the charge that Judge Haynsworth has at any time shown union bias was not totally disproved by the record made in this case?

Mr. HRUSKA. I am sure it is right. It was disproved not only by those who were his close associates but there was also, by testimony, and well-considered testimony, by Prof. Charles Allen Wright of the University of Texas Law School, one of the most celebrated and highly respected figures in Federal jurisprudence, and also G. W. Foster, Jr., of the University of Wisconsin Law School. I suggest that both these gentlemen, scholars, good educators, good students of the law, both of them happening to be liberal Democrats, not conservatives, found he was not biased. These scholars analyzed the decisions of Judge Haynsworth and came out with the conclusion that he is a most outstanding figure and will make an outstanding Justice of the Supreme Court upon confirmation.

Mr. ERVIN. I should like to ask the Senator from Nebraska if those who challenge Judge Haynsworth's fitness on the alleged ground that he has a union bias did not cite seven cases to sustain their allegations and if four of those cases were not cases that dealt with one of the most controversial problems that arise in labor law; namely, when a union is to be recognized as the bargaining agent on card counts rather than by secret elections, and if the law on that subject was not settled by the Supreme Court of the United States until June of this year?

Mr. HRUSKA. Yes.

Mr. ERVIN. I will ask the Senator if another one of those cases was not reversed on the basis of a decision made by the Supreme Court only 6 days before, for the first time in the history of the Supreme Court?

Mr. HRUSKA. That is correct. The record so reflects.

Mr. ERVIN. I ask the Senator if another one of those cases was not decided on the basis of an amendment to the Labor-Management Act made by Congress in 1958 after the case had been heard in the lower court?

Mr. HRUSKA. That is correct. The record so reflects.

Mr. ERVIN. Another one of those cases—one of the seven cases heard—was a case which involved the discharge of seven nonunion employees. Can the Senator from Nebraska tell me how this case affecting nonunion employees shows any antiunion bias?

Mr. HRUSKA. That takes a little imagination, but I presume it can be done, because great efforts are being made to do it.

Mr. ERVIN. I would like to ask the Senator from Nebraska if three of these cases on the card count were not per curiam decisions, decisions written by the court as a whole, and handed down by the court as a whole, and that only one of the seven was written by Judge Haynsworth?

Mr. HRUSKA. That is right.

Mr. ERVIN. Two of the opinions were written by Judge Morris Soper, one of the most distinguished members of the Fourth Circuit Court of Appeals. If they show any antilabor bias on the part of Judge Haynsworth, they are bound to show the same bias against Morris Soper, too, who is not charged with any antiunion bias, are they not?

Mr. HRUSKA. They never have been.

Mr. ERVIN. I would just like to ask the Senator from Nebraska if the charge was not made to the effect that Judge Haynsworth was hostile to civil rights and I would like to ask him, in connection with that charge, if the record before the committee does not show in every case that Judge Haynsworth had followed the decisions of the Supreme Court of the United States?

Mr. HRUSKA. That is true. That was pointed out not only in the cases themselves but also in the analyses of some of the witnesses. They pointed out that that is precisely what he did and further they pointed out that it was the preferable way to do it. Judge Walsh testified that it was the preferable way to handle it because if each circuit plows new ground, we will have 10 new plowed grounds. We do not need confusion like that.

The better procedure is for the established rule of the Supreme Court, as it existed up until that time, to be followed. If new ground was to be broken, it is for the Supreme Court to break it. Then we have some semblance of order and stability.

Mr. ERVIN. Is it not true that the law as proclaimed by the Supreme Court itself in so-called civil rights cases has been in a state of flux and more or less uncertainty?

Mr. HRUSKA. There is no question about that, when we consider the history of that type of case.

Mr. ERVIN. I do not know whether the Senator from Nebraska saw an article that appeared in the Washington Post of October 14, 1969, written by James E. Clayton, entitled "The Haynsworth Record on Rights" or not, but the Senator from Nebraska, I am sure, will agree with the Senator from North Carolina that the Washington Post has been a newspaper which has been in the forefront in the fight for civil rights for years.

Mr. HRUSKA. Yes.

Mr. ERVIN. It would not be the place where one would normally expect to see a statement to the effect that Judge Haynsworth had followed the Supreme Court decisions in this particular field.

Mr. HRUSKA. In the civil rights field?

Mr. ERVIN. Yes, unless that was the fact.

Mr. HRUSKA. Yes.

Mr. ERVIN. I would like to ask the Senator to permit me to make a unanimous-consent request that this article by James E. Clayton, which appeared in the Washington Post on October 14, 1969, entitled "The Haynsworth Record on Rights," be inserted in the body of the RECORD.

Mr. HRUSKA. Mr. President, I shall be happy to make that request if it is necessary for the purpose of the rules of the Senate.

Mr. ERVIN. Mr. President, I would like to add that this article makes clear what the record before the committee disclosed, and that is that Judge Haynsworth has faithfully followed the decisions of the Supreme Court in the civil rights field.

Mr. HRUSKA. I thank the Senator from North Carolina, and I ask unanimous consent to insert the article in full at this point in the RECORD.

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

THE HAYNSWORTH RECORD ON RIGHTS

(By James E. Clayton)

The trouble with the civil rights record of Judge Clement F. Haynsworth Jr. is that it's hard to label. It is neither the record of an all-out segregationist, as some of his critics claim, nor the record of a friend of the civil rights movement, as some of his supporters have claimed. It lies somewhere in between and the evaluation anyone places on it is largely determined by the way the record is approached.

Take, for instance, the eight cases cited on this page a week ago, in a letter to the editor, as evidence that Judge Haynsworth is a man who has "actively opposed desegregation." Three of those same cases were cited to support the proposition that the judge is pro-civil rights in a long letter we received in mid-August.

What seems to stand out as you read the opinions of Judge Haynsworth on civil rights in the last 12 years, and there are 25 or so of them, is this: 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.

The prolonged litigation in Prince Edward County illustrates this point. In 1959, Judge Haynsworth voted to strike down a lower court order giving that county 10 years to desegregate. In 1963, after the public schools were replaced with "private" white schools, he cast the key vote when his court decided to abstain while the Virginia Supreme Court handled the matter. After the Virginia court acted, the Supreme Court reversed this Haynsworth opinion. Two years later, the judge 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.

If you count these votes on a pure pro- or anti-civil rights basis, his score comes out 1 for and 2 against. But there is a substantial argument that he was right as a matter of law in one of the latter two votes. Beyond that, while voting to abstain, Haynsworth wrote, "Schools that are operated must be made available to all citizens without regard to race, but what public schools a state provides is not the subject of constitutional command." And, in the contempt case, he agreed that the action of the officials was "contemptible" and "unconscionable" but said the court lacked jurisdiction to hold them guilty of contempt.

There is a similar pattern in his opinions dealing with freedom of choice. Until the Supreme Court ruled out such plans and insisted that school boards take affirmative action to desegregate, his position was that a freedom-of-choice plan was acceptable as long as each student was free to choose each year the school he attended and his choice was uninhibited by coercive action. After the Supreme Court ruled, he voted against freedom of choice plans.

You can argue that Judge Haynsworth should have seen the handwriting on the wall for these plans, as did Judge Sobeloff and a majority of the judges in the Fifth Circuit. And you can argue that he found coercion to exist only when the pressure on Negro children was extremely heavy. But the other side can argue that he was doing all the Supreme Court said ought to be done.

To pursue the issue into other areas, the judges critics point with validity to his vote, in dissent, that a hospital receiving federal funds under the Hill-Burton Act could discriminate against Negroes. His supporters argue, rather weakly, that the "state-action" aspect of the law, the key to this decision, was not really clear in 1963 and, anyway, that once the issue was decided in his circuit he enforced it.

The judge's friends point to a 1966 case in which he voted to require the North Carolina Dental Society to accept Negro members, even though the state action involved was no greater than it was in the hospital case. His critics say this vote was pre-ordained by all the other state action cases.

In one of the last major cases before his court, Judge Haynsworth came out in the middle of his brother judges, Two voted with him to protect a group of teachers from discrimination. Another, Judge Sobeloff, thought their view did not provide sufficient protection, and three others thought it provided too much.

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 discourage 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.

(This marks the end of the colloquy which occurred during the delivery of Mr. HRUSKA's address and which was ordered to be printed in the RECORD at this point.)

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. 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.

THE PENDING BUSINESS

Mr. BYRD of West Virginia. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending business is S. 1181.

Mr. BYRD of West Virginia. Is that the bill to enable potato growers to finance a nationally coordinated research and promotion program?

The PRESIDING OFFICER. The Senator is correct.

ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, if there be no further business, I move, in accordance with the previous order, that the Senate adjourn until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 4 o'clock and 49 minutes p.m.) the Senate adjourned until tomorrow, Thursday, October 16, 1969, at 12 o'clock noon.

CONFIRMATION

Executive nominations confirmed by the Senate October 15, 1969:

U.S. CIRCUIT JUDGE

Charles Clark, of Mississippi, to be U.S. circuit judge, fifth circuit.

provide for the safety of American troops and those who may wish to leave with them."

Mr. President, the welcome response to our invitation to cosponsor this resolution is another indication of the growing sentiment for peace in the Senate. To this date, a total of 18 Senators have endorsed the resolution. This represents the high water mark of Senate support for any resolution calling for an end to the war in Vietnam.

Mr. President, I ask unanimous consent that the following Senators be listed as cosponsors on the next printing of Senate Resolution 270:

The Senator from Indiana (Mr. BAYH), the Senator from North Dakota (Mr. BURDICK), the Senator from New Jersey (Mr. CASE), the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Michigan (Mr. HART), the Senator from Minnesota (Mr. MCCARTHY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. METCALF), the Senator from Minnesota (Mr. MONDALE), the Senator from Utah (Mr. MOSS), the Senator from Wisconsin (Mr. NELSON), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Maryland (Mr. TYDINGS), and the Senator from Ohio (Mr. YOUNG).

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. DOLE. Mr. President, will the Senator from Idaho yield?

Mr. CHURCH. I yield.

Mr. DOLE. The Senator indicates that the cosponsors of his resolution (S. Res. 270) represent the high water mark of Senate support for any resolution calling for an end to the war in Vietnam.

May I remind the Senator that Senate Resolution 271 is sponsored by 36 Members of this body, and calls upon the North Vietnamese—the enemy in this conflict—to do certain things.

For the RECORD, I wish to emphasize that there are 36 sponsors of that resolution.

Mr. CHURCH. I am familiar with the Senator's resolution. I think that if he reads carefully the text of my remarks, he will find that they do not need revision.

ORDER OF BUSINESS

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

The PRESIDING OFFICER (Mr. ALLEN in the chair). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MR. PRESIDENT—NOT ENOUGH

Mr. YOUNG of Ohio. Mr. President, President Nixon last spring announced he favored increasing social security benefits by 7 percent. With a surplus in the social security and social security disability fund of nearly $30 billion—which is a tremendous surplus—certainly payments to men, women, and children should be increased to 15 percent. If they were increased to 15 percent, the social security fund would still continue to be an actuarially sound insurance system.

Social security is the greatest legislative achievement of President Franklin D. Roosevelt's administration. Conservatives of that period denounced it as state socialism and sneered that Americans would be wearing "dogtags." The Republican platform of 1936 pledged repeal. Its candidate, Gov. Alf Landon of Kansas, a good man, carried but two States. It has since been unthinkable for any political party to oppose the social security program.

A young worker today is building insurance for his family that could pay thousands of dollars in benefits should he become disabled or die before his children are grown. Today, 1,300,000 disabled workers under 65, and 1 million dependent children each month receive social security checks averaging $235. Many Americans are unaware that changes in the law now provide payments in early and middle years. For example, a young worker disabled before the age of 24 with 1½ years of covered employment during the preceding 3 years qualifies for social security payments as long as he lives. Also, children of a working mother covered by social security who dies or becomes disabled are immediately eligible for payments regardless of the father's income.

President Nixon proposed a 7-percent increase in social security benefits; recently he increased that proposal to 10 percent, effective not earlier than next April. Unfortunately, there is no delay in the ever-increasing cost of living and a long, cold winter is approaching, particularly for lower income families.

Social security is, and it will continue to be, and it must continue to be, an actuarially sound insurance system. Payments to the 25 million men, women, and children now receiving social security benefits could be and should be increased 15 percent, and without delay.

REPEAL THAT GULF OF TONKIN RESOLUTION

Mr. YOUNG of Ohio. Mr. President, in the final session of the 89th Congress on March 1, 1966, I report with pride that my vote was recorded in support of a resolution to repeal the Gulf of Tonkin resolution which was passed in the Senate following misrepresentation of facts from the White House and aided and abetted by officials of the National Security Council and Central Intelligence Agency falsely claiming small North Vietnamese gunships had fired upon our destroyers, including the destroyer *Maddox*.

Mr. President, hindsight is much better than foresight. Looking back on it, that assertion seems preposterous. The *Maddox* was accompanied by other destroyers of the U.S. Navy, but the *Maddox* alone could have destroyed every one of those small gunships that were falsely alleged to have attacked the *Maddox*.

President Johnson used this alleged incident to obtain authority to send hundreds of thousands of men of our Armed Forces overseas into Vietnam to wage an undeclared, immoral major war in that faraway country.

There were only five U.S. Senators at that time who voted to repeal the Gulf of Tonkin resolution. I am glad to report I was one of those five. The others were Senators FULBRIGHT, MCCARTHY, Morse, and Gruening.

Mr. President, I have prepared and am submitting a resolution to repeal the Gulf of Tonkin resolution.

The PRESIDING OFFICER. The concurrent resolution will be received and appropriately referred.

The concurrent resolution (S. Con. Res. 42), which reads as follows, was referred to the Committee on Foreign Relations:

S. CON. RES. 42

Resolved by the Senate (the House of Representatives concurring), That, under the authority of section 3 of the joint resolution, commonly known as the Gulf of Tonkin Resolution and entitled "Joint Resolution to promote the maintenance of international peace and security in southeast Asia", approved August 10, 1964 (78 Stat. 384), such joint resolution is terminated upon passage of this concurrent resolution.

ORDER OF BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that I may be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator is recognized for not to exceed 15 minutes.

THE NOMINATION OF HON. CLEMENT F. HAYNSWORTH, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. BAKER. Mr. President, at a special news conference convened in his office yesterday, President Nixon reaffirmed his support for Judge Clement Haynsworth and stated he had examined in detail the record made by the Senate Judiciary Committee, and that he had absolutely no doubt that Judge Haynsworth is a man of integrity and honesty.

I have read the transcript of the news conference, Mr. President, and also examined the charges that have been raised against Judge Haynsworth and their denial by Senator COOK and others 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 the nominee will be confirmed by this body by an overwhelming vote.

Some are now saying the President should withdraw this nomination because there are appearances of impropriety that have been created; but I ask, in all due deference, "Who created those ap-

pearances?" 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 imcomplete analysis of the 700-page record compiled by the Senate Committee on the Judiciary.

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, and said only yesterday, 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, 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, for no reason at all.

Mr. President, I have great respect for this body, as I have deep and genuine respect for the underlying genius that created our tripartite system of central government, consisting of the executive department, the two branches of the legislative department, and the judiciary, each having a rather exquisite set of checks and balances, prerogatives, and overlapping jurisdiction with the others. This insures that there is a consensus expressed by the machinery of government that fairly and clearly represents the will of the people themselves.

The Senate is now engaged in one of its unique jurisdictional undertakings—the responsibility, under the Constitution, that it advise and consent with the President of the United States on the confirmation or the withholding of confirmation of a nominee for the highest tribunal the only constitutional tribunal, in this Republic.

I think it might be appropriate, for the moment, to examine in detail the responsibility of this body in that respect. Clearly, I believe, the President and the Senate have concurrent responsibility and concurrent jurisdiction in the matter of selecting the members of that constitutional tribunal, the Supreme Court of the United States, in this case specifically an Associate Justice of the Supreme Court.

I have no quarrel with those who say that the Senate must not act as a mere rubber stamp, giving automatic or pro forma approval to any nomination sent by any President to the Senate at any time. I do believe that our jurisdiction is as great as that of the executive department; otherwise, the phrase "advise and consent" would have no meaning. But there is one principal constitutional distinction between the responsibility of the President and the responsibility of the Senate. As it clearly appears from the Constitution, only the President can initiate a nomination. The Senate may consider only those nominations so initiated; and, in considering nominees for the highest tribunal, it is the responsibility of the Senate to examine every fact and every facet involved in such nominations.

It is my purpose now to urge my colleagues to do precisely that; and, with all due respect, even with my great reverence for this body, to suggest that they have not yet done it. The debate thus far has been altogether too detached from the record compiled by the Committee on the Judiciary. The debate thus far has dealt too much and too often with "the appearance of impropriety," and too little with the fact and substance of the nominee's record as adduced by the committee.

I believe it would be a tragic chapter in the relationship between the Senate and the judiciary if this nomination were not determined on the basis of the merits and facts of the controversy, rather than on the basis of innuendo. I believe, as I have stated before on this floor, that it is time we examined the facts and circumstances attendant upon this nomination, and stopped "shoveling smoke"—a phrase that was impressed upon me some years ago when I was in law school. It was then pointed out that too often law students and lawyers and, I am inclined to believe, legislators, even those in this august body, tend to become caught up in the emotions of the moment and to be attracted by the glitter of vocabulary instead of careful scrutiny of the record itself and the facts and circumstances on which a judgment should be based.

In response to that implication, either Justice Holmes or Judge Learned Hand—I have forgotten now which—made the charge that lawyers are prone to spend much of their adult lives "shoveling smoke"—that is, dealing in things other than the facts of the case at issue.

I admonish my fellow Senators, and I am confident that the Senate will not do so, not to engage in a smoke shoveling contest in connection with the confirmation of Clement Haynsworth to serve as an Associate Justice of the Supreme Court of the United States. I believe my colleagues, and the Senate as a body, will not engage in the luxury of innuendo as the basis for judgment, but rather will make their judgment on the basis of the facts. The facts have been clearly delineated in the hearing record, and on occasion in debate on this floor. I commend now, as I have previously, the magnificent statement made by the junior Senator from Kentucky (Mr. COOK), wherein he took, one by one, the charges, the inferences, the allegations, and the implications—not just those involved in the debate, but in the stories circulated in the press, from every source—and made a point by point, meticulous answer to all such charges. I said then and I say once again that it is the constitutional duty of every Member of this body to do what MARLOW COOK, the distinguished junior Senator from Kentucky, did, and that is to examine these matters and look the facts in the face.

The confirmation of the nomination of a man to serve on the highest court in this land must be so judged. It must not be judged on some inference of liberal philosophy or conservative philosophy, or some alleged bias of a prolabor or antilabor stand, because, Mr. President, if we do judge on that basis, we are setting up a constitutional principle that I believe none of us would consciously adhere to or approve of. If some say, as some have said, "I oppose Clement Haynsworth because his philosophy is too prolabor or too antilabor, or too liberal or too conservative," we are in fact saying by that allegation or that statement that we are going to choose the members of the Supreme Court of the United States based upon some artificial balance between liberal and conservative, prolabor and antilabor. Mr. President, for my part, I do not want a member of the Supreme Court of the United States, whether it be the Chief Justice or an Associate Justice, who is either pro or anti anyone in these United States. To say that Clement Haynsworth is antilabor implies that the maker of the statement would rather have someone who is prolabor; or to say that he is anti-civil rights, that he would rather have someone who is pro-civil rights.

Judge Haynsworth is neither, and no conscientious member of this Government, whether he be a Senator, a Justice of the Supreme Court, or the President of the United States himself can afford the luxury of being anything other than dispassionate, calm, and impartial in his judgment of what is best for this country and best for humanity.

So I reject out of hand the contention that we should judge on the basis of a philosophical bias of any sort, and say rather that we should examine this nominee as we should examine all nominees, on the basis of their competence, their qualification to serve and to serve well, to serve impartially and to serve judiciously the best interests of the people of this country, all of them, without breaking the population down into pro or anti anything.

Clement Haynsworth is uniquely suited for this difficult task. The President of the United States has chosen well. The Senate of the United States must examine the facts and not revel in innuendos or aspersions. We must come to terms with the judgment we must make, disregarding as we must so often disregard what its political impact will be at home with one group or another, and we must decide what is best for this country.

In my humble view, what is best for this country is a man who has the judicial impartiality to look facts in the face and call the judgments as he sees them, which is precisely what we must do also in judging this confirmation.

Mr. THURMOND. Mr. President, I commend the able and distinguished Senator from Tennessee for the fine presentation he has just made. It is my firm belief that when Senators read the record in the Haynsworth case, they will find that Judge Haynsworth is as well qualified as any man who has ever been nominated to be a Supreme Court Justice.

I am very proud that the Senator from Tennessee has seen fit to make the remarks he has made today.

Having known Judge Haynsworth, his father, his grandfather, and the distinguished family from which he comes, I am sure that the Members of the Senate and the people of this country will be very proud to have him serve as a Supreme Court Justice.

CLASSIFIED INFORMATION IN CONGRESSIONAL RECORD

Mr. THURMOND. Mr. President, looking back to the debate on the 1970 military authorization bill, I would like to bring to the attention of my colleagues two points which have caused me deep concern in the past 6 or 7 weeks.

The first point is the fact that this debate has revealed to our enemies vast amounts of classified information they could not have obtained otherwise. Second, it appears to me we are witnessing a direct challenge to the committee system as we have known it here in the Senate.

On point No. 1 regarding classified information, it is not my desire to bring into question the right of any Senator to challenge any item in any bill on the floor of the Senate. To do so would challenge the democratic process which has made our Government a powerful and influential one.

However, it must be recognized that in the 6 weeks the military procurement bill has been debated item by item, information on weapons systems vital to our defense has been spread across the public record for all to see.

During this debate the thought often occurred to me that our enemies would have been required to pay millions to espionage agents for the information revealed in a copy of the CONGRESSIONAL RECORD which sells for a few cents. It is not hard to imagine the excitement of Communist military leaders around the world as their interpreters pour over the CONGRESSIONAL RECORD and extract information vital to their development of an effective strategy against us. Can you imagine the copies of the CONGRESSIONAL RECORD which have been shipped to Russia, China, Cuba, and other unfriendly countries in the last month?

Mr. President, the opponents of these various weapons systems are not the only ones who have spilled our "military beans" so to speak, but those of us trying to defend these systems have also been forced to reveal classified data, knowingly and unknowingly, in an effort to preserve the strength of our Military Establishment.

Our entire military strategy and concepts have been enumerated in full. We have had to talk about the "2 and ½" concept and justify it. We have had to talk about our balance of deterrence, our commitments abroad, our strategy of attack, the strength of our Navy, the shortage of submarines, the approaching weakness of our manned bombers, the successes and failures of our antiballistic missiles, the characteristics of our new tank, the naval strategy involving our aircraft carrier forces, the approaching obsolescence of our Air Forces, the strategic concepts upon which the C–5A is based, and so on.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. THURMOND. Mr. President, I ask unanimous consent that I be permitted to continue for an additional 10 minutes.

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

Mr. THURMOND. Mr. President, on two systems our debate has been particularly revealing, the ABM and the MBT–70.

In the lengthy debate on the ABM we precisely pinpointed the location of our planned defensive missiles, we discussed their capabilities and their weaknesses, we talked about the multiple independent reentry vehicle techniques, the size and power of our warheads, the number and range of our ABM's, the dispersion of our Sprints and Spartans, the expected points of interception, the problems with chaff and other countermeasures, and the strength and failures of the radars which control and guide these defensive missiles. This debate also laid bare the strength of our ICBM's, our Polaris and Poseidon forces, and the present makeup of our strategic bomber squadrons.

Furthermore, we revealed to a large degree exactly what we know and what we do not know about the military strength and plans of the Russians and the Chinese. Any schoolboy could plan the defense of his fort better if he knows how many slingshots, rubber guns, and dirt balls his opponents have prepared to use against him.

Regarding our revolutionary new tank, the MBT–70, we were forced to reveal its particular characteristics in an effort to justify its continued development. This being a joint project with West Germany, our allies must be in a state of shock over the fact we have unveiled to a potential enemy all the strengths and weaknesses of a vehicle in which they might some day have to place their young men and commit to a battlefield. It is likely the MBT–70 will be the last joint development project any nation will ever undertake with America, the land of open discussion.

Mr. President, I do not know what the answer is, but I hope it is something other than what we have just been through. All of these weapons systems have been reviewed and discussed at length in executive sessions of the Armed Services Committees of both the House and the Senate. In the past, certain classified hearings and reports of the committee have been available for Members of the Senate to examine if they wished.

It is not my suggestion that the Members of the Senate give unqualified support to the recommendations of the Senate Armed Services Committee. This committee has 18 members but we are not infallible, nor is the Defense Department, the President, the Bureau of the Budget, or any group involved in the defense of this Nation. Still, there must be a better way to get at these issues and deal with them in an effective way which will serve the best interest of all concerned. This must be accomplished with the recognition that more secret data vital to the survival of this country is heard by the Armed Services Committee than goes before all other congressional committees combined.

This problem is complicated by the fact that our enemies in this world operate in closed societies where the representatives of their people are more the servants of a powerful elite than the masters as in our country. Discussions of their military problems never reach the public ear or printed word and, therefore, they have an advantage because of the oppressive nature of the political systems under which they operate. While we cannot do anything about their system it does seem that some thought should be given to finding adequate methods to provide the necessary reviews and debates of our own military problems without the exposure which has just resulted in the Senate.

On the second point, we have witnessed in recent months a challenge to the committee system. We have seen members of other commitees use their committees to go into strictly military problems in an obvious challenge to the Senate Armed Services Committee. In addition, we have seen organized a bipartisan group of Senators and Congressmen working as members of an unofficial body called the Military Spending Committee of Members of Congress for Peace Through Law.

What would the members of this august body think if a similar nonofficial committee was organized to challenge the findings and reports of the Foreign Relations Committee, the Judiciary Committee, or the Finance Committee? If such a practice should become a custom we would have chaos, and each of us clearly recognizes the inherent dangers.

Now, Mr. President, I know some of the members of this military spending committee and they are good men who share a deep concern for the well-being of our people. But I wonder if they realize they are opening the door to the destruction of the committee system of Congress and embarking on broad vistas from which there may be no honorable retreat. They have assigned themselves to such groups and in so doing have demonstrated a lack of faith in the committee system as such.

Also, there are some other questions which should be raised. For example, what sort of impression would be created if 30 or 40 amendments were offered to the foreign aid authorization bill calling for reviews and studies of our foreign aid to each recipient in South America, in the Far East, in the Near East, and so on. Has the expenditures of these funds been analyzed in detail? Have cost effectiveness studies been made on each program in these various countries? Is it cheaper to feed an Indian or an Indonesian? Should not the General Accounting Office look into these programs? Have justification hearings been held on these expenditures? Where do these expenditures fit into our priorities?

In overcoming malnutrition, has the responsible committee determined what constitutes malnutrition and how many calories are needed to overcome it? What independent studies are available to support these requests? Is it cost effective to ship rice from Arkansas or Louisiana to Vietnam when Formosa could provide it cheaper? Should we not have studies on top of the hearings conducted by the responsible committees here in Congress on these subjects?

ator from Arkansas? The Chair hears none, and it is so ordered; the vote on the ratification of these two conventions will be postponed until 1:45 p.m. today.

LEGISLATIVE SESSION

Mr. FULBRIGHT. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

There being no objection, the Senate resumed the consideration of legislative business.

NOMINATION OF JUDGE CLEMENT F. HAYNSWORTH, JR., TO SUPREME COURT

Mr. HRUSKA. Mr. President, one of the biggest political fights of this session of Congress will be fought on the Senate floor over the nomination of Judge Clement F. Haynsworth, Jr., to the Supreme Court. I regret that very much. It is not our job in advising and consenting to a nomination to wage political battles. Our duty is to insure that the nominee is one of those few individuals truly qualified to sit on the Supreme Court.

A Senator's vote should not be cast because the nominee is "for" or "against" any individual or group. His vote should be cast because the nominee is not "for" or "against" any individual or group. But that is not the way this battle is shaping up.

Frankly, I was surprised by the ferocity of the attack on Judge Haynsworth. Perhaps that is because I attended most of the hearings and reviewed all the evidence. I have heard the attacks made against him and I consider them all answered by competent testimony. Still the opposition has been adamant. There have been demands that the President withdraw Judge Haynsworth's name.

The President of the United States called a press conference on Tuesday to make absolutely clear his position on this nomination. He will not withdraw the name. His support of the nominee is firm and his confidence in the nominee is complete. I commend the President for his forthright stand and his rejection of the attacks by innuendo and rumor made on the nominee.

In his press conference, President Nixon said:

> You may recall that when I nominated Judge Haynsworth, I said that he was the man, of all the circuit judges in the country, and a chief judge with 12 years experience, that he was the man I considered to be, by age, experience, background, philosophy the best qualified to serve on the Supreme Court at this time.
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> I reiterated that position, and today, after having had an opportunity to evaluate all the charges that have been made in the past three weeks I reaffirm my support of Judge Haynsworth and in reaffirming it, I reaffirm it with even greater conviction

The President's discussion of this nomination is valuable and illuminating. Mr. President, I ask unanimous consent that the transcript of the press conference, as it appears in the October 21, 1969, Washington Post be printed in the RECORD.

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

[From the Washington Post, Oct. 21, 1969]

NIXON ON HAYNSWORTH: "I AM GOING TO STAND BY HIM"

Following is the transcript of President Nixon's news conference yesterday:

The President: Ron Ziegler has suggested that it might be useful to members of the press if from time to time on a specific subject I brief the press myself and then take questions so you can follow through on that subject.

You may recall that I did this on the occasion of the Chief Justice Burger subject and it seems to me that this type of procedure is one that we can follow.

I want also to say that as far as those who are here for television and radio, you, of course, can only comment on this because we do not have sound and do not have film. But we will have ready, I understand, on December 15th, the new press room in the West Wing. When that is available we shall have this kind of briefing session of a subject-by-subject basis in that room so that those who want to get sound or film can get it. We won't do it always this way. Sometimes we will do it this way, but I think that will be a very useful way to do it.

It will be a very nice room. I was there this morning and it is coming along very well.

This morning this will be on the record and a transcript will be made available to you when we finish.

This morning I have selected as a subject one you have been asking Ron about over the past several weeks, the Haynsworth matter.

In discussing that matter, I want to give you my own thinking with regard to the nomination of Judge Haynsworth, where it stands at the present time, and what my evaluation of the charges that have been made against him is.

REAFFIRMS SUPPORT

You may recall that when I nominated Judge Haynsworth, I said that he was the man, of all the circuit judges in the country, and a chief judge, with 12 years experience, that he was the man I considered to be, by age, experience, background, philosophy the best qualified to serve on the Supreme Court at this time.

Three weeks ago at a press conference I not only had one question on this matter, as I recall, two. I reiterated that position, and today, after having had an opportunity to evaluate all the charges that have been made in the past three weeks I reaffirm my support of Judge Haynsworth and in reaffirming it I reaffirm it with even greater conviction.

I say it with greater conviction because 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 indicates 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.

I would like to touch upon perhaps three or four of the major points that have been raised: They are technical points, as many of you who have been studying the case will know.

I should say I have some experience in investigations myself, and I have studied this case completely in every respect.

I have read the income tax returns, the financial statements, all the charges that have been made by various senators, and the answers that have been made on the Senate floor by Judge Marlow Cook, by Senator Allott, and also the evaluation, of course, of the Department of Justice.

Based on that examination, I personally now have made and concluded now that all the evidence is in, there are four or five points, perhaps, that are worth discussing, but more if you want to bring them up in your questions.

REBUFFS CHARGES

The charge is made that Judge Haynsworth should have disqualified himself in six cases involving litigants who were customers of a company in which he owned stock. I have examined those cases and that charge. I agree completely with the American Bar Association, with Judge Sobeloff who conducted an investigation of this matter in 1963 and 1964, and also with John Frank, the leading authority on conflict of interest, when he said that not only did Judge Haynsworth have no requirement to disqualify himself; he had a responsibility to sit in these cases because in not one of these instances or cases named did Judge Haynsworth use his influence in any way in behalf of the company in which he owned stock, and in no instance was there any indication that he was influenced whatever in decisions by that stock ownership.

If you want to spread this out just a bit, if we were to apply that kind of a standard to all federal court judges across this country, I would say that perhaps half of them would have to be impeached, and some in the Supreme Court, because carrying it to the ridiculous end result, if a judge owned stock in U.S. Steel, U.S. Steel has customers, a great number of them, and most of those customers or a great number of them get to the Supreme Court or the circuit court of appeals.

So the judge should not disqualify himself because customers of a company he happens to own stock in are in the court. This charge has no substance.

The second major charge is that Judge Haynsworth had a substantial interest in litigation which he decided as a member of the Circuit Court of Appeals.

Let me be quite precise. The law refers not to a substantial interest in the company or the litigant, but a substantial interest in the case. Of course, that is the proper standard to apply.

In this case, I find that the senator from Indiana who made the charges cited six cases, and these six cases represent perhaps one of the most glaring examples of sloppy staff work that I have seen in the years of seeing what can happen in such cases. Two of the cases were mistakes, of course, and on the others the question of a substantial interest has been again, reduced to an absurdity.

In the Brunswick case, it is now found, as Judge Marlow Cook pointed out—and he was a judge before he became a senator, as you know—Judge Haynsworth would have profited by $5.00, at the most, probably $4.92, the exact figure, if the litigant had recovered all the amount that was involved in the case.

In the Grace case, which involved, incidentally, a parent-subsidiary relationship, Judge Haynsworth's stock would have been reduced in value by 48 cents as a result of the decision that he made.

As an indication of the staff work in this case, one of the other reasons was the Greenville Hotel case.

It is true that Judge Haynsworth did have an interest in the Greenville Hotel It appeared that years ago as an attorney he was a director for the hotel. Being a director of the hotel he was issued a share of stock in the hotel corporation.

Then after he became a judge, he received a stock dividend of 15 cents, a check which was mailed to him. The judge, of course, returned the check, thinking it was a joke. The Company returned it to him. So Judge Haynsworth recorded 15 cents on his income tax return.

Then there is another group of cases that have been raised. That is that Judge Haynsworth should have disqualified himself in those cases involving former clients of his law firm. I should say his former law firm. The law is quite clear here. A judge does not have responsibility and should not disqualify himself in cases involving clients of his former law firm unless that relationship has been very close to the client and has continued close, and also, in point of time, unless the relationship has continued. In other words, the passage of time and the closeness of the relationship is a factor to be considered.

"BEYOND SUSPICION"

In all of the cases, the 12 which were raised in hearings involving the former clients, it appeared that Judge Haynsworth was beyond suspicion, and, as a matter of fact not only should not have disqualified himself but had a duty to sit, in my opinion.

Now the Bobby Baker matter. This is guilt by association and character assassination of the very worst type. Judge Haynsworth knew Bobby Baker. He saw him last ten years ago. Many of the gentlemen of the press know I used to see him quite often when he was a clerk to the Majority. He had three contacts with him. He had no influence on Bobby Baker, and Bobby Baker had no influence on him.

The so-called business deals in which they were partners have been completely laid before the Senate committee, and any suggestion of improper influence has been discounted by Senator Williams, who is kind of a bull on these matters.

I should say, incidentally, while we are talking, I knew Bobby Baker very well myself, too, as the presiding officer of the Senate. He was clerk to the Majority.

One of the members of my staff, Rose Mary Woods, pointed up something I had forgotten. As a matter of fact, Bobby Baker's wife served as a stenographer on my staff for several months when I was a senator from California.

The fact that I knew him does not make me guilty by association. The fact that Judge Haynsworth along with others knew him, Senator Hollings and others, does not make him guilty by association.

On this particular point, I stand very firmly against the use of that tactic.

Now I will go to something a little more fundamental because this involves the decision as to what senators should consider as they determine whether they confirm a judge for the Supreme Court, or, for that matter, any court.

The question is raised, and one senator, Senator Magnuson, I thought quite candidly and honestly faced up to this question. He said he did not raise any question with regard to Judge Haynsworth's impropriety charges, but that he simply disagreed with his philosophy on certain matters, civil rights and labor law.

That is a ground which a senator can give for rejecting, perhaps, Judge Haynsworth. I do not believe it is a proper ground. 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 from the Supreme Court.

Looking back over the history of the cases, as I said when you were here before on the Burger matter, among my heroes of the court is Louis Brandeis. If philosophy were a test for him he would have been ruled out because he was too liberal.

Another was Charles Evans Hughes. If philosophy had been a test for him he would have been ruled out because he was too conservative in representing the business interests.

If you want to go back and read what really can happen in cases of this sort, I would suggest you read the debate over Louis Brandeis and also the confirmation of Charles Evans Hughes, in which they poured on him all the filth they could possibly amass because of his connection with insurance companies. Also like Judge Haynsworth, he had represented various other interests.

"CONSERVATIVE" NEEDED

As far as philosophy is concerned, I would be inclined to agree with the writer for the St. Louis Post Dispatch who said he thought Judge Haynsworth was a man with a razor sharp mind and a middle of the road record on the major issues.

But if Judge Haynsworth's philosophy leans to the conservative side, in my view that recommends him to me. I think the court needs balance, and 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.

Now the final point, and this one is one that troubles, I think, many people who are not prejudiced against Judge Haynsworth because he is a Southerner or because of his civil rights record, or because of his labor record.

It is this: At this time in our history, it is very important to have a man that is beyond reproach.

An editorial in The Washington Post, I thought quite a thoughtful editorial, was quite candid in saying that the charges against him on the ethical side were not warranted, or at least were not with the foundation they should be, but because a doubt had been raised, that the name should be withdrawn.

I just want to say categorically here I shall never accept that philosophy with regard to Judge Haynsworth.

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—and, incidentally, if he now asks for his name to be withdrawn I would not do so—Judge Haynsworth, when the charges were made, 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. I find that 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. I trust he will be.

Question: Mr. President, how much of this attack on Judge Haynsworth do you think is an attack, an end run attempt to get at you?

Answer: I have read some of the spec stories on that but I am not going to be involved in that.

The Brandeis case was not a very good moment in the history of the United States Senate. There was anti-Semitism in it and there was also a very strong partisan attitude towards Woodrow Wilson.

The Hughes debate was not a proud moment. There were a lot of partisan considerations that entered into it. This was a great man and a great chief justice, as was Judge Brandeis.

I don't think the Parker nomination was a very happy moment either.

"IT IS NOT PROPER"

I don't hold any brief for any one of these men in terms of philosophy. I don't agree with them, but no lawyer agrees with every other lawyer on everything. But in Judge Parker's case it was not proper to turn down a man because he was a Southerner.

It is not proper 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 a lawyer is he? What is his attitude toward the Constitution?

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.

Question: Mr. President, it has been suggested, and I wonder what you think of the idea, that every member of the federal judiciary holding a lifetime appointment, to avoid this kind of trouble, place their investments perhaps in some kind of a blind trust or perhaps in some kind of fund?

Answer: Bill, as you noticed, Judge Haynsworth said he would put his stocks into trust. I suppose the American Bar Association or, for that matter, the Senate, or Congress, could lay down some sort of a rule about that to really meet the problem.

I don't happen to think that blind trusts, particularly in the public mind, are going to remove these questions. That is one of the reasons, as a matter of fact, before I came to office, I disposed of every stock I owned. I own nothing but real estate.

Question: What would you say, Mr. President, when people say you selected Haynsworth in large part because of political obligations?

Answer: I selected Judge Haynsworth for the reasons that I mentioned. I was looking for a man, first, who, like Judge Burger, had broad experience as an Appeals judge, a court of appeals judge—who was the right age, and who also had a philosophy for the Constitution similar to my own because that is what a President is expected to do.

As far as a political obligation is concerned, I had no political obligation to select Judge Haynsworth or Judge Burger.

In fact, my acquaintance with Judge Haynsworth can only be casual. If he would walk into this room, I am afraid I wouldn't recognize him.

Question: Can you tell me on what you base your confidence in the confirmation, Mr. President?

Answer: The Senate is a body in which time and discussion work on the side of fairness and justice. That sounds like a cliche, I suppose.

"ABOVE REPROACH"

As a former member of the Senate it is perhaps a self-serving statement. But I am convinced that when senators read the record, as I did, not just the editorials but the record, the evidence, and as they study every one of these cases—and believe me, I have studied every one of them—if I had found one case where there was a serious doubt I would have had him removed because I want that court to be above reproach.

If the senators do that, I believe a majority of the senators will vote for Judge Haynsworth's confirmation.

Let me say this too: It is not a partisan matter.

To answer your earlier question, sure, there is some partisanship, I suppose. That is perhaps part of the game, and perhaps with some Republicans. I am not questioning their motives.

All I ask is that every senator should look very carefully into this record because he has to make the decision that I had to make.

Let me be quite candid. There were those, good friends of mine, who came to me a few weeks ago suggesting I withdraw Judge Haynswworth's nomination due to the fact that a doubt had been raised and that politically it was going to be very difficult to wield.

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.

"QUALIFIED TO SERVE"

I did not do so, and I think that as senators consider what they will be doing as they will be doing as they vote on this matter, as they consider the evidence, they will realize that they are dealing here with an honest man, a man who has laid all the facts before them, a man who is qualified to serve on the Supreme Court, and I think they will conclude as I did that there is no dishonor in connection with him.

Question: Senator Griffin is one of the men you referred to and he has studied this record, case by case.

How do you account for Senator Griffin's point of view?

Answer: I hope he will study further. I trust that after he studies it more, he will change his mind.

Question: One of the things that has happened in the Haynsworth case is that there has been a piecemeal revelation of details.

Is there a problem in our government, a problem of confidence with Congress and with judges, that we do not have a more comprehensive * * * kind of fund?

Answer: The matter of piecemeal disclosure is because the critics have chosen to make the charges this way.

Some senators were worried about when the other shoe would drop. I saw the other shoe and it wasn't even a slipper. We wondered why Senator Bayh wouldn't debate Senator Hollings. Senator Bayh is a very articulate man, but after reading the record I know why. He was well advised not to debate.

The Press: Thank you, Mr. President.

PRESIDENT NIXON'S POLICIES ON VIETNAM

Mr. DOLE. Mr. President, at a time when the leaders of the Democratic Party are supporting President Nixon's efforts to negotiate a settlement in Vietnam; when the Senator from Arkansas, (Mr. FULBRIGHT) has postponed hearings of the Senate Foreign Relations Committee to await the President's speech on November 3; when the distinguished majority leader, Senator MANSFIELD, has indicated the President is moving in the right direction; when the past presidential nominee of the Democratic Party, Hubert Humphrey, has expressed confidence in President Nixon's policies—Mr. President, in the light of these conditions, I seriously question the logic of the speech delivered earlier by the Senator from South Dakota.

Mr. President, I find myself wondering if the Senator from South Dakota is not guilty of the same "dangerous oversimplification" of which he complains. He speaks of "old schemes of forced killing in foreign crusades." He said we are fighting "so blindly to preserve General Thieu in Saigon." Are these not oversimplifications in the most elemental sense?

Mr. President, participation in the October 15 moratorium was a matter of conscience for many in this country. Although it is unclear whether those who participated in the moratorium opposed continuation of the war on any basis or merely desired the end of American involvement in the war, it was apparent there are many in this country who are deeply concerned with the war. This sentiment did not originate with the October 15 moratorium. President Nixon realized this months ago and established peace as his administration's first priority.

Mr. President, while the President wants peace, he also realizes that we cannot abandon our commitments without a full realization of the effect of our actions. In Guam, President Nixon outlined a new policy for Asia—this policy, however, cannot be implemented overnight. Review of our commitments in other parts of the world will continue by both the Congress and the President. This is healthy and necessary to a vibrant foreign policy.

Mr. President, the Senator from South Dakota has failed to mention the real reason the United States has not been able to negotiate a settlement in Vietnam. That reason is the intransigence of the North Vietnamese and the National Liberation Front. I introduced a resolution, which now has 35 cosponsors, calling on the North Vietnamese to seriously negotiate. I hope the Senator from South Dakota would agree that the North Vietnamese and the National Liberation Front have shown no interest in ending this war other than on their own terms.

Rather than placing all the blame on South Vietnam and our Government, we Dakota will agree that the North Vietnamese and the National Liberation Front by holding hearings on Senate Resolution 271.

I urge the Senator from South Dakota to join in cosponsoring Senate Resolution 271.

EXECUTIVE COMMUNICATIONS, ETC.

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

REPORT OF INDIAN CLAIMS COMMISSION

A letter from the Chairman, Indian Claims Commission, transmitting, pursuant to law, the annual report of the Commission for the fiscal year 1969 (with an accompanying report); to the Committee on Interior and Insular Affairs.

REPORT OF THE EAST GREENACRES UNIT, RATHDRUM PRAIRIE PROJECT, IDAHO

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, a report of the Secretary of the East Greenacres Unit, Rathdrum Prairie Project, Idaho (with an accompanying paper and report); to the Committee on Interior and Insular Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JORDAN of North Carolina, from the Committee on Agriculture and Forestry, without amendment:

H.R. 9857. An act to amend the provisions of the Perishable Agricultural Commodities Act, 1930, to authorize an increase in license fee, and for other purposes (Rept. No. 91-490).

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, without amendment:

S. 1968. A bill to authorize the Secretary of the Interior to permit the removal of the Francis Asbury statue, and for other purposes (Rept. No. 91-493);

H.R. 5968. An act to amend the Act entitled "An Act to provide for the establishment of the Frederick Douglass home as a part of the park system in the National Capital, and for other purposes", approved September 5, 1962 (Rept. No. 91-496); and

H.R. 11609. An act to amend the Act of September 9, 1963, authorizing the construction of an entrance road at Great Smoky Mountains National Park in the State of North Carolina, and for other purposes (Rept. No. 91-494).

By Mr. HOLLAND, from the Committee on Agriculture and Forestry, with amendments:

S. 1455. A bill to amend section 8(c)(2)(A) of the Agricultural Marketing Agreement Act of 1937, as amended, so as to include Colorado, Utah, New Mexico, Illinois, and Ohio among the specified States which are eligible to participate in marketing agreement and order programs with respect to apples (Rept. No. 91-491).

By Mr. BURDICK, from the Committee on Interior and Insular Affairs, with amendments:

S. 232. A bill to promote the economic development of the Trust Territory of the Pacific Islands (Rept. No. 91-495).

EXECUTIVE REPORTS OF A COMMITTEE

As in executive session, the following favorable reports of nominations were submitted:

By Mr. MAGNUSON, from the Committee on Commerce:

James V. Day, of Maine, to be a Federal Maritime Commissioner.

Albert Bushong Brooke, Jr., of Maryland, to be a member of the Federal Power Commission;

Harold C. Passer, of New York, to be an Assistant Secretary of Commerce; and

Jack E. Guth, Robert E. Williams, Robert C. Munson, Gerard E. Haraden, and Robert D. Hickson, Jr., for permanent appointment in the Environmental Science Services Administration.

BILLS INTRODUCED

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

By Mr. FULBRIGHT:

S. 3055. A bill to authorize the use of excess Government-owned foreign currencies to finance the establishment abroad of binational foundations for educational and scientific purposes; to the Committee on Foreign Relations.

(The remarks of Mr. FULBRIGHT when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. RIBICOFF:

S. 3056. A bill for the relief of Mr. Giuseppe Giarratana, Mrs. Vincenza Giarratana, Mr.

(b) The first paragraph of section 373 of title 28, United States Code, is amended by inserting immediately after the last comma therein the following: "or at any age after serving at least twenty years continuously or otherwise."

So as to make the bill read:

S. 1508

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 371(b) of title 28, United States Code, is amended by inserting immediately before the period at the end of the first sentence the following: ", or at any age after serving at least twenty years continuously or otherwise."

(b) The first paragraph of section 373 of title 28, United States Code, is amended by inserting immediately after the last comma therein the following: "or at any age after serving at least twenty years continuously or otherwise."

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

PURPLE PRIDE—PURPLE POWER

Mr. DOLE. Mr. President, every day Members of this body rise to make pronouncements concerning our great country. For the most part, we are engaged in serious debate which directly or indirectly affects nearly every American, as well as millions of people throughout the world.

Now and then, something out of the ordinary happens which may not have a great impact on world affairs, but which should be called to the attention of the Members of this body.

I witnessed such an extraordinary happening on Saturday when the Kansas State University Wildcats overwhelmed the great Oklahoma Sooners in Manhattan, Kans., by a score of 59 to 21, the worst loss ever inflicted on an Oklahoma University team. This was a highly significant event and, frankly, one which defies adequate description because Kansas State had not tasted victory over Oklahoma in 35 years.

For years, the Kansas State football team was the "doormat" of the Big Eight Conference, but during all those years thousands of faithful Wilcat fans took defeat in stride and muttered to themselves, "Wait until next year."

This year, under the tutelage of Coach Vince Gibson, the Wildcats have arrived, and even the most casual observers are singing their praises.

"Purple Pride," a slogan initiated by Coach Gibson, has been converted to "Purple Power" in 3 short years. All Kansans, and particularly K-State fans, take great pride in this year's great football team, which for the first time in my memory is the No. 1 team in the Big Eight Conference.

With an overall season record of 5 victories and 1 defeat—and a narrow one at that—the enthusiastic Wildcat fans are certain the Wildcats will be playing in one of the major bowl games on New Year's Day. Certainly the Wildcats deserve a successful season, and I join hundreds and thousands of Kansans and sports fans all across America in wishing them every success in the weeks ahead.

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. BYRD of 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.

PRESIDENT'S MESSAGE ON THE MERCHANT MARINE

Mr. BYRD of Virginia. Mr. President, I welcome President Nixon's message to Congress on the merchant marine.

This represents the first national commitment to a strong merchant fleet since the Second World War.

Just after that war, the United States was carrying more than 57 percent of its foreign trade in its own ships. Today, that figure has dropped to 6 percent.

Nearly 96 percent of imported raw materials—materials upon which our security and well-being depend—arrive in this country aboard foreign ships.

Our fleet is down to 950 ships. It ranks behind the fleets of the United Kingdom, Japan, the Soviet Union, Liberia, and Norway.

The United States is a maritime Nation by necessity. Unless we are content to become a second-rate nation, we must export and we must import.

We cannot afford to depend upon foreign fleets to haul our commerce. Experience has shown that these ships may not be available when they are most needed.

Our maritime needs demand that we weld together investments of public funds and private funds with the investment of the genius of American research. We need, too, an investment that is less tangible, namely, one that involves a joint commitment by Government and industry to the goal of a strong merchant fleet.

The President's message will do much to stimulate the needed commitment.

ORDER OF BUSINESS

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

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

PREVENT POLITICAL PAYOFFS

Mr. FANNIN. Mr. President, events of the past few weeks have caused me considerable concern in regard to the future exercise of democratic processes in our country. I am referring to a press report which appeared in one of the Washington papers to the effect that special interest groups are putting their most highly skilled lobbyists to work on making sure President Nixon's nominee to the Supreme Court, Clement F. Haynsworth, is not confirmed by the Senate.

On the same day this story appeared in Washington, Mr. President, the front page of the Toronto Telegram in Canada carried a banner story detailing some of the pressure brought to bear in this country last year on behalf of a convicted labor racketeer, Harold Chamberlain Banks, resulting in a so-called contribution of more than $100,000 to the campaign coffers of the Democratic Party.

Many Members of the Senate are familiar with the Hal Banks story. He is an American citizen, convicted of conspiracy to commit assault in Canada in a brutal waterfront war between rival unions. He skipped $25,000 bail and fled to the United States, where he was arrested aboard a yacht of the Seafarers International Union. Picked up by American authorities upon Canada's request to have him returned to face a perjury charge—the assault charge was not covered under our extradition treaty with Canada—he was bound over for return by the U.S. Commissioner in Brooklyn. This was early in November of 1967.

On December 26, 1967, two highly significant communications were directed to the then Secretary of State, Mr. Dean Rusk; one was a memorandum from the Secretary of Labor, Mr. Willard Wirtz, the other was a long letter from the president of the AFL–CIO, Mr. George Meany.

These missives, Mr. President, both dated the same day, December 26, 1967, urged Banks not be returned to Canada. In addition, Abraham Chayes, backed up by the then Undersecretary of State, Nicholas Katzenbach, urged Mr. Rusk not to send Banks back to Canada. Chayes, incidentally, had been the principal legal advisor to Mr. Rusk before leaving the State Department. At the time of this meeting with Mr. Rusk, Chayes was employed by Banks, or his agents, to plead his case in this highly unusual, secretive procedure before the Secretary, in the Secretary's office.

Mr. Rusk decided that Banks should not go back to Canada, nor should it even be submitted to an impartial international third party for arbitration.

Shortly after his decision, $5,000 checks began pouring into various Democratic presidential campaign committees around the country until the total contribution amounted to $100,000—which was reached within a few days.

Last year, as some of you may remember, I attempted to secure the release of the controversial memorandum from Secretary Wirtz. He would not release it. I think we now see the reasons why.

I ask unanimous consent, Mr. President, that the December 26 memoran-

dum from Mr. Wirtz to Mr. Rusk along with the December 26 letter from Mr. Meany to Mr. Rusk be printed in the RECORD at the end of my remarks as exhibits 1 and 2.

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

(See exhibits 1 and 2.)

Mr. FANNIN. Mr. President, I do not think it is in the best interests of the American people to have such a bald exercise of the power of union officialdom, when George Meany can, with or without checking with union members, vow that Clement Haynsworth will not sit on the Supreme Court of the United States.

It is not right, Mr. President, for a union goon—who Mr. Meany himself states is a "controversial figure"—be allowed to roam free in the United States as the result of what appears to be a $100,000 political payoff.

Last April I went to see the new Secretary of State about this "Banks" matter. I simply asked him to look into it again and review the basis of the previous Secretary's decision, particularly in the light of events subsequent to that decision. Members of the administration in power at that time may well have been unaware of the fact that the Seafarers International Union was so willing to unzip its members' purses in return for Hal Banks' freedom. Nevertheless, the payments did take place. No one denies it—least of all the union leaders involved. I just asked the present Secretary to review the whole matter—$100,000 and all—and see if the Canadian claim that Banks was a labor goon, their Hoffa-in-exile, and ought to be returned to the authorities, was valid.

I have not as yet received a reply, but I think I know why. I am afraid that "holdovers," some of the people left over from the previous administration, are anxious to keep their skirts clean on this issue. I am afraid that the Secretary is a victim of some leftovers who are giving him poor advice. Naturally, a Cabinet officer cannot attend to every detail of his department. That is what a staff is for. I feel sure the Banks matter has come to his attention, Mr. President. I feel equally sure that he must question the complete objectivity of the advice given by some who were involved in the first decision. I am still hopeful that the whole matter can be solved in a way that is satisfactory to Canada and the United States, who should be good friends.

Any citizen, Mr. President, has a right to be heard. But union officials, through the exercise of the tremendous sums of money at their disposal, are apparently able to exercise power that borders on the dictatorial.

The opponents of Judge Haynsworth have manifestly failed to demonstrate their allegation that he is antilabor. In fact, one of the leaders of the fight against Haynsworth was quoted in the press last Wednesday as saying he felt that labor had a "weak case" in trying to substantiate such a theory. Even so, Mr. President, most of the vocal opponents of Judge Haynsworth here in the Senate have in this, as well as previous, Senate confirmation debates, said they do not feel a particular nominee's ideological bent is a legitimate cause for refusing him a seat.

Mr. President, I am sympathetic with some who have cringed before this awesome display. In my view, it is wishful thinking for Republicans to think they can buy the good will of Mr. Meany and his minions. I do not wish to be misunderstood, Mr. President; I consider George Meany a worthy opponent in this matter. He is fighting for what he considers best, as am I, but he is holding a club over the heads of some that is an intolerable threat to the exercise of democratic processes and has been brought about in large measure by the preferential treatment accorded unions under our internal revenue laws.

He has committed himself and the AFL-CIO treasury to the destruction of Judge Haynsworth just as labor tried to destroy Judge John Parker 40 years ago.

If Mr. Meany and his millions can destroy an honest man of integrity on a flimsy and irresponsible record of the nine-page bill of particulars presented by the Senator from Indiana, then no man in the U.S. Senate, or indeed in public life, is safe from their vindictive power.

In the Senate Finance Committee, Mr. President, we are wrestling with the problem of a tax reform bill. One of the items which most urgently needs reform is the section of the IRS code which permits union leaders to exercise this kind of political power and still retain their tax-exempt status. Such preferential treatment is simply not right. Union leaders, in the exercise of their office, should have to abide by the same rule of "no politics" as applies to all other tax-exempt organizations.

In the case I have laid before the Senate today, we have one of the most naked examples of the brash display of monetary power, exercised freely without any form of restraint. And it is made possible by the special status enjoyed by these union leaders under our tax laws.

On September 4, I introduced an amendment to H.R. 13270—amendment No. 145—to the tax bill which would correct this intolerable situation. I am trying to see that the amendment is incorporated in the tax bill. It should be supported by every fair-minded American. I am convinced by the private talks I have had with some rank and file union members, that they support this bill. Of course, it is opposed by union leaders.

What would my amendment do? Plainly and simply, it would require that unions abide by the same statutes that presently apply to other tax-exempt organizations. That is the extent of the amendment, Mr. President. It is simple. It is straightforward.

The events which have transpired over these past days and weeks have convinced me more than ever that the amendment should be a part of the tax laws. I think the majority of Americans, union and nonunion, agree on the restoration of this democratic process and the elimination of an inordinate amount of power in the hands of a few.

Mr. President, I am sure a cry will arise from the AFL headquarters that their political contributions are voluntary, and thus should not make them subject to paying taxes. In anticipation of this kind of argument, Mr. President, I refer to a transcript of oral arguments before the U.S. Supreme Court in which Mr. Joseph Rauh, Jr.—at that time in 1956, he was general counsel for the United Auto Workers—said:

> When he (a union member) pays his dues, he has paid for his political action.

Lest some say I am taking that statement out of context, Mr. President, I ask unanimous consent to have printed in the RECORD as exhibit 6 a summary of that case with appropriate appendixes. The exchange to which I refer will be found in appendix "C."

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

(See exhibit 6.)

Mr. FANNIN. Sixty-three years ago, Samuel Gompers, founder of the AFL, recognized this danger when he said:

> It is doubtful to my mind if the contributions and expenditures of vast sums of money in the nominations and elections for our public offices can continue to increase without endangering the endurance of our Republic in its purity and in its essence . . . the necessity for some law upon the subject is patent to every man who hopes for the maintenance of the institutions under which we live . . .

Mr. President, the idea that a union member can successfully withstand the pressures if he objects to the use of his dues for political ends with which he may not agree, is simply not in accordance with reality. It is for the maintenance of these rights of the individual that I am offering my amendment.

Mr. President, I ask unanimous consent that several newspaper articles which bear on this matter and to which I have referred, be printed in the RECORD as exhibits 3, 4, and 5.

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

(See exhibits 3, 4, and 5.)

EXHIBIT 1

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, December 26, 1967.

Memorandum to: The Secretary of State.
From: The Secretary of Labor.

You have before you a request from the Canadian Government for the extradition of Hal Banks, a former Canadian labor official affiliated with the Seafarers' International Union of North America.

The request for extradition is based on an (sic) information alleging that Banks committed perjury 4 years ago when he denied before a Royal Commission having participated in illegal conduct six years prior thereto, a matter for which he was subsequently tried and convicted.

This extradition proceeding is a small outcropping of a matter which has an over 10-year history of intermingling of government (Canadian, U.S., and international), labor-management, internal union, and individual affairs. Some parts of the record are sordid and ugly; others are a chronicle of awkwardness.

On several occasions during the past four years, Under Secretary Reynolds and I have been called on to try to straighten out one aspect or another of this situation. It was, until this extradition request, in a posture which offered fair promise of continued—and generally satisfactory—quiescence.

I am not in a position to express a judgment on either the technicalities of the extradition issue or the political implication of whatever action is taken regarding it.

I do note these two things:

1. It is wrong, in terms of human equities and basic democratic principles, for an individual to be used this way in this matter. Banks, as a particular person, presents no case for special consideration. But the relationship of "the system" to "the individual" is involved here—and this individual is being used as a pawn.

2. There is a possibility (which I cannot assess) of Banks' extradition reopening what has in the past been a disruptive situation.

I shall of course be glad to supply whatever background or detail on this matter you may consider pertinent.

WILLARD WIRTZ.

EXHIBIT 2

AFL–CIO,
Washington, D.C., December 26, 1967.

Hon. DEAN RUSK,
Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: I am informed that there is now pending before you an application brought by the Province of Ontario for the extradition of Mr. Harold Chamberlain Banks. I hope you will not grant this application.

I have followed the career of Mr. Banks for a considerable number of years, beginning with his initial involvement in Canadian trade union affairs which came about in response to a request, by the Canadian and American governments, for American trade union assistance in dealing with a serious problem of Communist subversion in the Canadian maritime industry. I believe that I am familiar with all the forces which have conspired to place Banks in his current predicament. Certainly no principle of real justice or equity would be served by his extradition.

In the first place, it is abundantly clear that the efforts to pursue Mr. Banks in the Canadian courts have been politically motivated. The original charge of conspiracy to commit assault grew out of the Norris Commission investigation, which was itself a part of an attack upon the Seafarers International Union at a time when it was embroiled in a bitter dispute with a major shipowner. Furthermore, the perjury charge for which extradition is now sought is premised upon Banks' compelled testimony before the same Norris Commission which was no more than an industrial investigating body.

Secondly, although the evidence upon which the present perjury charge is based has been available for four and a half years, no extradition move was made until this past August, on the occasion of another S. I. U. economic strike in Canada. The connection, and the revival of the political issue, is obvious.

Third, as you may be aware, the whole question of Banks' fate—although he is an American citizen—has been debated incessantly in the Canadian Parliament as a political issue between the two major Canadian parties. It seems to me that their political issues should not be resolved, or accentuated—at the expense of real justice to an American citizen—by the United States.

Banks was convicted of conspiracy to commit assault in Canada in 1964, stemming from an incident alleged to have occurred *six* years previously in 1958. This was the only grounds for legal action found after an exhaustive investigation into all of Banks' personal and official conduct, designed for the clear purpose of finding grounds for "getting" him. He fled the jurisdiction of Canada, after an extraordinary harsh sentence considering the nature of the alleged offense and the relatively light sentences imposed upon those found guilty of actually committing the alleged assault, before his appeal was heard, forfeiting a $25,000 bond. He has already paid a very high price for whatever misconduct may be charged to him. In addition to the money he forfeited, he cannot again hold a leadership position in the labor movement. He has been held in prison since September of this year.

Conspiracy, as you know, is not a crime for which anyone can be extradited under our treaty with Canada. The Province of Ontario, therefore, brought the perjury action in order to avoid the limitations of the treaty. The attempt to extradite him for perjury is an effort to do by indirection what could not be done directly.

I know Mr. Banks has been a controversial figure. He has his enemies and he has his friends. Whatever may be said about him as a product of the waterfront environment, there is no doubt in my mind that he has, in his career, rendered substantial constructive service to the labor movement and to working seamen.

At the time of his arrest for extradition proceedings, he was employed by the Henry Lundberg School of Seamanship, a non-governmental, labor-management supported training school. This enterprise is engaged in training young men of all races, most of whom are drawn from underprivileged and deprived backgrounds, to equip them as seamen and to give them an opportunity in a meaningful and rewarding seagoing career. The function of this undertaking in filling the manpower needs of the Merchant Marine necessitated by the present Viet Nam conflict is also worthy of mention.

Banks has severed all relations with the Canadian labor movement and has no impact on or connection, directly or indirectly, with the organization he formerly represented in Canada, its officials or its members.

For all of these reasons it is my firm conviction that it would serve the interests of neither the United States nor Canada, nor of future relations between them, to extradite Mr. Banks. On the contrary, it would be a gross miscarriage of justice and a great inequity to grant the application.

Sincerely yours,

GEORGE MEANY,
President.

EXHIBIT 3

[From the Telegram, Oct. 16, 1969]

"SECRET" NOTES REVEALED IN HAL BANKS CASE

(By Robert MacDonald)

A renewed demand for the extradition to Canada of former Seafarers International Union boss Hal Banks was made today after The Telegram obtained copies of two confidential messages to former U.S. Secretary of State Dean Rusk.

Both messages were dated Dec. 26, 1967. One was a memorandum sent to Mr. Rusk by then U.S. Secretary of Labor Willard Wirtz. The second is a three-page letter from AFL-CIO president George Meany.

Both urged Rusk not to sign an order for Banks' extradition to Canada to face a perjury charge—despite the fact a U.S. Commissioner had so ordered after hearing all evidence.

Meany, in his letter, claimed the perjury charge had been trumped up to "get" Banks and that the five-year jail term handed out to Banks for conspiracy to assault was "extraordinarily harsh."

Wirtz wrote that the extradition proceedings "were a small outcropping" from a wave of terrorism on the Great Lakes.

U.S. Senator Paul Fannin said he would make a further request to U.S. Secretary of State Williams Rogers for a decision on whether Banks should be extradited.

And in Ottawa, Conservative MP George Hees said the messages "confirm irrefutably the tremendous pressure that was brought to bear to prevent Banks' extradition."

Mr. Hees said he will "have some tough questions for External Affairs Minister Mitchell Sharp and Justice Minister John Turner when Parliament re-opens next Wednesday.

"There seems little doubt that Hal Banks has let it be known that he will sing like a nightingale about his work in political campaigns in Montreal if he is brought back to Canada," he said.

Fannin was reached in Washington for comment. He had been attempting for over a year to gain a copy of the memo, but had not known the Meany letter existed.

"The documents show that such unions exert tremendous political power and are prepared to pay for it," said the senator.

"I am aware of the pressure both within and without the Johnson administration that was brought to bear on behalf of Harold Banks," he said.

He claimed the SIU spent at least $150,000 last year in contributions to the Democratic party's presidential campaign chest. Of the total, $100,000 went to the fund within 10 days after Rusk finally decided not to sign the extradition order.

Secretary of State Rogers is still reviewing the decision of Mr. Rusk.

In his memo, former labor secretary Wirtz warned that "there is a possibility (which I cannot assess) of Banks' extradition reopening what has in the past been a disruptive situation."

Wirtz termed the extradition attempt "a small outcropping" of the wave of terrorism in Great Lakes shipping circles that surrounded the SIU tactics.

He failed to mention that Banks had been convicted of conspiring to assault a ship captain and had been assessed a five-year jail sentence. He had jumped $25,000 bail and escaped to his native U.S.

However, the letter to Rusk from labor czar Meany claimed Banks had been originally involved in the Canadian labor scene "in response to a request, by the Canadian and American governments, for American trade union assistance in dealing with a serious problem of Communist subversion in the Canadian maritime industry."

"It is abundantly clear that the efforts to pursue Mr. Banks in the Canadian courts have been politically motivated," wrote Mr. Meany.

He also charged that the Norris Royal Commission that investigated the labor terrorism (and from which the perjury charge came) "was itself a part of an attack upon the Seafarers International Union at a time when it was embroiled in a bitter dispute with a major shipowner."

He even claimed the Norris commission "was no more than an industrial investigating body."

Mr. Meany also told Rusk:

"The whole question of Banks' fate—although he is an American citizen—has been debated incessantly in the Canadian parties. It seems to me that their political issues should not be resolved, or accentuated—at the expense of real justice to an American citizen—by the United States."

The perjury charge was designed solely for "getting" Banks, said Meany. The five-year sentence for conspiracy to commit assault was "extraordinarily harsh," he wrote.

He noted Banks had forfeited his $25,000 bail. "He has already paid a very high price for whatever misconduct may be charged to him," he claimed.

"I know Mr. Banks has been a controversial figure," stated the letter. "He has his enemies and he has his friends. Whatever may be said about him as a product of the waterfront environment, there is no doubt in my mind that he has, in his career, rendered substantial constructive service to the labor movement and to working seamen."

EXHIBIT 4

[From the Washington Post, Oct. 16, 1969]

AFL–CIO RATES HAYNSWORTH FOR "SPECIAL" FIGHT

(By Murray Seeger)

Sen. Thomas J. Dodd (D-Conn.) received a telephone call a few days ago from an old friend, Jay Lovestone, director of international affairs for the AFL–CIO.

The two men usually discuss their common interest in fighting communism, but this recent conversation was different. Lovestone was trying to get a commitment from Dodd that he would vote against confirming Clement F. Haynsworth Jr. as an associate justice of the U.S. Supreme Court.

"We don't usually use Jay on something like this," an AFL–CIO staff man said this week. "But the Haynsworth case is special."

The special nature of the Haynsworth case that it represents the first occasion since 1930 that the labor federation has actively opposed a Supreme Court nomination.

That nominee was John J. Parker of North Carolina, the last court appointee to lose a Senate confirmation vote.

As one of the 10 Democrats on the majority side of the Senate Judiciary Committee, Dodd warranted special attention in the view of the AFL–CIO. He voted to send the Haynsworth nomination to the Senate floor, but may vote against confirmation.

Another Democratic member of the committee, Sen. Joseph D. Tydings of Maryland, had an unusual visit from Al Barkan, director of the AFL–CIO Committee on Political Education before voting "no" on the nomination.

Sen. Hugh D. Scott of Pennsylvania, the minority leader of the Senate who is still uncommitted on the nomination, has been pressured to vote "no" by the only Republican in the AFL–CIO heirarchy, Lee W. Minton, of Philadelphia, president of the Glass Bottle Blowers' Association, and the United Steelworkers, biggest union in his state.

Haynsworth has become the biggest single issue for the AFL–CIO in this session of Congress and represents the first serious break between the federation and the nine-months-old Nixon administration.

The campaign against Haynsworth has also renewed the alliance between the AFL–CIO and major civil rights organizations at a time when local unions and minority groups are battling in several cities.

"This has already become part of the 1970 congressional elections," one union source said.

When Haynsworth's name first came through the Washington rumor mill, Tom Harris, the AFL–CIO associate general counsel, and Andrew J. Biemiller, legislative director, met with Joseph L. Rauh Jr., well-known Washington lawyer representing several civil rights groups.

They alerted George Meany, president of the AFL–CIO, and Clarence Mitchell of Baltimore, top lobbyist for the NAACP and other civil rights organizations.

The AFL–CIO had a file on Haynsworth because of his involvement in the long, tangled legal case involving the Darlington Manufacturing Co. and Textile Workers Union, his participation in Carolina Vend-a-Matic Co., and his civil rights record as a judge on the Federal Court of Appeals.

Harris telephoned Daniel J. Moynihan, urban affairs specialist on the White House staff who was with the President in California, and Jerris Leonard, Assistant Attorney General, on Aug. 15 and warned them of what the AFL–CIO considered Haynsworth's anti-labor and anti-civil rights record as well as issues involving his ethical conduct while on the bench.

In addition, Meany sent a telegram directly to the President raising the same issues.

"The President didn't reply, he didn't reply at all," Meany said recently. "His reply came a few days later when he announced the appointment of Judge Haynsworth."

EXHIBIT 5

[From the Washington Daily News, Oct. 22, 1969]

BAYH THE WAY: HAYNSWORTH ATTACK LABOR OF LOVE

(By Dan Thomasson)

Sen. Birch Bayh, D-Ind., received more than $68,000 last year from organized labor which is now allied with him in the fight to prevent Senate confirmation of Supreme Court nominee Clement F. Haynsworth, Jr.

But Sen. Bayh denied today that union support of his 1968 campaign for re-election affected his decision to lead the battle against Judge Haynsworth, who is accused of being anti-labor.

And Sen Bayh argued that labor's contribution to his campaign was small in light of the nearly $800,000 he spent to defeat his Republican opponent, William D. Ruckelshaus, now an assistant attorney general in the Justice Department.

Sen. Bayh conceded, however, that AFL–CIO leaders did approach him shortly after Judge Haynsworth's nomination, but before any question of a possible conflict of interest was raised about the judge, and asked him to look into Judge Haynsworth's record.

The Hoosier Senator, a member of the Judiciary Committee, said he told the labor leaders he would examine the record, hut if what he found was only a question of philosophical differences, the "benefit of a doubt" belonged to the President.

Sen. Bayh said today that he believes labor may have a "weak case" in its argument that Judge Haynsworth's decisions as a member of the Fourth U.S. Circuit Court of Appeals show he generally opposed unionism.

In fact, he said, there are cases in which Judge Haynsworth obviously ruled for labor.

Sen Bayh would not deny that labor representatives have been in and out of his office all during the Haynsworth fight.

And he acknowledged that labor had helped with some research into the judge's financial background, even helping Sen. Bayh compile his controversial "bill of particulars," against Judge Haynsworth.

Pro-Haynsworth forces charge that the "bill of particulars" was misleading and full of factual error. Sen. Bayh admits to one error and has apologized to the Judiciary Committee for it.

But Sen. Bayh bristled at further charges by Judge Haynsworth's backers that his efforts to sidetrack the nomination on "ethical" grounds are merely a smokescreen to hide the fact that as a liberal dependent upon traditional liberal money sources, he really opposes appointment of any conservative to the Supreme Court.

"I would be asking the same questions about the propriety of his stock dealings even if he were pro-labor," Sen. Bayh said

Haynsworth backers, however, challenged this today—charging that Sen. Bayh would have no support from labor for his questions about Judge Haynsworth's financial dealings if the judge were considered pro-labor.

Those pushing Judge Haynsworth's confirmation to a showdown on the Senate floor also have been privately citing what they call Sen. Bayh's "debt" to labor.

This includes, according to records in the House Clerk's office, some $42,000 given the Senator last year by the United Auto Workers of America. Sen. Bayh concedes this is the largest amount from any single contributor.

Sen. Bayh also received contributions from the United Steelworkers; Machinists Nonpartisan Political League; Trainmens Political Education League; Oil Chemical and Atomic Workers; AFL–CIO Committee on Political Education (COPE); International Brotherhood of Electrical Workers; International Ladies' Garment Workers Union; Teamsters Union (Drive); Brotherhood of Painters, Firemen and Oilers Political Fund.

He also was given a $400 contribution by the Textile Workers Union of America (TWU). The TWU first raised the Haynsworth storm by charging the judge shouldn't have sat on a labor relations case involving a textile firm because he had a one-seventh interest in a vending machine company doing business with the textile concern.

EXHIBIT 6

A SUMMARY OF UNITED STATES *v.* UAW CIO, 352 U.S. 567 (1957)

This case is noteworthy for two reasons:

The decision itself holds that the Corrupt Practices Act, 18 USCA 610, prohibiting corporations and labor organizations from making "a contribution or expenditure in connection with" any election for Federal office, covers any use of corporate or union money for political purposes within the scope of its proscription. More specifically it holds that the use of union dues to sponsor commercial television broadcasts designed to influence the electorate to select candidates for Federal office is within the ban of the statute. Thus the Court said on page 585:

'To deny that such activity, either on the part of a corporation or a labor organization, constituted an 'expenditure in connection with any [federal] election' is to deny the long series of congressional efforts calculated to avoid the deleterious influences on federal elections resulting from the use of money by those who exercise control over large aggregations of capital. More particularly, this Court would have to ignore the history of the statute from the time it was first made applicable to labor organizations. As indicated by the reports of the Congressional Committees that investigated campaign expenditures, it was to embrace precisely the kind of indirect contribution alleged in the indictment that Congress amended § 313 to proscribe 'expenditures.' It is open to the Government to prove under this indictment activity by appellee that, except for an irrelevant difference in the medium of communication employed, is virtually indistinguishable from the Brotherhood of Railway Trainmen's purchase of radio time to sponsor candidates or the Ohio C.I.O.'s general distribution of pamphlets to oppose Senator Taft. Because such conduct was claimed to be merely 'an expenditure [by the union] of its own funds to state its position to the world,' the Senate and House Committees recommended and Congress enacted, as we have seen, the prohibition of 'expenditures' as well as 'contributions' to 'plug the existing loophole.'"

In reaching this conclusion as to what constitutes political activity on the part of a union, the Court quoted the 1945 Report of the House Special Committee to Investigate Campaign Expenditures. In this connection the Court said at pages 580–1:

"The 1945 Report of the House Special Committee to Investigate Campaign Expenditures expressed concern over the vast amounts that some labor organizations were devoting to politics.

" 'The scale of operations of some of these organizations is impressive. Without exception, they operate on a Nation-wide basis; and many of them have affiliated local organizations. One was found to have an annual budget for "educational" work approximating $1 500,000, and among other things regularly supplies over 500 radio stations with "briefs for broadcasters." Another, with an annual budget of over $300,000 for political "education," has distributed some 80,000,000 pieces of literature, including a quarter million copies of one article. Another, repre-

senting an organized labor membership of 5,000,000, has raised $700,000 for its national organizations in union contributions for political "education" in a few months, and a great deal more has been raised for the same purpose and expended by its local organizations.' H.R. Rep. No. 2093, 78th Cong., 2d Sess. 3.

"Like the Senate Committee, it advocated extension of § 313 to primaries and nominating conventions, *id.*, at 9, and noted the existence of a controversy over the score of 'contribution.' *Id.*, at 11. The following year the House Committee made a further study of the activities of organizations attempting to influence the outcome of federal elections. It found that the Brotherhood of Railway Trainmen and other groups employed professional political organizers, sponsored partisan radio programs and distributed campaign literature. H.R. Rep. No. 2739, 79th Cong., 2d Sess. 36–37."

Thus it is clear from this decision that the Court regards expenditures for political education, the writing, printing and distribution of political literature, the supplying of briefs for broadcasters to radio stations, the employment of professional political organizers, the sponsorship of partisan radio and television programs, all constitute political activity. Moreover, the Court found that not only contributions for such purposes, but also expenditures for such purposes, are within the ban of the statute.

The Court, it is true, refused to pass upon the constitutionality of the statute as thus construed. Instead it remanded the case back to the District Court for trial. The Court declined to decide the constitutional questions since the decision was not necessary at that stage of the proceedings. It referred to the fact that the case was before it on an appeal from an order sustaining a motion to dismiss an indictment, and remarked that "an adjudication on the merits cannot provide a concrete factual setting that sharpens the deliberative process especially demanded for constitutional decision." It finally observed that "by remanding the case for trial it may well be that the Court will not be called upon to pass on the questions now raised." This last was a prophetic observation. Upon remand the case was tried before a jury in the District Court and the defendant was acquitted.

The opinion of the Supreme Court on the questions of law, however, still stands. It not only declares that expenditures as well as contributions for political activities are within the prohibition of the Corrupt Practices Act, but also rather clearly defines what are political activities. Since the definition of political activities is one of the most vitally important issues in *Allen* v. *Southern Railway*, it seems to me that the case is of great significance. It shows that all of the manifold activities of the various union organizations—Brotherhoods, Railway Labor Political League, Railway Labor Executive Association, COPE and AFL–CIO—all constitute political activities. Everything would seem to constitute such an activity if it should be politically motivated, or if it should tend to produce political effect. Political activity is not confined to political contributions to candidates and to their committees. It also embraces all the ramifications of political education and other assistance rendered to political causes and political candidates.

The second significant thing about this case lies in some of the concessions made by Mr. Joseph L. Rauh, attorney for the UAW, in attacking the constitutionality of the Act before the Supreme Court on December 4, 1955. Mr. Rauh is one of the leading labor lawyers in the country and was formerly President of Americans for Democratic Action. I am attaching certain pertinent excerpts from his argument.

First. Mr. Rauh conceded under questioning from the bench that the prohibitions of political contributions and expenditures by the Corrupt Practices Act apply equally to corporations and unions. At first he tried to maintain that there were distinctions but wound up by conceding that they did not mount to much. He conceded the illegality of contributions, but maintained that expenditures for the purpose of stating the political position of the union are legal because within the constitutional protection of free speech. The most pertinent parts of the colloquy will be found in Appendix A attached.

Second. Mr. Rauh contended that the question whether the funds in the union treasury used for political purposes came from dues paid voluntarily or dues involuntarily under a union shop contract is irrelevant because the statute attempts no distinction between them. The colloquy is reproduced as Appendix B.

Third. Mr. Rauh volunteered that the union used money from general treasury funds derived from dues for political purposes because it could not raise sufficient funds by appealing to the membership for voluntary contributions for political campaigns. This is the most important part of his concession, and it is set forth in Appendix C.

Fourth. Justice Frankfurter suggested from the bench that voluntary contributions from union members do not fall within the ban of the statute because the union is a mere conduit in transmitting the individual's contribution to the political candidate or committee. Mr. Rauh agreed and said that this result also follows from the legislative history of the Corrupt Practices Act. The pertinent extract will be found in Appendix D.

APPENDIX A

Mr. RAUH. * * *.

What we are asking for here is simply to have the right to say the same things outside the labor movement that we have been given the right by the CIO case to say inside.

Justice FRANKFURTER. Mr. Rauh, do you make a distinction between the provisions of the statute limiting the conduct of a corporation and a labor organization?

Mr. RAUH. We believe that under many circumstances a corporation would be the same. There are legal differences.

Justice FRANKFURTER. How?

Mr. RAUH. There are legal differences, there are factual differences.

Justice FRANKFURTER. But I mean for this purpose.

Mr. RAUH. We see no reason why a corporation should not state its views to the public on political issues.

Justice FRANKFURTER. Because the question of freedom of speech considerations are equally applicable?

Mr. RAUH. Yes, sir. One might draw a distinction. We are not urging such a distinction.

Justice BLACK. Suppose a corporation is to buy all the stock of a newspaper, could the newspapers get away from this act?

Mr. RAUH. Under the government's interpretation they could not. Under ours, our interpretation makes everybody equal, the newspaper stating its views and the union stating its views. What does the government say about the difference between this and CIO? The government refers to literal language but it is the same. It refers to legislative history but it is even clear they intend no such extension. It says we are emasculating the statute but as my answer to Justice Harlan, there is plenty left and finally this is really the crux of the case.

The government says at page 17 of their brief at the bottom of page 17 that what we are doing differs but little from a direct contribution, the distinction lies only in the fact that in one instance the candidate would apply contributed funds to purchase television time and in the other the union would buy it for him.

No, we are not making a contribution, we are stating our position. It may or may not benefit the candidate. It may or may not be what he wants said.

It has none of the corrupting influences of a contribution and finally I would like to return to Mr. Justice Frankfurter's question of yesterday. I agree on reflection that there are 2 motives that we share in stating our position.

There is the motive of wanting to win the election and there is the motive of wanting to state your position. But I say it is relevant that there is the motive of sating your position which may be protected by the Constitution more likely than the motive of handing over money. Therefore having the two motives is not a negative factor such as was suggested yesterday but a positive factor.

* * * * *

Justice HARLAN. Do you say that the statute is also unconstitutional as it applies to a business corporation?

Mr. RAUH. There are differences, sir, between the union and a business corporation. A union is a group of men with a common interest. A business corporation has its control in the man who owns the most stock. It gets its money from a public which is completely disparate in views.

Therefore, one can make a distinction between a corporation and a union, and the decision of the corporation will have to come here some day if that case is raised.

I personally raise none, and our union takes the position publicly that we feel that democracy is best protected by corporations having the same right to state their position on candidates that we have.

I can only say, sir, that there are differences between corporations and unions which might at some future time create a difference in results. I urge none.

Justice FRANKFURTER. As to the—I suppose you don't because you would have a hard time differentiating between the right of a corporation to urge economic interests which bind those disparate members together.

Mr. RAUH. We urge no differentiation.

For a hundred years, if Your Honors please, we have been engaged in political activity. Our own union constitution, from its first day, urges it. One cannot draw a line between bargaining and politics. Bargaining is supplemented by legislation, and legislation is supplemented by bargaining.

Justice FRANKFURTER. Would you put a limit as to the amount of expenditures?

Mr. RAUH. I would say reasonable limitations. It would depend on whether it was a reasonable limitation on free speech. No effort was made to do any of these things.

Justice FRANKFURTER. I understand that, but I am trying to test this proposition. Can Congress say "You shan't spend more than 'X' thousand or 'X' hundred dollars"?

Mr. RAUH. They might try that on individuals.

Justice FRANKFURTER. But not on unions?

Mr. RAUH. I say if you had a general regulatory statute limiting expenditures, I see no reason why we shouldn't be part of it.

Justice FRANKFURTER. You would have to treat the corporation or labor organization the same way that you treat an individual, is that it?

Mr. RAUH. I would think that if you had a—yes, basically I would say there are rights to speak here that ought to be protected. I hadn't thought about this sheer matter of money limitation, because——

Justice FRANKFURTER. But it is very relevant, I should think.

Mr. RAUH. But it sounds, I would only suggest, sir, that is sounds rather artificial.

Justice FRANKFURTER. Why? You say you can't spend more than a million, if you collect the fund for other purposes, and then go into politics. We have put limits on corporations, haven't we?

Mr. RAUH. On expenditures. Well, you have now a bar, the same bar we are under,

but there are no numerical limitations, sir. The limitations are on the candidates' expenditures, and it is absolutely historically a matter of record that they are not complied with. It is in the daily press that the expenditures——

Justice FRANKFURTER. That is a different problem.

Mr. RAUH. But there are no limitations of this type other than on candidates which have been placed.

Justice REED. There is a limitation on personal contributions.

Mr. RAUH. Yes, sir, of $5,000, which is avoided by giving to each committee.

Justice REED. To each committee.

Mr. RAUH. To each committee, yes, sir.

Now, you cannot split legislation from bargaining. At the bargaining table we get Blue Cross and Blue Shield, and at the Congress we ask for national health insurance to supplement it.

In Congress we get unemployment compensation, and at the bargaining table we supplement it with supplementary unemployment payment.

This is as one, what you have there, the bargaining and the legislative process.

APPENDIX B

The CHIEF JUSTICE. Mr. Rauh, before you get to constitutionality, would you mind elaborating just a little on what you said, to the effect that this was not a statute to protect the minority in the unions?

Mr. RAUH. Sir, it is——

The CHIEF JUSTICE. You stated it, but you didn't elaborate on it. Would you mind doing that?

Mr. RAUH. Sir, I will do that right at this moment as part of the constitutional argument.

The CHIEF JUSTICE. Oh. Well, if you are going to do it anyway, go right ahead in your own way.

Mr. RAUH. I can do it right now.

I was going to say, in the order that I was going to follow, I was going to say that the prime presentation of the Solicitor General yesterday can still be boiled down to that of a murder defendant who said, "We didn't do it, but we were justified in doing it."

I will leave aside "We didn't do it" for a moment, and come to "we were justified," because "we were justified" is based on this minority argument.

If Your Honor pleases, this statute has nothing whatever to do with minorities. This statute applies if every member of the union supports the expenditure. This statute applies if every member of the union supports the same candidate. This statute applies whether there is a union shop or not. This statute applies even if you have a contracting-out arrangement.

Now, by that I mean this, sir: Our union expends its funds in this area for political broadcasts out of a thing called the Citizenship Fund. We allow any member who wants to, to say he does not want this money spent for political activity, and it will go to some citizenship fund such as the American Heritage Society.

In other words, while the Government defends this statute on the ground that it was intended to protect minorities, it is not a protection of minorities, because you could have done that much simpler

Why didn't they say, "Let the minorities, if they want to, have their right to contract out the fund," or why didn't they say "It is all right if there isn't any minority"?

Senator Taft made clear what they were doing. Senator Taft said the purpose of this bill was to take labor out of politics. And the Solicitor General yesterday, with commendable candor, said the purpose of the bill was to minimize the influence of labor at the time of an election. That was the purpose.

There was no purpose of protecting the minority, because the statute isn't aimed at the minority problem.

And in the area of free speech, where this Court has so many times made clear that the limitation on speech must be as narrow as the evil presented, if they were going to deal with the minority problem it was absolutely essential that they limit the matter to the minority problem instead of saying "Unions, you are out of political action."

And, as we say in our brief, and we have made a great deal of this point, "This statute was not aimed at minorities, because if it were unanimous, we can't act. If we have a contracting-out scheme, we can t act. If every member of the union wants to go for this, we can't act."

So that is what I meant by that, sir, when I said this does not deal with the minority problem.

Now, what we have here is a denial of access to the public of the collective views of union members, a denial of access to press, television, radio, magazines, public rallies, letter-writing campaigns.

What this statute does is to put in the hands of the opponents of labor the right to decide whether the voice of labor may be heard. If we want to put our position out, the decision then whether it shall be heard, if this statute is valid, becomes the decision of Hearst, Howard and Sarnoff. They control whether we get heard.

But if we can buy the time, then we decide whether we can be heard.

This statute, as I say, denies unions access to the media of communication except at the will of the opponents of labor, and it is a denial of free speech at the very heart of the democratic process.

The great decisions of this Court, in Stromberg, in Near, the great dissent in Whitney, are based upon the proposition that free government by free men depends upon full discussion of the great issues of political life.

APPENDIX C

Mr. RAUH. * * *.

In other words, what the Government was claiming was voluntary funds were perfectly clearly dues money. COPE, PAC, LLPE, was no substitute for dues money. No moneys have ever been raised for this kind of making actions, to the public mind, for making political actions of this kind.

This has never been a part of their work and, of course, we in the UAW have no such activity. Our activity in this field is carried out, and can only be carried out, with the dues money that we have available to us.

Now, the Government says they didn't do it, and I have answered that.

Justice REED. I don't understand that statement, the only way you can do this——

Mr. RAUH. The only funds available to the union are those that come from dues for the purpose of buying radio time, television time, and newspaper advertising. The small amount, sir, that has been able to be collected as voluntary dollars has all gone as contributions to the very small contributions to the candidate. We have never had the type of funds on voluntary dollars——

Justice REED. You can't get as much from voluntary dollars as you can from dues?

Mr. RAUH. Well, sir, a union man thinks he has paid, when he has paid his dues, he thinks he has paid for bargaining, for legislation, and for political activity. He doesn't feel he should pay a second time for political activity. That is why it is so hard to raise voluntary contributions.

Our constitution and the constitution of all unions set this up as a purpose, political action. When he pays his dues, he has paid for his political action. He may give another dollar or two to some candidate for an office, but he doesn't feel he is going to give another some more money.

We have collected a little, but never anything to do this job of making the public know our views.

Justice FRANKFURTER. Was it only the other day that unions went into politics? For years we had a great leader of labor who thought it was very bad to go into politics for the union.

Mr. RAUH. There was such a leader, sir.

Justice FRANKFURTER. So if you say a hundred years of history, there is a good deal of history the other way.

Mr. RAUH. There has been history the other way, but political life has—there is history back a hundred years. There was a period, as you suggest, when this was the view of some leading labor leaders. So what does the Government suggest that is justified?

It was trying to minimize the influence—these are the Solicitor General's commendable frankness—it was trying to minimize the influence of unions at elections

APPENDIX D

Justice BLACK. What is the relevancy of the emphasis on the fact that it came out of union dues?

Mr. RAUH. Well, sir, if it came out of voluntary funds then everyone agrees that it is not a violation. There is nothing in the statute that says that.

For example, take COPE, that is the Committee on Political Education of the AFL–CIO. They get voluntary funds paid separately from union dues from a number of members. Everybody agrees that an expenditure or a contribution by COPE is legal. The reason everybody agrees to that is that I think the government is under some misunderstanding about the statute on this point but we agree as to the result.

They think the statute does not apply because COPE is not a labor organization In my judgment COPE is clearly a labor organization under the statute but it does not apply if Your Honors please because Senator Taft made clear on the floor of the Senate that voluntary funds not part of dues could be used for any purpose and whether you use the government's interpretation or ours the fact is that there has never been an indictment for voluntary monies——

Justice FRANKFURTER. You don't need Senator Taft's statement to reach that conclusion. If you will just read the statute, any labor organization that makes a contribution—if you are just the conduit of other people's money, then you are not making the contribution.

Mr. RAUH. That would be another interpretation to reach the same answer.

Justice BLACK. Is there any other fact which attempts to regulate the way unions shall spend their dues? I don't quite understand the difference. It sounds as though the theory is that union members are to be protected on how their dues are to be expended

Mr. RAUH. The government is contending, sir, that that is the justification for this statute, that it is a protection of the minority members of the union.

Justice BLACK. Is there any statute which has attempted to regulate the way the unions must spend its money or dues?

Mr. RAUH. No. When I come to this point I would like to point out that this statute is not directed to the minority but is to take unions out of politics.

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

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

by 250,000 to 350,000 American troops and airmen and a permanent drain on our resources badly needed at home. Reducing the troop level in Vietnam from 535,000 men to a permanent garrison of 250,000 or 350,000 men is not what Americans had in mind when they elected Richard Nixon to end the war.

Defense Secretary Laird himself discussed as a "fallback" position the possibility of maintaining a 200,000-man garrison in South Vietnam indefinitely. Unfortunately, it appears that this is what the Joint Chiefs of Staff have in mind and are really talking about when their spokesmen renew their old, stale propaganda of the war being almost won or their promises that it will slowly fade away, or that they can see the light at the end of the tunnel.

Mr. President, is it the policy of this administration to seek an end to this immoral, unpopular, undeclared war or merely to reduce the casualties and the troop commitments to what it supposes to be politically tolerable levels?

Until the President begins to make a real effort to solve the central task of forming a coalition government in Saigon, he cannot begin to make good the pledge on which he was elected. The President needs a new policy aggressively directed to a realistic political settlement. The present administration policy is totally inadequate. It rests upon the concept of an election to be conducted and essentially controlled by the Saigon militarist regime while huge numbers of American troops remain in South Vietnam. The VC and the Hanoi Government quite obviously will not accept a rigged election of that sort. Indeed, they may not accept any settlement to which the present Thieu-Ky militarist regime is a party.

The President has never really faced up to this issue. His statements about not "imposing" a government in South Vietnam miss the point entirely. In fact, the administration is imposing the Thieu-Ky militarist regime on South Vietnam every day of the year. Were we to withdraw only our financial support from that dictatorship and the huge subsidy to meet the payroll of its troops, the Saigon Government would fall within a month. Thieu and Ky would then be forced to flee and rendezvous with their unlisted bank accounts in Hong Kong and Switzerland.

The fact is that while professing a desire for peace, the administration has failed to create political conditions in Vietnam under which peace is possible. The desire of those Saigon militarist leaders to remain in power is totally inconsistent with President Nixon's statement that "What is important is what the people of South Vietnam want." These incompatible policies hold out the prospect not of peace but of a prolonged military occupation which will continue indefinitely to drain American treasure and lives.

President Nixon and all responsible Americans want to get out of Vietnam as soon as possible. Walter Lippmann has stated that we are fighting a major war in South Vietnam in order to save face. It is true just as the Chinese sage Confucius said many centuries ago:

A man who makes a mistake and does not correct it, makes another mistake.

The same is certainly true regarding nations.

It is now evident to practically all Americans that we do not have any mandate from Almighty God to police the world. There is a general realization that we never should have supported the French from 1946 to their defeat at Dienbienphu in 1954 in their attempt to reestablish their lush Indochinese colonial empire.

Then, it was a tragic mistake that we went into Vietnam with our Armed Forces and our tremendous air power and napalm bombed so many cities, villages, and hamlets in South Vietnam to "save them." We are compounding that mistake the longer our Armed Forces remain there.

Moratorium day, October 15, was the greatest peaceful mass demonstration in the history of our Republic. Americans paraded with dignity or remained away from work to show to administration leaders that Americans want the war to end without delay—that Americans demand a halt to the loss of priceless lives of recent high school graduates and the flower of the young manhood of America in a faraway little country of no importance to the defense of the United States.

Very definitely, we should bring home as quickly as possible by ship and plane, in the same manner our Armed Forces were sent, the more than 500,000 Americans in our Armed Forces now in South Vietnam. At the same time we should call on the North Vietnamese to withdraw without delay all of their forces now in South Vietnam. This total according to former Ambassador Averell Harriman, a truly great American and our most skilled and experienced negotiator, is estimated to number not more than 40,000.

I am hopeful that President Nixon will accelerate the withdrawal of American troops from South Vietnam. He should respond to the overwhelming will of the majority of Americans and immediately withdraw all of our Armed Forces from Vietnam.

The PRESIDING OFFICER. Is there further morning business?

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

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

ANNIVERSARY OF THE ENTRY OF GREECE INTO WORLD WAR II

Mr. PELL. Mr. President, today, October 28, marks the 29th anniversary of the entry of Greece into World War II. It is an important holiday in Greece for it marks the turning point in that country's struggle for liberty and freedom.

On October 28, 1940, the Greek people began a decade of fighting and sacrifice, marked by both triumph and tragedy, which encompassed some of Greece's most desperate moments and some of its finest hours. Those of us who care about the ideals for which the Greeks fought, and who care about the courageous people of that country, find it difficult to celebrate today, because of the fact that Greece is in the hands of a military regime which has made a mockery of the victories won by Greece during that turbulent 10-year period.

I have spoken many times on the floor of the Senate in recent months on this subject. I do not intend to repeat or recapitulate these comments today. Suffice it to say that the regime continues to be repressive. The Greek people do not enjoy the civil liberties which are the fundamental characteristic of a democracy. Reports of torture by reliable observers continue, despite official denials. In fact, the regime has been censored by the Consultative Assembly of the Council of Europe for violating the European Convention on Human Rights and a subcommission on human rights of the Council will present a report on this subject in December. Finally, there are persistent reports of a growing anti-American sentiment in the country based on the feeling that the United States is supporting the present regime.

The people of Greece should know that there are many in this Chamber, many in the House of Representatives, and millions of Americans who deplore the present situation in Greece. We are not only saddened by the apparent unwillingness of the Government to move toward the restoration of democracy, in the land in which democracy was born, but outraged by the violent methods being used by the regime toward those who question its principles and practices.

There is, of course, little that we can do to help the Greek people, for the character of their regime is, in the final analysis, their own internal affair. But there is something that we can do not to help the military dictatorship. To this end, I have proposed an amendment to the foreign aid bill which would curtail military aid to Greece by insuring that no additional aid is programed until the Congress so approves. I shall do all that I can and have that proposed amendment enacted into law.

The PRESIDING OFFICER. Is there further morning business?

NOMINATION OF CLEMENT F. HAYNSWORTH, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. BELLMON. Mr. President, since the nomination of Clement F. Haynsworth, Jr., for the position of Associate Justice of the Supreme Court on the 18th of August of this year, every Member of this body and particularly those Members who serve on the Committee on the Judiciary have been flooded with comments from their constituents, special interest groups, labor organizations, and from many of their colleagues, concerning this appointment.

Mr. President, every Member of this

body has heard of the "Darlington case" and the "Brunswick case." The facts of those cases and the judge's role in them have been repeated many times here on the floor of the Senate and any objective study of them can, in my opinion, only lead to the conclusion that the charges made are in fact not substantiated by any evidence before the committee or the Members of this body.

From my examination of the testimony presented at the hearings on Judge Haynsworth's confirmation, the committee was primarily interested in determining whether three basic criteria had been met by this nominee. First, is Judge Haynsworth a person of great integrity; second, has Judge Haynsworth demonstrated judicial temperament; and third, does Judge Haynsworth possess a high level of professional ability.

Using these basic criteria as guidelines upon which one should base his opinion in considering the nomination, I have found ample evidence that the nominee qualifies with flying colors.

Judge Haynsworth has made disclosures of his financial holdings in more detail than is required by any Member of this body and in much greater detail than most members of the judiciary who have previously been confirmed by the Senate.

Many members of the legal profession who have conducted cases before Judge Haynsworth as well as the organized bar, in the form of the American Bar Association, have expressed confidence in his ability as a judge to render a fair and just decision in any case appearing before him.

I would also like to point out that many of those expressing that view had, in fact, lost cases in the judge's court. However, it appears that they still hold to the opinion that the decisions were rendered fairly, using the cases decided in the past and the evidence which had been presented.

Mr. President, there is need for serious concern over the impact of this controversy on the Supreme Court.

I can find no reason to oppose a person solely because his philosophy is contrary to my own. I can find nothing which indicates that the judge has committed an unethical practice. Judge Haynsworth has been a distinguished circuit judge, and I believe he will be an outstanding addition to the U.S. Supreme Court.

Mr. President, a major confrontation over the nomination of Judge Haynsworth to the Supreme Court is coming up on the Senate floor in the near future. The public's interest in the Court, and the intense press coverage of the nomination hearings, and attacks against the nominee insure that the Nation will be watching closely as the Senate votes on this nomination.

The President has made it clear that he stands behind Judge Haynsworth's nomination. After reviewing all of the attacks made against the nominee on his civil rights record, his labor record, and on his integrity, the President reaffirmed his confidence in Judge Haynsworth. His letter of October 3, 1969, to the minority leader states:

> In order that there be no misunderstanding on the part of anyone, I send this letter to confirm that I steadfastly support this nomination and earnestly hope and trust that the Senate Judiciary Committee and the Senate will proceed with dispatch to approve the nomination.

It is equally clear that those who oppose the nomination are not ready to relent. The machinery to block confirmation has been set in motion and it is questionable if the attack could be stopped now even by those who started it.

Thus, notwithstanding the fact that a great deal of balance has been added to the whole discussion in the Senate by the efforts of the distinguished Senator from Nebraska (Mr. HRUSKA) and the distinguished Senator from Kentucky (Mr. COOK), thousands of labor union and union members and thousands of supporters of civil rights are writing and telegraphing their opposition to their Senators. Most of these communications reflect an understanding of, or exposure to, only one side of the issue. They represent the product of the massive effort that was begun several weeks ago when the entire story had not been presented. We are confronted, now, by thousands of people and organizations who have publicly committed themselves to fight the Haynsworth nomination, right or wrong.

There is another dimension to the "stop Haynsworth" effort: The outright lobbying of Senators by private interest groups. Lobbying is neither illegal or immoral. Private groups are entitled to their opinions on Supreme Court nominees as they are on any other subject. But, in the case of Court nominees, the Senate has a duty, under the Constitution, to consider their integrity, capability, and experience, and if they approve the nominee on this basis, to advise and consent to the nomination. I question what new insight into these issues will be provided by a powerful lobbying effort.

Mr. President, this lobbying effort is discussed in some detail in a Washington Post article of October 16, 1969, and I ask unanimous consent that the article be printed in the RECORD.

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

AFL–CIO RATES HAYNSWORTH FOR "SPECIAL" FIGHT

(By Murray Seeger)

Sen. Thomas J. Dodd (D-Conn.) received a telephone call a few days ago from an old friend, Jay Lovestone, director of international affairs for the AFL–CIO.

The two men usually discuss their common interest in fighting communism, but this recent conversation was different. Lovestone was trying to get a commitment from Dodd that he would vote against confirming Clement F. Haynsworth Jr. as an associate justice of the U.S. Supreme Court.

"We don't usually use Jay on something like this," an AFL–CIO staff man said this week. "But the Haynsworth case is special."

The special nature of the Haynsworth case that it represents the first occasion since 1930 that the labor federation has actively opposed a Supreme Court nomination.

That nominee was John J. Parker of North Carolina, the last court appointee to lose a Senate confirmation vote.

As one of the 10 Democrats on the majority side of the Senate Judiciary Committee, Dodd warranted special attention in the view of the AFL–CIO. He voted to send the Haynsworth nomination to the Senate floor, but may vote against confirmation.

Another Democratic member of the committee, Sen. Joseph D. Tydings of Maryland, had an unusual visit from Al Barkan, director of the AFL–CIO Committee on Political Education before voting "no" on the nomination.

Sen Hugh D. Scott of Pennsylvania, the minority leader of the Senate who is still uncommitted on the nomination, has been pressured to vote "no" by the only Republican in the AFL–CIO hierarchy, Lee W. Minton, of Philadelphia, president of the Glass Bottle Blowers' Association, and the United Steelworkers, biggest union in his state.

Haynsworth has become the biggest single issue for the AFL–CIO in this session of Congress and represents the first serious break between the federation and the nine-months-old Nixon administration.

The campaign against Haynsworth has also renewed the alliance between the AFL–CIO and major civil right organizations at a time when local unions and minority groups are battling in several cities.

"This has already become part of the 1970 congressional elections," one union source said.

When Haynsworth's name first came through the Washington rumor mill, Tom Harris, the AFL–CIO associate general counsel, and Andrew J. Biemiller, legislative director, met with Joseph L. Rauh Jr., well-known Washington lawyer representing several civil rights groups.

They alerted George Meany, president of the AFL–CIO, and Clarence Mitchell of Baltimore, top lobbyist for the NAACP and other civil rights organizations.

The AFL–CIO had a file on Haynsworth because of his involvement in the long, tangled legal case involving the Darlington Manufacturing Co. and Textile Workers Union, his participation in Carolina Vend-a-Matic Co. and his civil rights record as a judge on the Federal Court of Appeals.

Harris telephoned Daniel J. Moynihan, urban affairs specialist on the White House staff who was with the President in California, and Jerris Leonard, Assistant Attorney General, on Aug. 15 and warned them of what the AFL–CIO, considered Haynsworth's anti-labor and anti-civil rights record as well as issues involving his ethical conduct while on the bench.

In addition, Meany sent a telegram directly to the President raising the same issues.

'The President didn't reply, he didn't reply at all," Meany said recently. "His reply came a few days later when he announced the appointment of Judge Haynsworth."

Mr. BELLMON. Mr. President, it is clear, in view of the President's position and the organized opposition, that there will be a major confrontation on the Senate floor over the nomination of Judge Haynsworth.

The question has been raised from several sources that profess only an abiding concern for the well-being of the Supreme Court: "Why does not the President withdraw the nomination and avoid the bloody confirmation fight?"

Mr. President, there is need for serious concern over the impact of this fight on the Supreme Court. The image of the Court has been tarnished recently by the resignation, under fire, of the Associate Justice whom Judge Haynsworth is supposed to replace. We need to be greatly concerned by the public's loss of confidence in the impartiality of this Court.

Concern for the Court, however, does not dictate the withdrawal of Judge Haynsworth's name by the President. Instead, it counsels those who attack Judge Haynsworth recklessly to consider and decide whether their pique over the

choice of a man of his philosophy is sufficient to justify the lasting damage they may inflict on the Court.

The demands for withdrawal of Judge Haynsworth's name seem to rest on an argument that goes like this: While Judge Haynsworth has not done anything wrong, or anything that would disqualify him, he is an undistinguished choice and it would be better for the Court if another man were nominated.

Mr. President, the only part of that argument with which I can agree is that he has done nothing wrong, nothing that would disqualify him. Thereafter, my disagreement with those who make the argument is complete.

Judge Haynsworth has been a distinguished circuit court judge and it has been predicted that he will be an outstanding addition to the U.S. Supreme Court.

The public has shown little understanding of the qualities which fit Judge Haynsworth for his position. I think these qualities should be reviewed, because too many people are operating under serious misapprehension.

The nomination by President Nixon of Judge Clement Haynsworth, Jr., does not result in the Senate considering "just another Federal judge"; but rather an outstanding jurist who possesses in great measure the attributes needed for service on the Nation's Supreme Court: the intelligence, experience, character, intellectual and personal integrity, judiciousness, and proper temperament.

These qualities make for a professional qualification much needed and highly desirable in the highest court of the land.

These are the qualities which together with his personal characteristics will serve to make him an outstanding Justice. The hearings included testimony of many highly qualified witnesses in regard to the record and activities of the nominee. They studied, analyzed and considered, in detail, all aspects of this man's career, his works and his activities. They speak authoritatively on basis of fair, evenhanded appraisal.

President Nixon showed his judgment of Judge Haynsworth and confidence in him by reason of the nomination as orlginally made. He reaffirmed both on October 2, after the hearings were completed in a letter urging the Judiciary Committee, and the Senate to approve the nomination. The letter further read in part:

> I am conversant with the various allegations that have attended this nomination. I have most carefully examined the record. There is nothing whatsoever that impeaches the integrity of Judge Haynsworth. There is no question as to his competence as a Judge. There is not proper faulting of his posture vis-a-vis Civil Rights or Labor.
>
> It would be very wrong to allow unfounded allegations to deny this country of the distinguished service of Judge Haynsworth on the Supreme Court. I intend to do all that I can to secure his confirmation.

The American Bar Association Committee on Federal Judiciary, Lawrence Walsh, chairman—former Deputy U.S. Attorney General, former Federal district judge—reported that Judge Haynsworth was "highly acceptable from the viewpoint of professional qualification." It recited that it sought candid reports from a representative sample of the bar and bench of the fourth circuit. The report reads:

> 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 difference 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.

Mr. Norman Ramsey, of the Maryland and Baltimore bar, a member of the ABA Committee, testified that:

> In the opinion of the Board of Governors of the Maryland State Bar Association, he (Judge Haynsworth) is eminently well qualified to be a member of the Suprem Court. . . .

He explained that it was unvaryingly the opinion of the board that 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.

Charles Alan Wright, professor of law at the University of Texas, specialist in Federal courts and in constitutional law, author of renown—a seven-volume revision of the Barron and Holtzoff; Treatise on Federal Practice and Procedure; one on civil litigation, "Wright on Federal Courts"; and other writings—since 1964, a member of the standing committee on "Rules of Practice and Procedure" of the Judicial Conference of the United States; American Law Institute Reporter for the "Study of Division of Jurisdiction Between State and Federal Courts"; in his statement to the committee, Professor Wright said:

> With his 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*.

Professor Wright's original statement concludes 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 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.

Later Professor Wright send a supplemental statement which consists of a thorough and scholarly analysis and comment of the cases in which Judge Haynsworth has participated, centering on the areas of criminal procedure and freedom of expression. The concluding paragraph of this supplement reads:

> I end as I began. I cannot predict the votes of Justice Haynsworth. . . . 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.

Prof. G. W. Foster, Law School of University of Wisconsin since 1952, onetime administrative aide to Secretary of State Dean Acheson, and legislative assistant to U.S. Senator Francis J. Myers, Democrat, of Pennsylvania, at that time whip of the U.S. Senate, served from 1964 to 1967 as a consultant on problems of school segregation to the U.S. Office of Education. At one point in his statement he testified:

> 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.

By way of conclusion, Professor Foster used these words:

> 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.
>
> 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.

It is clear, then, that we are dealing with demands to withdraw the name of a distinguished jurist who will be an outstanding Associate Justice. It is no trifling matter to turn such a man aside.

The attacks on Judge Haynsworth, as they have been presented to date, are ill conceived and founded more on fancy than on fact. I will not attempt to go into detail on these matters at this time. Memorandums have been distributed to all Senators discussing Judge Haynsworth's record as a judge. It is clear to me that at no time has he exhibited a bias toward any party that deprived that party of justice or that disqualified the judge from sitting in the case. His ethical conduct has been reviewed carefully and no violations of statute or canon have been substantiated. Throughout it all, Judge Haynsworth has been as cooperative and as candid and as patient as you could expect any man to be.

For the Senate to fail to confirm him now, despite the lack of substance in the

attacks made upon him, would be to yield to coercive political pressure.

To look to expediency as the justification for defeating this nomination, in my opinion, would be to sacrifice Judge Haynsworth and ultimately the well-being of the Supreme Court.

The independence of the judiciary as a whole and the Supreme Court in particular is a vital element in our system of self-government. Judges are appointed to the bench for life and serve to interpret the law without depending upon a constituency that they must please. They are not expected to make "popular" decisions, they are charged with the duty of applying the law, as they see it, in as fair and careful a manner as humanly possible.

What happens to the independence of the Supreme Court if a nominee can be forced into defeat by powerful opponents not because he is unqualified, but because they oppose his philosophy?

What prospective nominee, who values his independence, will submit himself to a political litmus test controlled by special interest groups. The lessons of the Haynsworth nomination are apparent. If he fails the test, will another worthy nominee willingly submit their integrity and honor to attack? The importance of this case goes far beyond this single instance.

The defeat of Judge Haynsworth would have deep meaning to the public. It will be obvious that only nominees with particular views will be entitled to sit on the Court. The reason for the public to have confidence in the Court's independence will be sadly diminished.

Just as the Supreme Court cannot decide constitutional questions on the basis of expediency, Mr. President, the Senate cannot afford to select Justices on the basis of expediency.

Judge Haynsworth is a highly qualified and truly honorable man who will grace the Court.

I commend the President for his support of the nominee and urge the Senate to advise and consent to the nomination. I intend to give him my full and unqualified support.

Mr. HRUSKA. Mr. President, will the Senator from Oklahoma yield?

Mr. BELLMON. I yield.

Mr. HRUSKA. I commend the Senator from Oklahoma for the statement he has made on the subject he just discussed. It is apparent that the Senator has done a commendable thing; namely, he has gone into the record and determined for himself the facts upon the points he has canvassed in his remarks. This we all should do.

Mr. President, I speak as one who has been present at the bulk of the Haynsworth hearings and who has familiarized himself with all of the record. I believe that the points stressed and emphasized by the Senator from Oklahoma today should be taken to heart, not only for the instant case, but also because of the impact the decision in the matter of confirmation of Judge Haynsworth will have upon similar situations in the future. This is certainly something which will be of great influence, not only in the Supreme Court, but also in the inferior courts as well.

Again I want to say it is well that the Senator from Oklahoma has spoken as he has after the careful and studious attention he has given to the record.

Mr. BELLMON. Mr. President, I thank the Senator from Nebraska for his remarks.

Mr. STEVENS. Mr. President, will the Senator from Oklahoma yield?

Mr. BELLMON. I yield.

Mr. STEVENS. I have just arrived in the Chamber and assume that the Senator from Oklahoma has stated his position on Judge Haynsworth. We discussed this matter yesterday, and I want to congratulate him on reaching his decision.

Let me say that I have not yet reached mine but that the comments the Senator has made today, which we discussed yesterday, will have a great deal of impact, I think, on those of us who share freshman status with him.

I thank the Senator from Oklahoma very much.

Mr. BELLMON. I thank the Senator from Alaska.

ORDER OF BUSINESS

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

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

U.S. INTERVENTION IN SOUTHEAST ASIA

Mr. COOK. Mr. President, I have probably received more mail on the Vietnam conflict than upon any other subject of national concern during my first year in the Senate. Of all the many hundreds, even thousands, of communications, two stand out in my memory. They came from men involved in the war as members of the U.S. Army.

Now, I have not broken with the administration in its conduct of the war because I sincerely believe that no one seeks a more rapid termination of the conflict than does the President. However, I have always believed our involvement in any land war in Southeast Asia is ill advised. This feeling applies not only to our initial decision to become involved in Vietnam, but also to any possible intervention in the future in Laos, Thailand, or other Southeast Asian countries.

The frustrations and heartbreak which would result from such interventions in the future can be anticipated by benefiting from the lessons of the past. These lessons can best be taught by those with the greatest experience; those who are called upon to fight and die for causes which they do not comprehend—the young American fighting men.

The greatest lesson any Senator can learn about the futility of any more Vietnams can be acquired by reading the following letters from two of my constituents. Mr. President, I ask unanimous consent that the letters I received this year from Sp4c. Raymond Clooney and Pfc. Ronald E. Bogle appear in the RECORD at this point.

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

DEAR SENATOR COOKE: I have been asked by my husband to forward this letter to you. It reads as follows:

It's hard to begin because where did Vietnam begin, (or I should say this war in Vietnam)? Why did this war begin and when will it end? These are questions that so far have not been answered by our State Department. I don't really propose to attempt to answer these questions—that would be foolish. I simply wish to give a few of my impressions of this war from where I am right now. And right now I'm sitting damn close to a "foxhole" about five miles from the Cambodian border in what is called III Corps.

For six months now, I have been involved in search and destroy and night ambush missions. My unit searches for enemy bunker complexes during the day and sets ambushes on jungle trails by night. The ultimate mission is to kill the enemy. And we do. They also kill us. Boris Pasternak refers to this as a product of man's insane logic. In his novel, Doctor Zhivago, Pasternak refers to war as "mutual extermination." Most people sit back and say, "Yes, how true"—and yet are insulated from the torn flesh, screams and cries of the dying, and the eternal anxiety of those still alive who must carry this war to the next day.

The horrors of this war are as real as those of our past wars and it continues year after year without abate.

The people closest to the war are the "grunts." These are the young people drafted into the army and forced with the threat of imprisonment if they don't fight and kill. These are the same people who hate this war the most. These are the people who know their lives are at stake.

Right now I am tempted to quit writing this letter, it seems so useless. But the death of a friend several hours ago forces me to continue. His death was in vain, and perhaps, this will be too.

Maybe all this will be is a plea in the distance for the people here to come and say a sad prayer for those who have already died. This is a plea for you at home to put pressure on the elected representatives to fight for total disengagement from this battlefield.

It is time for the people of South Vietnam to take up this battle. They have the people, they would have our continued financial support, and have had a ten year period to organize an effective army. They should be able to take this battle from our shoulders, if they want to. If they don't want to take up the battle, how much longer can we sustain them in this present quasi military government? There's a crude saying in reference to a hesistant bowel movement that applies here.

I must end this letter now, dark is here. I hope the young people will read this letter (it has been sent to various newspapers) it's their lives as stake. As for the older people, your son's lives. Those of us over here have faith in our government at home and I hope we are not let down.

Do not accept Plato's philosophy that, "Only the dead have seen the end of war." Many people already are asking "Where have all the young men gone?"

Hope to see Kentucky again.

Sincerely,

Sp4c. RAYMOND CLOONEY,
1st Air Cavalry Division.
APO SAN FRANCISCO.

Local officials are concerned also because of a lack of guidelines for future development of the regional airport concept. Land for airports is becoming scarce and our hopes for expansion of the system may be determined by land availability in 15 or 20 years. We must be prepared to meet these demands—not in 10 or 15 years—but now. Innovation demands preparation.

The amendment would require that initial planning efforts be completed in 1 year. Hopefully, the Senate will pass this bill by the end of this session and the President will appoint a body that will submit its report by January 1, 1971.

Can the objective of obtaining national air system guidelines be achieved through the existing provisions of S. 2437 without establishment of a special commission? I do not believe so for several reasons, and that is the reason I have offered my amendment.

First, as the bill presently states, the Secretary of Transportation is to prepare and continually update a "national airport system plan," and in the process, to consult "to the extent feasible" with other Federal agencies.

I believe, however, the cooperation of the directly concerned agencies can be obtained far better through joint service on a commission than through discretionary consultation by a single department.

Second, air system guidelines must deal not only with airports but with aircraft, air routes, air traffic control and ground access. Here again, the bill directs the Secretary of Transportation to consult "to the extent feasible with air carriers, aircraft manufacturers, and others in the aviation industry."

Any basic air system decisions, however, have vast economic implications for all sectors of the industry. Such decisions should be made with built-in industry participation.

Third, the bill directs the Secretary to consult with State and regional planning agencies and airport operators. Here again, the judgment of area representatives should be carefully incorporated in these decisions.

Fourth, because of the broad impact of air system decisions on the Federal Government, the air industry and the Nation's major communities, decisions should reflect the judgment of key figures from each of these sectors.

Commissions often produce fat reports and thin results. This amendment incorporates the Commission securely into the procedure for national air system planning by its inclusion in a bill that provides funding for the facilities of the future.

With the imminent prospect of sizable Federal airports and airways' support, the uncertainties concerning future aviation markets and the broad community concerns about new and expanded airports and access, the key ingredients for reaching general agreement on the optimum form of the future air system are present now.

Such agreement can best be achieved by a commission—directed to prepare general guidelines for the coordinated development of airports, aircraft, airways, air service, and ground access.

Mr. President, I urge my colleagues on the Committee on Commerce to consider this amendment to S. 2437 very carefully. Its potential benefit to the aviation industry cannot truly be measured. But it is a beginning to a solution of a problem that distresses all Americans.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of my amendment No. 138 for the information of Senators.

There being no objection, amendment No. 138 was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 138

On page 10, lines 21 and 22, strike out "within two years of the date of enactment of this Act" and insert in lieu thereof "prior to January 1, 1971".

On page 10, line 24, after "The plan" insert "shall be prepared and revised with the advice of the Aviation Advisory Commission established pursuant to subsection (d) and".

On page 15, between lines 2 and 3 insert the following:

"AVIATION ADVISORY COMMISSION

"(d) (1) The President, with the advice of the Secretary, shall appoint an Aviation Advisory Commission consisting of members representing the Departments of Transportation, Defense, the Interior, and Housing and Urban Development, the Civil Aeronautics Board, the National Aeronautics and Space Administration, the Air Transport Association of America, the Aerospace Industries Association of America, Airport Operators Council International, the Association of American Railroads, the American Transit Association, the American Automobile Association, the American Trucking Association, the Aircraft Owners and Pilots Association, the Airline Pilots Association, several major metropolitan areas, and the fields of conservation and community development. The President shall also appoint a Chairman for such Commission with the necessary qualifications to lead such Commission in effectively carrying out its functions.

"(2) Such Commission shall—

"(A) advise the Secretary in the preparation and revision of the national air system plan pursuant to subsection (a);

"(B) prepare a long-range national air system plan for at least the year 1980 or the foreseeable needs of the Nation thereafter giving consideration to airport location and size, surrounding land use, terminal arrangements, ground access, airspace use, air traffic control, airline route structure and administrative arrangements, aircraft design, environmental effects, effect on urban areas, and costs of carrying out the plan;

"(C) report an initial such plan to the President and the Congress prior to January 1, 1971, and make any necessary revisions in such plan thereafter and report such revisions to the President and the Congress; and

"(D) make such investigations and studies as are necessary to carry out its functions.

"(3) Members of such Commission who are not regular full-time employees of the United States, shall, while serving on the business of the Commission, be entitled to receive compensation at rates fixed by the Secretary of Transportation, but not exceeding $100 per day, including traveltime; and, while so serving away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

"(4) The Secretary shall engage such technical assistance as may be required to carry out the functions of such Commission, and the Secretary shall, in addition, make available to the Commission such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of Transportation as the Commission may require to carry out its functions.

"(5) In carrying out its functions pursuant to this subsection, such Commission may utilize the services and facilities of any agency of the Federal Government, in accordance with agreements between the Secretary of Transportation and the head of such agency."

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

THE NOMINATION OF CLEMENT F. HAYNSWORTH TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. HRUSKA. Mr. President, yesterday the American Trial Lawyers Association announced the results of a poll regarding the issue of the confirmation of the nomination of Judge Haynsworth. It is to that subject that I should like to address a few remarks.

First of all, to set the general background, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a news account of that poll as published in the Washington Post for October 27, 1969.

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

(See exhibit 1.)

Mr. HRUSKA. Mr. President, the American Trial Lawyers Association is a very fine professional group. It has a membership of some 24,000 lawyers. They are primarily trial lawyers in plaintiffs' cases and personal injury cases, though not exclusively. They can be defendants' attorneys as well. A great many of them are defense counsel in criminal cases, though there are likewise, I understand, some who are prosecutors. The organization serves a good, constructive purpose. It is helpful in providing programs, seminars and meetings at which workshops are conducted, and lectures and demonstrations employed as a means of instruction. The end product, of course, is supposed to be a lawyer who is better equipped to handle his work as a trial lawyer.

As organizations for members of the bar go, they are a relatively young organization, and do not have the same broad scope in their activities or their purposes that the American Bar Association, for example, has. I would presume—though I do not know what the actual facts are regarding the origin of the American Trial Lawyers Association—that it was felt that by forming a special organization of this kind, they could better serve their purpose of improving their capabilities as trial lawyers by forming an organization of their own,

rather than attaching themselves to some organization already in existence.

Mr. President, when the announcement was made, some time ago, that the American Trial Lawyers Association was contemplating a poll of its members, it was suggested that such a poll, in order to be of real use and benefit, would have to be what we know as a scientific poll, one which would not be just a popularity contest for a given group, but one qualified by a certain degree of standardization, which could meet certain qualifying tests. This was a general statement, made in a friendly way. The suggestion was made that any poll, to be of scientific value and to merit more than cursory attention, would have to be a true sampling of a cross section of trial lawyers; and, of course, that would take some study, because one could not, at random, pick a list of 1,000 or 1,500 lawyers from a membership of 24,000; it would have to be a demonstrably true sampling.

Second, there should be some assurance that those lawyers from that membership roll who are called upon to participate in that poll would have read and familiarized themselves in more than casual fashion with a reliable record of the case. There is a need to respect the requirement that the best evidence should be used; and of course the best evidence, in this instance, would be the published hearings of the Committee on the Judiciary. It is a document which is quite imposing in size, containing about 750 printed pages.

I do not contend, nor do I suggest, that everyone must have read every page in that book in order to be reasonably familiar with the issues and the evidence in the case of Judge Haynsworth. However, certainly the principal witnesses' statements, the briefs and reports of the various witnesses who submitted statements, and certainly the pertinent exhibits contained in these hearings, should be considered and should be reasonably fresh in the thinking of anyone responding to a poll of this kind.

Then, there is a third requirement. In order to be meaningful and useful, those registering opposition to the confirmation of Judge Haynsworth should spell out whether that opposition is based on questions about his philosophy or his ability, or specific doubts about his ethical standards. Those questioning Judge Haynsworth's honesty or ethical position should make that fact clear and specific.

Those three tests can reasonably be applied to such a poll, and I think we might expect that there would be compliance with those tests. Perhaps there are other requirements also; but, in order for the questionnaire to be more than a mere popularity poll, at least these tests ought to be applied.

What are the facts in regard to the poll that was taken? A letter was sent by Leon L. Wolfstone, president, to some 1,204 members of the American Trial Lawyers Association; 715 of them replied, and, according to the reports made and the accounts in the press, 73.2 percent believed that the nomination should be either withdrawn or rejected by the Senate.

What is the basis of the questionnaire which was sent out and the request that was made by the president of those 1,200-odd members of the association?

This poll was conducted on the basis of a letter dated October 15, 1969, addressed to "Dear ATL member," and signed by Leon L. Wolfstone, president. I ask unanimous consent, Mr. President, that the entire letter, together with the ballot attached to the lower part of the same page, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. HRUSKA. One interesting fact is that the letter bears the date October 15. The final paragraph reads—and it is in capital letters:

> YOUR RESPONSE MUST BE RECEIVED IN CAMBRIDGE, MASSACHUSETTS, NO LATER THAN WEDNESDAY, OCTOBER 22, 1969. KINDLY SEND IT TO US VIA AIRMAIL.

Mr. President, assuming that the mailing occurred on October 15, it is reasonable to assume that it was not delivered, in any instance, sooner than October 16, and very likely a little bit later than that, particularly if the poll was conducted on a nationwide basis with some regard for geography.

Mr. President, inasmuch as the hearings of the committee were not generally distributed, and other official material was not readily available, it would be reasonable to expect that, upon receipt of this questionnaire, the careful lawyer, if he wanted to get the best evidence in the case, would direct an inquiry to the Committee on the Judiciary, asking for a copy of the hearings or some summary of them, or that he would direct his attention anywhere else he might obtain reliable information.

If he did that, it would hardly seem that the request for such additional information would arrive at the Washington office of the committee, or at the White House, much before the time that receipt of a reply was necessary pursuant to this questionnaire letter, October 22.

The Judiciary Committee staff reports to me that they received one request for the hearings from a lawyer who identified himself as a member of the American Trial Lawyers Association. About 12 requests were received from other lawyers, and three copies were furnished to the American Trial Lawyers Association directly.

So there would not seem to be any great urgent demand, for the members to equip themselves with copies of the hearings. Nevertheless, 715 of them presumably did respond to the questionnaires, with the results that I have already suggested.

It is interesting to observe that the 15th of October this year was on a Wednesday. Between Wednesday the 15th and Wednesday the 22d, there was a weekend. Normally, most professional activity is suspended or cut back during a weekend.

So I would suggest that even on the face of this questionnaire, it hardly would comply with those tests which were generally discussed already in my remarks and which commonsense would dictate. However, there is something even more significant about this questionnaire, and that is the language contained in the two full paragraphs of the letter. They read:

> Although I stated that I would inform you that the full text of the Senate Judiciary Committee hearings on this appointment will be available through the committee and that the position of the White House is available through its legal counsel, some people have informed me that they have endeavored to obtain this information, but without success.
>
> If you experience such difficulty, I respectfully suggest that you respond to this poll basing your response upon—

And, I should like to emphasize this—

> basing your response upon an objective analysis of the information disseminated through the communications media.

The second to the last paragraph then calls for the response not later than October 22. That is a sad commentary upon the operation of an organization that has concerned itself with the major issue of fair trial and free press. There is concern for the rights of defendants because of the tendency for the press, in the exercise of its freedom, to publish information without the total context or sometimes inaccurately or prematurely. Sometimes the information is prejudicial or without foundation or for some other reason inadmissible. There is the collateral problem that great care must be exercised by prosecutors and judges and other officers of the court in disclosing information that would be harmful to the rights of the defendant.

In other words, the problem is that somehow or another, the bias, the prejudice, the untimeliness, or the unfairness of newspaper accounts, whether deliberate or due to a shortage of space, prevents the entire story being told and all of the details being set out.

Whatever the shortcomings are, here we find an association of lawyers being asked to base their judgment and give a decision in the poll on the basis of an objective analysis of the information disseminated through the communications media.

This Chamber has heard a number of expositions on the inaccuracies in the printed record itself. Presumably, that would be reflected in many of the accounts which have been disseminated through the communications media. Perhaps it is in the nature of things that the media cannot, as I have already suggested, give the full copy and cannot give a full explanation of the background, and that, therefore, it cannot be held to strict accountability in that way.

Yet, many of us believe that there has been distortion and there has been emphasis on erroneous information and conclusions during the course of dissemination through the communications media. That has been documented by Senator COOK, myself and others and it will be further documented as we go along.

It seems to me that the tests that commonsense which must apply to a poll in order for it to be a useful reflection of professional judgment have not been met in this case. And I say this in all kind-

liness. After all it was notable and even laudable that the association was, concerned enough to try to ascertain the opinion of its members. However, I submit with due respect that it was not done in a way that would lend great value to the end result.

Mr. President, as far as I know, this is the first time that the American Trial Lawyers have attempted to evaluate nominations to the Federal bench, whether district, circuit or Supreme Court.

If they have done it before, it has not come to my attention.

There is a further fact that is, I think, quite significant. No special interest in the nomination of Judge Haynsworth was shown by the American Trial Lawyers Association until after the hearings had been printed. No official of the association requested to appear at the hearings and testify for the record. No witness from the association has submitted himself to questioning as to the foundation for the organization's opinion, or its validity or its reasonableness.

I grant that every citizen has a right to petition. Every member of the Republic, whether he is a voter or not, has a right to write and say, "I have canvassed a certain group, and here is what they think about Haynsworth or the United Nations or the tariff," or whatever it might be.

However, the right to petition is not at issue here. We want to know what value can be attached to a poll of this kind. In this regard, I should like to call attention to the fashion in which the role of the American Bar Association has developed through the decades with reference to processing and making recommendations of nominations for the Federal judiciary. Their experience goes back a long time. The association is one of the most eminent and oldest and largest and is most diversified in its membership.

As I recall there are as many as 200,000 persons admitted to practice law in the United States. And roughly 140,000 of them belong to the American Bar Association. That does not mean that a recommendation of the American Bar Association represents the thinking of 140,000 people. It does not mean that at all.

On the other hand, the association has developed through these years methods and procedures which allow the Committee on the Federal Judiciary of the American Bar Association to produce a report that would be considered commonsense and that would be considered professional in character.

Mr. President, I ask unanimous consent that there be printed in the RECORD at the conclusion of my remarks the testimony before the Judiciary Committee of former Federal judge, former Deputy Attorney General of the United States, Lawrence E. Walsh, an eminent member of the American bar. He is also chairman of the Committee on Federal Judiciary.

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

(See exhibit 3.)

Mr. HRUSKA. Mr. President, this testimony developed in detail what the procedures are of the committee and of the bar association in arriving at its recommendations in regard to the nomination.

I submit that it is a great contrast with the simple taking of a poll without sufficient and assured knowledge on all of the issues at hand.

Again I want to say that I make these remarks with all kindliness toward the American Trial Lawyers Association. I believe that they did make a sincere effort to make some contribution to the dialog. But I also submit, most respectfully, that the effort did not produce anything that will be of great benefit to the evaluation of the issues which are before us. We must examine these issues one by one and evaluate the various witnesses and documents. Some of the most eminent legal authorities in this field have testified during those hearings—scholars and judges, as well as practitioners.

I do believe that is the way to review the evidence, and delineate the issues in a fashion that will allow the Senate to make a final decision in this matter.

Earlier in this statement, reference was made to the trial lawyers demand for documents, such as the hearings or any other documents from the Committee on the Judiciary. I have received information from Mr. Clark Mollenhoff, in the White House, indicating that no copies of his materials were requested by any lawyer identifying himself as a member of the American Trial Lawyers Association. In addition neither the junior Senator from Kentucky nor I received a single request for the memoranda we prepared on the question of Judge Haynsworth's ethics, civil rights, or labor decisions records.

Mr. President, it is hoped that my analysis of the American Trial Lawyers poll, as well-intentioned as the poll might be, will serve aid in its evaluation by my colleagues.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. HRUSKA. I am happy to yield to the distinguished Senator from West Virginia.

Mr. BYRD of West Virginia. Did I correctly understand the able Senator to say that the American Trial Lawyers Association had not conducted such a poll in connection with previous nominees?

Mr. HRUSKA. So far as my recollection goes, I might inform the Senator from West Virginia that I recall no similar interest in such an event. If there is record of one, I would cheerfully acknowledge it. I might say, further, that I have been serving on the Committee on the Judiciary since 1958.

Mr. BYRD of West Virginia. Did I also correctly understand the able Senator to say that the American Trial Lawyers Association had not appeared before the Judiciary Committee during the hearings, as witnesses for or against the nominee?

Mr. HRUSKA. The Senator from West Virginia is correct in his recollection. That is what the Senator from Nebraska stated.

Mr. BYRD of West Virginia. Did I further correctly understand the able Senator to say that, in response to the questionnaire, 715 replies had been received?

Mr. HRUSKA. Out of 1,200 letters sent out, according to news accounts, including one that was placed in the RECORD a short time ago. That is true; that is the report.

Mr. BYRD of West Virginia. I thank the Senator.

EXHIBIT 1

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

NOMINATION OF HAYNSWORTH OPPOSED BY TRIAL LAWYERS

(By Spencer Rich)

The embattled Supreme Court nomination of Judge Clement F. Haynsworth Jr. received a new blow yesterday when the American Trial Lawyers Association asked that the nomination be withdrawn or disapproved by the Senate.

The action, taken by the group's board of governors after a study of the Senate Judiciary Committee hearing record and White House documents, followed a poll of ATLA members in which 73 per cent of the 715 persons who responded indicated they favored disapproval or withdrawal of the nomination.

Sen. Marlow Cook (R-Ky.), a leading Haynsworth supporter, discounted the poll results, saying, "That's making a popularity contest of a Supreme Court nomination."

ATLA President Leon Wolfstone said in a telephone interview from Boston that the board's decision was not based solely on the poll but was taken by a vote of the executive committee after extensive discussions Saturday night of the whole hearing record of the Senate Judiciary Committee and related documents.

Wolfstone said the 55 board members present voted by at least two-to-one against Haynsworth after examining charges that Haynsworth, a federal appeals judge for the Fourth Circuit, had ruled on cases in which he had links through stockholdings to companies involved in the litigation.

"The Vend-A-Matic case and Judge Haynsworth's purchase of Brunswick Corp. stock while Brunswick litigation was still before him was disturbing to some and probably to many members of the board," said Wolfstone, though he declined to discuss in detail the reasons for the board's "overwhelming" vote against Haynsworth. (Judge Haynsworth participated in a ruling in the Darlington case while Vend-A-Matic, a company in which he owned a substantial interest, had business with a Darlington subsidiary.)

Wolfstone said the board had adopted a resolution ascribing its recommendations—which it is forwarding to the White House and each member of the Senate—to "belief that public uncertainty in the ethical conduct of any nominee to the U.S. Supreme Court affects public confidence in the integrity of our judicial system."

The board said it was "persuaded upon the record of the hearings before the Senate Judiciary Committee that Judge Haynsworth has failed to demonstrate that sensitivity to the high standards of conduct required and expected of nominees of the U.S. Supreme Court."

Senator Cook said he was "shocked that they would consider a poll as a way to select a Justice of the Supreme Court. None of them read the record, most heard only one side and based their responses to the poll on newspaper accounts."

Cook said he suspected the poll was decisive in determining the board's position.

Wolfstone said at least half the 55 board members who voted had read the entire record and that others had read large excerpts.

The ATLA has about 24,000 members, only one-fifth as many as the much larger and much better established American Bar As-

sociation. Wolfstone announced that a poll would be taken of ATLA after the ABA's Federal Judiciary Committee, in reaffirming an earlier endorsement of Haynsworth, split 8 to 4 on Oct. 12.

"We felt that a committee of 12 whose views were no longer unanimous was not a fair, adequate representation of a cross-section of the lawyers of America," Wolfstone said.

The poll was sent out to 1204 ATLA members, some former officers and other members chosen at random. Of the 715 responses, only 91 favored approval of Haynsworth, while 524 favored disapproval or withdrawal.

In New York, meanwhile the National Bar Association, consisting of 2400 Negro lawyers, reaffirmed its opposition to Haynsworth.

The Haynsworth nomination is expected to come before the Senate in about two weeks, after Judiciary Committee reports are drafted. The committee approved the nomination by a 10-to-7 vote, but the Senate at present appears evenly split.

President Nixon has said that after consideration of the charges against Haynsworth, he is confident the judge is qualified and suitable. The President has indicated he is determined to press for Senate confirmation.

Opposition to Haynsworth in the Senate is led by Sen. Birch Bayh (D-Ind). Much of the key lobbying against him is being done by labor unions. All the judges of Haynsworth's own court, plus a block of former ABA presidents as well as the ABA Federal Judiciary Committee, have endorsed Haynsworth.

EXHIBIT 2

AMERICAN TRIAL LAWYERS ASSOCIATION,
Cambridge, Mass., October 15, 1969.

DEAR ATL MEMBER: Pursuant to a vote taken in a telephonic conference of the Executive Committee, I sent telegrams to the White House and every member of the United States Senate "firmly cautioning (them) against prematurely approving" the appointment and confirmation of Clement F. Haynsworth, Jr., to the Supreme Court of the United States "until and unless all available information is fully and fairly considered and properly evaluated."

I stated that there may have been approval "by a few individual members of this Bar Association," but that our Bar Association "has not yet evaluated or taken a position upon either his appointment or his confirmation".

I pointed out that the American Trial Lawyers Association lauds and approves without reservation the basic concept "that membership of the Supreme Court should be composed of men of unquestionable scholarly ability, and who also have demonstrated they are unquestionably discreet and sensitive in all matters that might undermine public confidence in the integrity of the Supreme Court and its membership, consistent with the need of an independent judiciary".

I further stated that since our Bar Association consists of a "large segment of the knowledgeable trial lawyers of America . . . representing the interest of the public . . ." that I would poll approximately 1,000 members—such as yourself—to obtain their opinions as to whether:

1. The Nomination should be approved;
2. The Nomination should be disapproved; or
3. The nomination should be withdrawn.

The poll will be unsigned and confidential.

Although I stated that I would inform you that the full text of the Senate Judiciary Hearings on this appointment will be available through that committee and that the position of the White House is available through its legal counsel, some people have informed me that they have endeavored to obtain this information but without success. If you too experience such difficulty, I respectfully suggest that you respond to this poll, basing your response upon an objective analysis of the information disseminated through the communications media.

An immediate reply and prompt return of your opinion is urgent since our poll must be completed and evaluated before the Board meets next week. Hence, *Your response must be received in Cambridge, Massachusetts no later than Wednesday, October 22, 1969.* Kindly send it to us via Air Mail.

Your anticipated prompt consideration of this matter is appreciated.

Sincerely,

LEON L. WOLFSTONE,
President.

Please detach! Mail now to:

President Leon L. Wolfstone, American Trial Lawyers Association, 20 Garden Street, Cambridge, Massachusetts 02138.

Check the box of your choice

1. The Nomination should be approved ☐.
2. The Nomination should be disapproved ☐.
3. The Nomination should be withdrawn ☐.

EXHIBIT 3

Our Committee was established many years ago and for the past 18 years it has at the request of the President of the United States or the Chairman of the Senate Judiciary Committee, reviewed the professional qualifications of persons under consideration for appointment to the United States Judiciary. It consists of twelve members appointed by the President of the Association, one from each circuit, and a Chairman appointed at large.

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 specialties. For example some customarily represent 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 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.

On September 5, our Committee met in New York to receive these reports and evaluate Judge Haynsworth's qualifications. The members of the Committee were unanimously of the opinion that Judge Haynsworth was highly acceptable from the viewpoint of professional qualification.

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 serviced were three of twenty-seven owned in whole or in part hy the Deering-Milliken Company which was a party to the proceeding befors Judge Haynsworth's court. Tbe 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. 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.

RETIREMENT OF JUSTICES AND JUDGES OF THE UNITED STATES

The Senate resumed the consideration of the bill (S. 1508) to improve Judicial machinery by amending provisions of law relating to the retirement of justices and judges of the United States.

Mr. ELLENDER. Mr. President, will the Senator from Nebraska answer a few questions in respect to S. 1508?

Mr. HRUSKA. Surely.

Mr. ELLENDER. I have just consulted with the clerk of the committee, and I am informed that no specific hearings were held on this bill. A series of bills were filed, to replace S. 1506 which was a comprehensive bill pertaining to various aspects of the judiciary. Is that correct?

Mr. HRUSKA. I cannot verify the number, but I am sure that if the clerk informed the Senator to that effect, that is accurate information.

Mr. ELLENDER. He stated that there were no specific hearings on the pending bill but that there was some testimony on this matter in the overall bill, S. 1506.

Mr. HRUSKA. That is probably the case.

Mr. ELLENDER. Why is not the pending bill considered together with the overall bill? What was the idea of rushing it?

Mr. HRUSKA. I do not know that it was a matter of rushing. After all, the overall bill was much more comprehensive—perhaps more controversial. I do not recall all its provisions.

An aspect of this case was selected because of its impact upon an area that was considered more vital and perhaps more pressing than other phases of the subject. It does have a direct impact

upon the greater likelihood of injecting into the Federal judiciary younger, more vigorous judges who would find a career on the bench attractive under the provisions created by this bill, who would not be attracted and who would not go into the Federal judiciary as a career if the bill is not approved. That is the objective and that is the hope of the Judiciary Committee. We believe that we have reasonable basis for thinking that it might have that result.

Mr. ELLENDER. Since the judge is appointed for life and the judicial retirement system is noncontributory——

Mr. HRUSKA. He is appointed to serve during good behavior.

Mr. ELLENDER. Well, for life.

Mr. HRUSKA. In practice, it is for life. The Senator is correct.

Mr. ELLENDER. The Senator from Nebraska has said that the purpose is to attract younger judges. If a young judge is appointed and he retires at age 50, is he still subject to being called to sit on cases, as directed by his superiors?

Mr. HRUSKA. That point was covered in a colloquy earlier today, when the Senator from Florida, who is interested in the same point, had inserted in the RECORD that part of section 371 of title 28 which makes provision for retirement of a judge now after 10 years of service and reaching age 70, or 15 years of service and reaching age 65. In that case, he remains a judge, and he remains qualified to accept assignments from the Judicial Conference or the Administrative Office, as the case may be. That is correct.

Mr. ELLENDER. Under existing law, has the retiree the opportunity to refuse to sit if he so desires?

Mr. HRUSKA. Yes; he has.

Mr. ELLENDER. So that it is possible for a lawyer, let us say, at the age of 25 to be appointed as a Federal district judge and then serve, say, 4, 5, or 6 years on that court, then be appointed to the circuit court of appeals and then the Supreme Court; and so long as he serves continuously for 20 years on the judiciary, irrespective of what court it is, he is entitled to retire with full pay and not be forced to serve unless he desires to do so.

Mr. HRUSKA. That is correct.

On the other hand, in order to complete the record, Mr. President, I think it would be presuming too much upon the good sense, the human nature, the tradition, and the history of the Senate to confirm a man at the age of 25 for such an important post, to serve for virtually a lifetime. It would be unlikely that the Attorney General would report a person of such an age to the President of the United States for nomination to that post. I thought I would mention that in connection with the subject, although I understand what the Senator is driving at. It could be an age of 35 or 40.

Mr. ELLENDER. It is entirely possible for that to happen.

Mr. HRUSKA. It is possible.

Mr. ELLENDER. There is no prohibition.

Mr. HRUSKA. There is no prohibition. It could happen. If he is appointed at 21, I imagine that, under that statute, he could retire at 41.

Mr. ELLENDER. There should be rules and regulations to prevent that. In my own State one cannot be a candidate for judge unless he has served as an attorney for at least 5 years.

Mr. HRUSKA. Yes.

Mr. ELLENDER. That is why I mentioned the age of 25. After that age, he can serve as a district judge. He can be elected, of course, and retire.

But in this case I find it strange that this bill was taken out of the main bill that was introduced and considered and presented to the Senate.

Mr. HRUSKA. There are the hearings on S. 1506. In addition, it should be pointed out that in previous sessions we have considered this matter specifically on this point, as well as the general policy of judicial retirement. That is a policy that has been considered over a long period of time and proven to be something good for the judicial system and the country.

Mr. ELLENDER. Does the Senator mean for young lawyers to retire?

Mr. HRUSKA. No; the general policy of judicial retirement.

Mr. ELLENDER. Yes.

Mr. HRUSKA. The rationale for the system we have is considered to be good and sound for the system and the country. This bill, S. 1509, is a refinement of that general system.

Mr. ELLENDER. Mr. President, I am grateful to the Senator for answering the few questions I have asked. I tried to get the hearings so that I could look into the matter further but I understand the hearings have not been printed and that they are not available. I also learned recently that the Judicial Conference will be meeting on Friday and Saturday and this matter of judicial retirement may be discussed at this meeting. That is why I have asked these questions.

Mr. HRUSKA. I am glad to have been able to respond to the Senator.

PROGRAM FOR TOMORROW

Mr. BYRD of West Virginia. Mr. President, as a reminder to Senators, tomorrow the Senate will vote by rollcall, at 12:15 p.m. on S. 1508, a bill to improve judicial machinery by amending provisions of law relating to the retirement of justices and judges of the United States.

The unanimous consent request by the able majority leader also provided for time to be set aside immediately following that rollcall vote for the delivery of eulogies to the late beloved minority leader, Everett McKinley Dirksen, a Senator from the State of Illinois.

ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 12 o'clock meridian tomorrow.

The motion was agreed to; and (at 4 o'clock and 12 minutes) the Senate adjourned until tomorrow, Wednesday, October 29, 1969, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate October 28, 1969:

IN THE COAST GUARD

The following-named regular officers of the Coast Guard for promotion to the grade of captain:

Thomas W. Wolfe	Frederick W. Folger
Frank E. Parker	John V. Caffrey
Norman P. Ensrud	John E. Wesler
James T. Clune	William R. Fearn
Charles B. Hathaway	Charles L. Blaha
Leroy Reinburg, Jr.	Sydney M. Shuman
Walter C. Ochman	William T. Adams 2d
Maxwell S. Charleston	Arne J. Soreng
Paul W. Tifft, Jr.	William H. Stewart
Roger F. Erdmann	Charles E. Larkin, Jr.
Donald F. Hall	Henry A. Gretella
John S. Lipuscek	William S. Schwob
Alfred E. Hampton	Anthony F. Fugaro
Christy R. Mathewson	Benedict L. Stabile
Walter Folger	

IN THE ARMY

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

Brantley, Thomas J., 250-48-1021.
Cobb, James B., 460-22-7118.

To be Captain

Bilberry, Ralph W. E. J., 437-62-6696.
Cook, Rollie D., 235-58-1138.
Conrad, Donald W., Jr., 542-32-9370.
Coulter, Wayne E., 360-20-7338.
Duggan, Lawrence W., 541-42-6922.
Dupont, Robert H., 128-24-5103.
Edmonds, Warren B., 223-44-8860.
Egersdorfer, Rudolph H., 118-30-2554.
Foutz, Vernon E., 235-48-6573.
Geurin, John A., 449-52-7189.
Gregg, William R., 363-40-9118.
Grimes, Paul T., Jr., 246-60-9918.
Harrington, Arnold D., 431-68-7830.
Higginbotham, James L., 258-56-1269.
Hodges, Benjamin F., Jr., 260-50-7539.
Hollwedel, George C., 089-32-9802.
Hopkins, John A., 315-32-7125.
House, Homer C., 577-50-2743.
Hurt, Henley H., Jr., 247-58-3173.
Kimura, David Y., 575-40-6590.
Kimzey, Guy S., 550-42-5375.
Kinne, Theodore L., 480-36-7237.
Lane, Bishop L., 429-62-8786.
Lively, Edmund P., 246-54-5803.
McKenzie, Robert C., 380-32-1745.
Mills, William G., 457-58-6112.
Myers, Lilburn L., 232-52-7874.
Nation, James R., 410-50-8296.
Noyes, Peter M., 034-30-6514.
Pope, Richard L., 259-50-3942.
Pugmire, James H., 519-26-4324.
Ramos, Richard J., Jr., 048-26-1845.
Samuels, Claude C., 517-46-4214.
Schneider, Wyatt L., 520-36-5634.
Shirley, Frank R., 247-48-8371.
Smeltzer, Paul N., 184-28-1311.
Warren, Billy J., 455-56-9482.
Wilson, Richard A., 151-28-7595.
Wolf, Harrison, 212-38-1612.
Woods, Lawrence R., 207-28-8745.
Young, Robert A., 573-50-7113.

To be first lieutenant

Aljets, John W., 498-42-2384.
Angel, Phillip N., 225-52-3207.
Arlauskas, Joseph, 047-32-8702.
Barnes, Brice H., 466-58-3706.
Barthmus, Winfried, 173-32-7472.
Baumgartner, Glenn W., 231-56-1061.
Beaver, John W., 232-70-4211.
Becker, Loren L., 505-40-3747.
Blieberger, Anton G., 506-52-4484.
Bonner, Robert E., 420-54-1610.
Bouault, Louis L., 084-30-9014.
Brauch, Gilbert M. F. J., 243-60-6015.
Bresser, Richard C., 371-36-0047.

Buhmann, William G., Jr., 496-48-3060.
Burke, Gerald W., 549-48-9427.
Burnsteel, Harvey L., 201-30-9684.
Busbee, Walter L., 252-54-7577.
Butler, Eulous S., Jr., 252-54-7757.
Cannon, Robert W., 515-40-8411.
Cembor, William G., 140-32-7007.
Chadderdon, Robert N., 284-34-3529.
Chastain, William M., 461-60-5555.
Chippi, Michael J., 193-28-2814.
Coldren, Lawrence E., 267-54-1591.
Combs, Dudley D., 527-48-0816.
Daly, Thomas H., Jr., 322-32-8652.
Darnell, Richard H., 425-84-1090.
Davenport, David I., II, 264-50-1949.
Dean, William R., Jr.,254-56-2506.
Devens, Robert J., 137-32-2411.
Dewitt, Emmit D., 435-50-2126.
Deutscher, Wayne E., 502-30-9732.
Dodson, Richard M., 493-42-7129.
Dorn, George N., Jr., 251-70-4907.
Dorstewitz,Ellen M., 385-42-2417.
Dougherty, George J., 143-32-3934.
Emerson, Samuel C., 378-42-5474.
English,David T., 538-36-3524.
Evert, Richard H., 506-50-6193.
Farless, Darold W., Jr.,495-46-8324.
Firman,Terrence G., 067-34-8712.
Fleming, Allan F., Jr., 087-32-8246.
Fleming, John W., 452-60-8660.
Foster, Frank C., Jr., 251-64-6779.
Gentle, Howard B., Jr., 497-42-2310.
Glasscock, Charles E., 417-48-2189.
Gramer, Frank E., 189-34-3083.
Gruwell, Joel A., 571-48-8130.
Hallissey, Stephen C., 137-32-7712.
Haralson, John T., 053-32-6555.
Harper, Sidney W., Jr., 260-66-6001.
Hartford, Thomas F., 006-42-2527.
Hattaway, William E., 464-68-7971.
Heffernan, Walter B., 032-28-1399.
Higgins, Charles L., 430-64-4640.
Housley, Robert E., 434-50-9135.
Howell, James L., 443-42-3925.
Ingham, Bruce E., 325-34-5652.
Jantovsky, Anthony J., 261-62-8948.
Johnson, Richard A., 475-38-7024.
Jordan, Charles O., Jr., 515-38-6026.
Kennedy, Ollie D., Jr., 420-54-3403.
Kilcoyne, Robert L., 192-30-0245.
Klein, Warren I., 230-46-2743.
Klippel, Philip B., 091-28-9484.
Knieser, Martial R., 080-34-1541.
Kotch, Michael C., 194-26-8628.
Lawton, John P., 224-52-5959.
Leach, George C., 010-30-9474.
Lesikar, George J., 452-66-5112.
Likens, Wilbur D., 442-40-1788.
Lyles, James H., 008-30-7487.
MacLeod, James F., Jr., 562-54-1593.
Makowski, Eugene F., 344-34-3368.
Martin, Donald L., 440-42-8874.
McGrath, Walter J., 127-30-6733.
Mellick, Paul W., 292-34-6528.
Miszklevitz, Sheridan, 358-34-9123.
Mitchell, Alan S., 007-40-8740.
Mittica, Norman T., 189-30-9404.
Mootz, Eugene D., 391-36-1390.
Moscrip, John Jr., 286-34-0662.
Nichols, John D., 257-62-6677.
Nolte, Juergen, 452-66-4543.
Owens, James E., Jr., 168-34-2196.
Parker, John S., 190-32-5626.
Paterson, Theodore B., 532-38-9983.
Pendleton, William C., 242-62-7958.
Perry, Larry J., 512-40-0511.
Posta, Charles D., 299-38-5579.
Potts, Bruce W., 503-40-5741.
Price, James T., 243-60-1595.
Randall, Herbert E., 440-38-3493.
Retterer, John M., 292-32-3746.
Richtsmeier, Ronald C., 481-40-1624.
Robertson, Michael P., 462-54-6998.
Ross, Edwin S., VI, 079-34-1061.
Schandl, John, 018-30-3229.
Shields, John E., 558-44-9472.
Smith, Henry C., III, 007-40-4330.
Smith, John T., Jr., 424-52-3182.
Smith, Robert H., 457-64-0414.
Smith, William C., 483-48-1814.
Spencer, William A., 529-40-1821.
Sport, William M., 417-50-4089.
Stankovich, Robert J., 561-52-8087.
Steen, David B., 366-34-3319.
Stocker, Ronald W., 464-62-4180.
Strickland, Bryant S., 257-64-9604.
Strunck, William G., 123-30-1667.
Swallow, Gary L., 261-60-0790.
Swisher, Ted A., 223-56-0478.
Tanner, Kenneth P., 262-54-5715.
Tenis, Andrew, 476-40-5548.
Thomason, Jeffrey H., 059-32-6137.
Tidwell, Richard L., 430-66-4323.
Vuaght, John L., 306-38-5607.
Ware, George A., III, 298-36-9578.
White, Richard A., Jr., 223-54-8042.
White, Steven L., 267-60-1215.
Whiteman, James T., Jr., 002-30-6083.
Whitfield, David, 344-36-0576.
Williams, David E., 245-54-2103.
Wilson, Edward B., 243-64-3977.
Wolf, Richard C., 512-42-7706.
Woodall, John B., 461-60-8513.
Wright, Richard H., 252-56-7098.
Zachar, Frank, 232-66-1934.

To be second lieutenant

Adair, Lawrence J., 223-60-6714.
Autz, Remy E., 527-54-7761.
Boudreau, Michael W., 545-66-8653.
Burdick, William L., 049-38-6644.
Clark, Howard W., 461-64-0473.
Cottrell, Walter T., II, 257-64-2851.
Dowdney, Stephen P., 249-70-5701.
Gragg, Larry L., 533-40-6803.
Hawk, Michael E., 580-50-0616.
Hule, Clifford R., 292-38-5302.
Jones, James R., 444-34-9777.
Lennox, Thomas J., III, 151-34-5983.
Lowman, Tommy G., 517-50-7526.
McNulty, John J., III, 017-32-4097.
Michels, George N., 556-56-8137.
Mohasci, Steve G., Jr., 572-52-6274.
Orwin, James P., 391-40-2134.
Peacock, Kenneth W., 266-64-7652.
Peyton, Gaylon A., 483-38-7751.
Piazza, Peter B., 214-36-3836.
Quick, Van B., Jr., 419-50-0282.
Rogers, Jerry A., 530-28-4186.
Siekman, Dwayne K., 507-64-1196.
Skelly, Lawrence E., 413-72-7969.
White, Roland J., 219-44-6265.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 28, 1969:

U.S. ARMY

The Army National Guard of the United States officers named herein for promotion as Reserve commissioned officers of the Army, under provisions of title 10, United States Code, sections 593(a) and 3392:

To be major general

Brig. Gen. Ross Ayers, O378526, General of the line.

To be brigadier general

Col. Jackson Bogle, O461234, Adjutant General's Corps.

HOUSE OF REPRESENTATIVES—*Tuesday, October 28, 1969*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

All the paths of the Lord are mercy and truth unto such as keep His covenant and His testimonies.—Psalm 25: 10.

Eternal Spirit, we pause with bowed heads at the opening of another day, lifting our spirits unto Thee, unto whom all hearts are open and all desires known. Teach us so to pray that Thy presence becomes real to us, that we endeavor more earnestly to do Thy will and to walk in Thy paths of peace.

We come disturbed by the problems of this period, burdened by many anxieties, tempted to feel our labor is in vain, and wondering what the future holds for us and for our Nation. We pray for ourselves in these trying times that we may not add to the divisions that divide us by giving way to petty prejudices but by our dedication to Thee and our devotion to our country may increase our unity by an ever-widening spirit of good will.

Give us strength to walk in Thy way, to travel in Thy truth, and to live in Thy light.

We pray in the spirit of Him whose life is the light of men. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Leonard, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate agrees to the amendment of the House to a bill of the Senate of the following title:

S. 210. An act to declare that certain federally owned lands are held by the United States in trust for the Indians of the Pueblo of Laguna.

The message also 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 House to the bill (S. 1689) entitled "An act to amend the Federal Hazardous Substances Act to protect children from toys and other articles intended for use by children which are hazardous due to the presence of electrical, mechanical, or thermal hazards, and for other purposes."

The message also announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the the following title:

H.R. 11959. An act to amend chapters 31, 34, and 35 of title 38, United States Code, in order to increase the rates of vocational rehabilitation, educational assistance and special training allowance paid to eligible veterans and persons under such chapters.

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

S. 1. An act to provide for uniform and equitable treatment of persons displaced

plate. The few civilian cars were considerably older and more modest.) Although we saw this new elite, we had virtually no contact with it. At the hotel, people just did not speak to other people. They had a great fear of speaking to the wrong person or saying the wrong thing. This condition produced silent dining rooms and beaches, crowded, but silent. It was not a very gay atmosphere. For example, the waiters would rotate so the same one could not serve you twice and possibly become acquainted with a Westerner. If a waiter would have a second contact with you, he would be accompanied by a security man when at the table.

Almost entirely, the common people were very friendly, or as friendly as they could be under the circumstances. The ones we could talk to were very anti-Russian and very pro-American and Austrian. German is spoken widely as a second language, more so than English in the Province of Quebec. Speaking German, and a few words of Hungarian, we could make contact with people, and visited several in their homes. The Hungarians are very likeable, warm and hospitable, and it is depressing to see them suffering under Russian occupation. We visited one fellow in Budapest who was a strong Catholic, anti-Communist. Although he has a degree in Civil Engineering, he is not allowed to practice it, and lives with three branches of his family in one small apartment. His parents and wife were in bad health and not far from death. They were not people the Regime cared much about providing with medical attention. Most of their suffering came from their determination to follow their religion. I could only think of the Biblical films which show Christians being martyred by the Romans, and thrown to the lions. In Hungary today, it is not all that different.

Although the Engineer was a Catholic-Monarchist with strong opinions, his opinions were no stronger than those of teenagers and students we met. One university student, and students are relatively privileged within the Communist Society, asked if we were fighting in Viet Nam because we wanted missile sites there to launch an attack on Russia. When we explained that was not the case, he was terrifically disappointed. Another teenager with whom we spoke at length was, along with many other Hungarians, thrown into a railroad car, guarded by Russians, and kept for two days without food during the Czech crisis last August. His dislike of the Russians, and his feeling for a Hungary he had never known, was intense. His feeling was for a Hungarian kingdom which has not existed in fact since 1918. However, after dictatorship and Russian occupation, the Hapsburg government has remained, in the minds of the people, a good government. So much so, that any display of its double-eagle symbol is forbidden, even in antique shops. It is interesting to see the Russians, and Hungarian Communists, feel threatened by a Monarchy from past centuries. But they have provided no alternatives to it, other than misery and fear.

As we could determine, those gifts of horror remain in Hungary only because of the Russian occupation. The Russians are very much in evidence in the Country, with snappy, well equipped troops, contrasting with the relatively poorly equipped and sloppy Hungarian ones. We seemed to constantly run across them, from tank units in the fields to garrisons in the towns. From one experience we had with them, they really seem to be disappointingly brainwashed. From our own, and friends' experience, they are apparently told all the Western tourists in the Country are spies. On the way back from Budapest one evening, passing through the Russian garrison town of Székesfehérvar, we stopped to pick up a woman standing in a heavy rain. We thought she would be Hungarian, but she turned out to be a Russian, apparently the wife of one of the soldiers. She saw the Austrian plate on the car and, after she was inside, said (in mixed Russian and German), "You are with the German Military Commission. Austria is bad. We have many partisans here and will shoot you. Go back to Austria". I frankly did not dare mention I was an American, lest she die of shock on the back seat. It is unfortunate, however, to think that her ideas were probably typical of those of the soldiers there. It was one of several unnerving experiences.

There are, of course, many security police in the Country, and there were several at the hotel. Since it was, at times, almost empty they did not have many people to watch, and watched us. Late one night, we had supper in a room, empty except for the waiters, a gipsy band, a table of security police (some wearing dark glasses), and us. I think we were watched enough by them to convince some of the hotel workers that we were spies. On several occasions, they would whisper, "God be with you", or "please be careful on the rest of your mission", to us. It was somewhat unsettling, as was the hotel in general.

We were, finally, quite anxious to leave and after exhortations from Hungarian acquaintances not to forget them but to remember they are not Communists, only an occupied people, we left for the border. As we approached it, several miles away, we passed men sitting on corners at the roadside, recording our car and license number. Shortly afterwards, we were stopped by machine gun armed soldiers at an opening in a strip of mined land and barber wire. After that check, we proceeded on through open country with watch towers, until we came to the border station, and a log barricade. This barricade was lifted and we drove forward just far enough to face another log barricade. Then, the first barricade was lowered behind us, sealing in our car. With fellow guards watching from small towers at the station, border police then searched the car, even checking to see if the engine compartment had been modified to hold an escapee. It was good to cross the Austrian border.

I did not find it possible to go to Hungary without becoming more anti-communist. As an economic organization, Communism appears ridiculous, and it is a fantastic oppression of the human spirit. It is significant that while we try to correct our social problems in America, with varying degrees of success, the creation and maintenance of human suffering is virtually part of government policy under Communism.

I am afraid there will be no easy settlement of our differences with it.

Sincerely yours,

J. MALCOLM SWENSON,
President.

REDUCTIONS IN FEDERAL FUNDS FOR EDUCATION PROGRAMS

Mr. CRANSTON. Mr. President, last spring the administration recommended substantial reductions in Federal funds for education programs which, I believe, threaten to undermine past Federal commitments to provide meaningful financial assistance to State and local educational agencies and libraries. In July, the House spurned the administration's recommendations by passing H.R. 13111, which restored most of the proposed cuts. That measure is now pending before the Senate Committee on Appropriations.

In the meantime, funds for the office of Education have been provided by a joint resolution on the basis of either the fiscal 1969 appropriation or the administration's revised budget estimates for fiscal 1970, whichever is lower. Consequently, programs for which the administration recommended a lower budget than that approved in fiscal 1969 have been operating at the lower level, and programs for which the administration made no budget recommendation have been in effect repealed temporarily.

Should the administration's proposed cuts be adopted, California would receive less than two-thirds of the Federal funds which it received in fiscal 1969. In fiscal 1969, California received $290,911,305 in Federal funds. Under the administration's proposed budget, that share would drop to $189,793,034. What particularly disturbs me, however, is that, under the terms of the current joint resolution, the proposed cuts are presently in effect and are causing severe financial hardships to school districts, colleges and universities, and public libraries across the country. Among the hardest hit programs are those which provide Federal funds to local school districts in federally affected areas; to State education agencies and institutions of higher education for the acquisition of library materials and resources; to colleges and universities for the construction of facilities; and to State education agencies for the acquisition of equipment and minor remodeling of schools and for counseling, guidance, and testing of elementary and secondary schoolchildren. In addition, Federal outlays for public library services and for the construction of libraries have been substantially curtailed.

Mr. President, on October 28, the Senator from New Mexico (Mr. MONTOYA) introduced Senate Joint Resolution 163 which provides much needed funds to the Office of Education to counter the restrictive effect of the current joint resolution continuing appropriations for fiscal 1970 to the Department of Health, Education, and Welfare. That resolution, which I have cosponsored, would amend the current joint resolution by incorporating the provisions of H.R. 13111 insofar as they relate to the budget of the Office of Education. It is difficult, today, to imagine anyone seriously disputing the high priority which must be assigned to education. Senate Joint Resolution 163 is an important step forward in reestablishing that priority. The House, under the able leadership of Representative JEFFERY COHELAN, of California, took this step on October 28. I, therefore, ask Senators to join the House in their concern over federally assisted education programs by supporting this indispensable measure.

JUDGE CLEMENT F. HAYNSWORTH, JR., AND THE AMERICAN TRIAL LAWYERS ASSOCIATION

Mr. COOK. Mr. President, I wish to put to rest finally any remaining sentiment there may be in the Senate that the poll conducted recently by the American Trial Lawyers Association has any validity whatsoever in regard to the nomination of Judge Clement F. Haynsworth, Jr., to the Supreme Court.

Yesterday the distinguished Senator from Nebraska (Mr. HRUSKA), the ranking minority member of the Committee on the Judiciary, outlined quite well

the deficiencies of the poll as a device for use by an organization in its deliberation over whether to endorse a Supreme Court nominee.

I wish only to add my feelings on this matter, as expressed in a letter to Mr. Leon L. Wolfstone, the president of ATLA, which I sent earlier this month, upon learning that his organization might conduct a public opinion poll upon the subject of this Supreme Court nomination.

I ask unanimous consent that my letter to him be printed at this point in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., October 15, 1969.

MR. LEON L. WOLFSTONE,
President, American Trial Lawyers Association, Seattle, Wash.

DEAR MR. WOLFSTONE: I have been informed that there will be a Board of Governors meeting of your association to consider the nomination of Judge Clement F. Haynsworth, Jr., to be Associate Justice of the Supreme Court.

First, let me express my complete dismay that your group would jump into this controversy at such a late date. I am sure that many of your membership has been following the evolving "fair-trial-free-press" discussions. In my opinion, Judge Haynsworth is being tried by the press. I believe most of your membership would agree that this is fundamentally unfair. Your announcement of related interest in this nomination has made a significant contribution to the efforts of those who would defeat this nomination through unfounded and exaggerated accusations in the press.

In addition, the device of polling a substantial portion of your membership to decide whether to endorse Judge Haynsworth is patently ridiculous and unfair. This is similar to taking a Gallop poll to determine whether the people support a politician. Supreme Court Justices are not elected but appointed. There is simply no way the lawyers you may poll will be able to render an informed judgment about this information because they have heard only one side—the press side. They will not have the opportunity to read the record and consider all aspects dispassionately.

If you feel you must get into the act at this late stage, I would suggest that you appoint a committee as has the American Bar Association. A committee would be able to study the record and render an informed judgment. Supreme Court nominees should not be approved nor should they be defeated on the basis of public opinion polls. As a lawyer, I urge you to pursue this matter in a fair and judicious manner.

Sincerely yours,

MARLOW W. COOK,
U.S. Senator.

Mr. COOK. Mr. President, no indictment of the procedure employed by ATLA could be more crushing than that given by one of its own board members, who was called upon to participate in this travesty. Mr. Charles M. Leibson, of my own State of Kentucky, is a member of the board of governors of this organization. He attended the meeting which preceded the public announcement of the poll results and the unfavorable decision on Judge Haynsworth.

Mr. Leibson relates in his letter to me that—

It was my opinion then, and it is my opinion now, that the results of the poll should not have been published, because it is inherent in such a poll that it can be no more than trial by accusations heard or seen on the news media—

He continues—

In conclusion, I believe it would be unfair to Judge Haynsworth if his nomination should be acted upon on any other basis than the sworn testimony of record before the Senate Judiciary Committee.

I ask unanimous consent that the entire text of the letter be printed at this point in the RECORD.

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

AMERICAN TRIAL LAWYERS ASSOCIATION,
Louisville, Ky., October 27, 1969.

Re Confirmation of Judge Clement F. Haynsworth, Jr.

HON. MARLOW W. COOK,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR COOK: I disagree with the action taken by the American Trial Lawyers Association in conducting a poll of some 1,200 of its members regarding confirmation of Judge Haynsworth, and also with the action taken by the ATLA Board of Governors in publishing the results of the poll and in passing a resolution against confirmation of Judge Haynsworth's nomination.

This poll, limited to 1,200 of the 23 thousand plus members, was taken before the meeting of the Board of Governors held last Saturday, October 25, 1969. At that meeting it was my motion that the results of the poll should not even be announced to the Board, let alone to the press or the membership, for the very same reasons you have been quoted as stating in the article appearing in the Courier-Journal this morning, i.e., that it was at best a popularity poll with the members polled necessarily voting (for the most part) on the basis of what they have heard or read in the news media.

My motion was defeated. The results of the poll were announced to the Board, and it is impossible to evaluate the extent to which the results influenced the deliberations of the Board thereafter on the issue of whether we should be for or against confirmation of Judge Haynsworth, or indeed, take no position at all.

It was my opinion then, and it is my opinion now, that the results of the poll should not have been published, because it is inherent in such a poll that it can be no more than trial by accusations heard or seen on the news media. I voted against publishing the poll.

It was my opinion then, and it is my opinion now, that despite the hours spent Saturday in discussing this matter, the Board could not possibly be as well informed as members of the Senate Judiciary Committee, and that we should not express an opinion. I voted against the resolution.

In conclusion, I believe it would be unfair to Judge Haynsworth if his nomination should be acted upon on any basis other than the sworn testimony of record before the Senate Judiciary Committee.

Our ATLA organization is a specialized bar, specializing in trial practice and representing the rights of the injured in court. I am justly proud of our accomplishments in improving and securing justice for the injured. I believe that our organization should have a Committee on Judicial Nominations; that this committee should be consulted before judicial nominations are made; and that it should then advise the Executive department after due deliberations, including consulting our members who have been involved in litigation with lawyers nominated to the bench, or who have tried cases before judges nominated for a higher court, thus having special knowledge of the competency of those being considered. This is the procedure that should have been followed here. Let us both work toward seeing that the government and ATLA use better procedures in the future.

Very truly yours,

C. M. LEIBSON.

Mr. COOK. Finally, Mr. President, we all know what underlies this whole controversy—politics, in that regard, I ask unanimous consent that a letter from Mr. Denzil D. Garrison, a member of ATLA from Oklahoma, to Mr. Wolfstone, be printed in the RECORD, because it suggests the political motivation behind not only the ATLA's decision to become involved, but behind the whole nature of the opposition to Judge Haynsworth.

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

GARRISON, PRESTON & BROWN,
Bartlesville, Okla., October 17, 1969.

LEON L. WOLFSTONE,
President, American Trial Lawyers Association, Cambridge, Mass.

DEAR MR. WOLFSTONE: Enclosed please find my ballot relative to the Haynsworth appointment. To date, I have not seen or heard of anything which should keep the appointment from being approved.

As a member of [1] the Oklahoma Trial Lawyers Association, may I caution you not to allow any hint of "playing politics" to enter in this very delicate matter. The so-called "Bill of Particulars" of Senator Birch Bayh is certainly laughable, to any lawyer who takes the time to study its contents.

In short, Mr. Wolfstone, you may count on my immediate resignation, if this matter is mishandled. I do not intend to lend my name to character assassination for political reasons.

I have great faith that you will not be led by those who would try to use our great and needed organization for narrow political purposes.

Yours very truly,

DENZIL D. GARRISON.

ENVIRONMENTAL QUALITY: PESTICIDES

Mr. TYDINGS. Mr. President, increasingly the threat to our environment by the widespread and indiscriminate use of persistent pesticides is being recognized. These poisons, and we ought not to forget that they are exactly that, have killed fish and harmed wildlife. Their damaging effects on human health have not yet been proven though there is mounting evidence that the toxic residues of pesticides do indeed pose a threat to our health.

Commonsense should tell us that absorbing such poisons into our body is not healthy.

Sweden and Hungary have already acted to limit the use of certain persistent pesticides. Our own Government, at long last moved by public concern, has called for a gradual phasing out of the most persistent and dangerous types. While I approve of this action, I do feel the Government could have acted sooner and should have acted far more forcefully.

The States also have begun to rec-

[1] Above deletion made at request of the writer of this letter.

as it is not physically destructive, it generally is no major threat to society.

But the current protestors maintain that in the interest of "a higher morality," the functioning of the school may be impaired and the "lesser morality" of freedom of speech or of action (of those who might want to talk with recruiters for business or the military) may be subjugated.

We would maintain that the moral character of these protesters is being endangered by their insistence on a totalitarian means (forcibly denying other students the right to meet with the representatives of, say, Dow Chemical Co.) to accomplish a democratic end. Justice Holmes pleaded for "freedom even for the thought that we hate," and the demonstrators seem not to see the strength in this principle.

By the same token, of course, students may take the means-end argument to support many of their cases against what they may believe is an oppressively authoritarian administration. And while there may be a need for reformative action on that level, it certainly is not as much a threat to our system of government as are the current demonstrations.

Being a student does not provide a shield for an assault upon our society. A university does not exist to watch placidly over its own destruction, and should not be expected to do so.

Are the campuses being subverted by professional agitatore? There is no conclusive evidence available that this is true, and Dr. Philpott took pains not to accuse any particular group of this. But campuses for many reasons are likely places for agitation.

College authorities will tell us there is a tactical pattern to the current protests. One becomes suspicious at the wide geographical area covered by the protests. And the phenomenon is not restricted to a single size school, nor to a single type school.

At least part if not most of the "pattern" probably is attributable to national student groups which openly circulate representatives from campus to campus seeking to sell specific programs. Some of these organizations are quite vocal and articulate, have definite goals (usually under the heading of "student power") and have a secure financial base, which aids mobility.

The aims of these groups are not necessarily destructive. From them a student might gain a greater "national awareness," as a high level administrator at one Alabama institution suggests. There is certainly no reason to deny flatly their presence on the campuses. Yet, because the groups have a national structure they are attractive instruments through which undesirable interests might function. Student units at member schools might be cautious, then, of endorsing blindly every action of parent organizations.

College administrators are faced with the problem of guiding, through dialogue, the vast majority of the restless students who intend no subversion. These students must be warned of the danger that some might seek to exploit them for devious purposes.

Alabama administrators have not been confronted yet with a large wave of student protest. To guard against that ever happening, they must examine their own campuses for possible genuine student grievances, and maintain open channels to all segments of the student body to identify trouble spots.

Too, campus authorities must be prepared to act quickly and decisively if they identify a disturbance as destructive to the campus life. And if the disturbance holds evidence of subversion, from within or outside the institution, they should be prepared to hand this information to the proper investigative officials.

There are insistent reasons why this should be done. Columnist Max Lerner put these reasons bluntly: "Too much thought and passion and concern has been built into the structure of freedom and community on the American campus to be scrapped in the interest of student political anger today."

[From the Anniston (Ala.) Star, Mar. 27, 1967]

PHILPOTT ON FREEDOM

With his admirable incisiveness, Dr. Harry Philpott addressed to the March graduates at Auburn recently deliberations on freedom and discipline that deserve the thoughtful attention of all Americans.

The Auburn University president spoke in a few words volumes of wisdom about freedom and what it means to man, some excerpts here catching the high points·

"This graduating class generally covers a time span on the campus from 1962 to the present. Great events have transpired during this period of time and important issues have occupied your attsntion. One of the most important themes of concern to all people in this era has been that of freedom.

"On the international scene, we have witnessed the continuation of the struggle for national liberty and the emergence of new nations. Within our own nation and state, there have been various movements seeking freedom from prejudice, freedom from poverty, and freedom from oppression. Within the community of university, students have concerned themselves with their own freedoms. No issue has been of greater concern to administrators and faculty members . . .

"Freedom, as a value or goal, never stands alone—it must always be balanced with responsibility or, to use a term that is not very popular today, with discipline. We delude ourselves when we advocate, discuss, or seek freedom as an absolute. As long as we live in a human society it must be sought within the balancing concept of discipline . . . Freedom without discipline results only in chaos, disorder, and anarchy . . .

"If you will remember only one thing that I have to say today I hope that it will be this. Human history teaches us that men will be disciplined from within or they will be disciplined from without. (Here Dr. Philpott pointed out that the leftist revolution of Russia and Hitler's rightist revolution in Germany succeeded because they provided order—even if by force—to replace existing anarchy).

"All too much of our agitation and discussion today centers on freedom *from* something. Too, little attention is given to the more important aspect of freedom *for* something.

"There is a yearning within all of us also to be our own master. Yet, it is one of the paradoxes of life that we cannot attain this unless we are mastered by something greater than ourselves. It is in losing life that we find it and we become masters only by submitting ourselves to the mastery of a great cause, a great idea, a great faith . . . In the words of Tennyson in 'Oenone,' self-reverence, self-knowledge, self-control, these three alone lead life to sovereign power'."

Dr. Philpott's words put one of our most cherished—and most perishable—possessions, freedom, into meaningful perspective.

[From the Gadsden (Ala.) Times, Mar. 29, 1967]

UNIVERSITY PRESIDENTS SPEAK FOR DISCIPLINE

Youth is a time for questing and testing.

Crusading and missionary zeal are part of its endowment. Rebellion against restraint often seems natural as breathing.

But coupled with this fervor and enthusiasm is a need, perhaps subconscious, for restrictions imposed by authority. Youth may rail against the restrictions—but secretly it welcomes having its prerogatives defined. It recognizes the need for some sort of protection during its questing years.

For this reason we have been totally out of sympathy with the tendency of many universities to refuse to acknowledge any responsibility for establishing and maintaining reasonable standards of ethics and conduct on campus.

It is not the rebelliousness of youth that has so often distressed us, but the acquiescence of the establishment. Capitulation to all the demands of youth is unnatural and unhealthy. And the results may be disastrous.

Therefore, we note with satisfaction the stand of President J. Roscoe Miller of Northwestern University in a specific ruling and of President Harry Philpott of Auburn University in defining a philosophy for student behavior.

Dr. Miller turned down a recommendation by a student-faculty committee that drinking be permitted on campus. The proposal, he said, "runs counter to standards of . . . administration and is clearly not reconcilable with the moral and ethical standards of this university.'

He was not impressed by the committee's plea that the no-drinking rule is constantly violated. True, he acknowledged, hut revoking the rule would merely "make an already difficult situation impossible for administrative control."

This is the voice of common sense.

Dr. Philpott brilliantly presented the necessity for discipline in an address to Auburn's pre-Easter graduating class.

"Freedom without discipline results in chaos, disorder and anarchy . . . From history there is a clear proclamation that the one thing human beings cannot endure is chaos and disorder. A society cannot exist without discipline, nor can an individual.

"Human history teaches us that men will be disciplined from within or they will be disciplined from without. To speak of freedom only and forget the necessity of discipline is to forget the recorded experience of mankind."

Dr. Philpott touched on the difference between the desire of youth to be free from something and the more mature desire to be free for something. He concluded:

"It is our hope that you will seek and covet freedom for the creative use of your highest and best talents, for the constructive service of your fellow man and for the fulfillment of God's purpose in your life."

JUDGE CLEMENT HAYNSWORTH

Mr. McGOVERN. Mr. President, the nomination of Judge Clement Haynsworth to the Supreme Court, as is the case with any such nomination, calls for the exercise of one of the Senate's most imposing responsibilities. The obligation to confirm or deny confirmation is equally as demanding as the President's power to nominate the membership of the highest judicial body in the land. It requires our careful attention not only to the judicial philosophy of nominees—which should play a relatively minor role in our analysis—but to their intellectual stature, their personal qualifications, and their sensitivity to issues which can enhance or degrade respect for the law.

It misses the point to describe our investigations as "character assassination." In the case of Judge Haynsworth we must assume that his background was thoroughly examined and considered before he was nominated. It would be an abandonment of responsibility for the Senate to do less prior to confirmation. We have a further obligation to apply our stand-

ards, just as the President has applied his, before we vote, notwithstanding the possibility that our standards may differ from those formulated in the White House.

Of the arguments against confirmation I find quite persuasive Judge Haynsworth's retention of a large block of stock and of corporate office in a company which was bound to, and did, become involved in a controversy before his court. I think it raises serious questions about his judgment.

In the November 1 issue of the New Republic, Yale Law Prof. Alexander Bickel writes of the meaning of this set of circumstances. He points out, correctly, that—

> Judge Haynsworth's honesty and integrity have not been successfully impugned—or impugned at all—and the President is quite right; it would be unfair to drive him off the federal bench. But the Senate is not considering articles of impeachment. It is weighing Judge Haynsworth's qualifications for higher judicial office. The issue is not his honesty but his ethical sensitivity.

Further on, Mr. Bickel suggests that—

> There are two sets of standards of ethical behavior in any profession; a common standard, codified with more or less precision, and a more sensitive standard, which is hopefully the emerging common one. It is desirable to hold nominees for the Supreme Court to the standard of highest ethical sensitivity.

Mr. President, because I believe it provides a most helpful analysis of the questions which should concern us in passing on the Haynsworth nomination, I ask unanimous consent that Mr. Bickel's article, "Does It Stand Up?" be printed at this point in the RECORD.

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

DOES IT STAND UP?

(By Alexander M. Bickel)

Mr. Nixon is the first genuine lawyer-President in over half a century, with the ambivalent exception of FDR—and his professional skills were in evidence as he insisted on the nomination of Judge Clement Haynsworth for the Supreme Court. Mr. Nixon makes the strongest case possible for confirmation. But lawyers are often better than their cases, and the Haynsworth case is ultimately weak.

The President's basic argument is that Judge Haynsworth is a competent—Mr. Nixon thinks a good deal better than competent—lawyer, that his ideological leanings are congenial to the President, and no concern of the Senate, and that the charges of misconduct that have been leveled against Judge Haynsworth have in no instance been supported by proof of dishonesty, impropriety or even the appearance of impropriety. The emphasis, of course, is on the charges of misconduct, and the President says that in no case which Judge Haynsworth sat was there the remotest showing that he had improperly used his influence in a party's behalf, or that he was in any way himself improperly influenced in a party's favor. Judge Haynsworth's choices whether to sit or disqualify himself in various cases where he was alleged to have an interest conformed to standards established by law and by canons of judicial ethics. He is an honest man, the President says, and his integrity is above suspicion. To withdraw the nomination in these circumstances would be unjustifiably and cruelly to "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."

Judge Haynsworth's honesty and integrity have not been successfully impugned—or impugned at all—and the President is quite quite right; it would be unfair to drive him off the federal bench. But the Senate is not considering articles of impeachment. It is weighing Judge Haynsworth's qualifications for higher judicial office. The issue is not his honesty, but his ethical sensitivity. No more than insensitivity to ethical standards of judicial behavior was shown against Justice Fortas when the Senate, with no thoughts of driving him from the bench, failed to confirm him as Chief Justice. And no dishonesty, no actual influence-peddling was shown against Justice Fortas, even later, in connection with the Wolfson matter, when he was in fact driven from the bench. Just plain honesty and law-abiding conduct are not all we are entitled to demand of men who are to be raised to the highest judicial offices. Judge Haynsworth's transgressions are not comparable to Justice Fortas' in the Wolfson matter, although Justice Fortas' downfall was itself the consequence more of the appearance than the reality of his behavior. But Judge Haynsworth is up for promotion, not banishment.

It is wrong for judges to serve as corporate officers. The Judicial Conference said so in 1963, when it was discovered that some federal judges did hold corporate office. Most did not, of course. Judge Haynsworth was one of those who did, and he quit only when he was told to. Senators who oppose Judge Haynsworth's nomination are right to think that it would be better to have on the Supreme Court men who don't need to be told. It does not follow that they must also wish to banish Judge Haynsworth from public life.

Judge Haynsworth owned a one-seventh interest in a company, Carolina Vend-A-Matic, which did its business right in his judicial circuit. His initial investment was small, but when he sold it in 1963 (he had been an officer of Vend-A-Matic, and he sold out after he was required to resign) it was worth upwards of $400,000, and apparently constituted about half his personal fortune. More than once, Judge Haynsworth sat in cases involving customers of Vend-A-Matic. The contracts with these customers were sizable; in the Deering Milliken case, $50,000, plus another $100,000, Warren Wheeler reports in *The New York Times*, awarded while the litigation involving Deering Milliken was pending before Judge Haynsworth and his colleagues.

What if a judge owned stock in US Steel, as no doubt some do, says the President, defending Judge Haynsworth? US Steel has many customers. Must a judge disqualify himself in every case involving one? If so, says the President, perhaps half the federal judges "would have to be impeached" because they do not disqualify themselves in such cases. But how many federal judges own one-seventh of US Steel? How many have a sizable investment, constituting something like one-half their wordly goods, in a company actively soliciting business right in the judge's jurisdiction, where the company's customers are almost certain to surface in litigation in the judge's court? Besides, the question is not whether Judge Haynsworth should be impeached.

Judges may own stock, and perhaps they should be allowed to manage their own investments rather than being required to put them in trust and thus to insulate themselves from them. But Judge Haynsworth not only a heavy investment in a local business—Vend-A-Matic—resulting in an unusual kind of identification on his part with that business even aside from his directorship in it; he had in addition a diversified and active portfolio, which not unnaturally created a series of disqualification problems for him. Possibly he was right in each instance, other than the Vend-A-Matic cases, in which he did not disqualify himself. But was he right in courting these problems by maintaining an active and diversified portfolio?

A judge does not disqualify himself only when he is consciously aware that his interest in one of the parties would influence him. No man knows himself quite that well, and the public ought not to be asked to rely on such exquisite self-knowledge. Judgment may be influenced in subtler ways, less apparent on the surface of consciousness, and people—especially litigants—may at any rate suspect as much. The law and the practice that seek prophylactic assurance against bias in decision-makers—administrative and executive as well as judicial—address themselves not only, not even chiefly, to the existence in fact of conscious bias, but to the existence of relationships which may possibly cause bias, consciously or otherwise. The test is the sort of surmise that naturally arises out of general human experience, not whether in a given case actual bias can be shown.

Surmises of bias get remoter and remoter, to be sure. It becomes a question of degree, and a difficult one. No judge, not even a pauper, can avoid the problem forever, but it is a judge's duty so to conduct his private affairs that he faces it as infrequently as possible. Judge Haynsworth's Vend-A-Matic connection guaranteed that he would face the disqualification problem in aggravated form, and when, sure enough, he encountered it, he solved it wrongly—not culpably, but wrongly. His active and diversified portfolio guaranteed, moreover, that he would face the problem elsewhere with what one hopes is unusual frequency.

There are two sets of standards of ethical behavior in any profession: a common standard, codified with more or less precision, and a more sensitive standard, which is hopefully the emerging common one. It is desirable to hold nominees for the Supreme Court to the standard of highest ethical sensitivity. In the process, a certain injustice may be done to a perfectly honest man like Judge Haynsworth, who does not quite measure up. This is a price that is paid for raising the general standard. And the injustice, if anything, was inflicted by the nomination. If the appointment fails, Judge Haynsworth may continue to serve honorably where he is. Other judges may, as he has said he will in any event, resort to trusts, buy land, as the President has done, or government bonds, of blue-chip stocks in a few large, impersonal corporations. Disqualification problems will still arise, but more rarely, and not with customers of US Steel or General Motors.

The President was on sounder ground when he urged that senators who disagreed to some extent with Judge Haynsworth's opinions ought not to vote against him for ideological reasons. Ideology is relevant to both Senate and President in the performance of their functions. They are partners in exercising through the appointment process the only available form or direct political control over the Court. When the ideological clash between a nominee and a Senate majority is sufficiently violent, the Senate is well within its rights to reject the nomination, and it has done so in the past. Ideology was one, if only one, of the factors that prevented confirmation of Abe Fortas as Chief Justice.

But President and Senate are partners, and the Constitution gives the President the initiative. In order to refashion the Court so as to please himself, he were to attempt to move it beyond an ideologically moderate position, senators who are of a different mind ought to resist. But 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 in 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 real issue is not judicial philosophy, but ethical standards, and these are equally the Senate's concern as the President's. So the Senate has shown time and again, in passing on nominees for executive offices.

NEEDS CITED FOR NATIONAL TIMBER SUPPLY ACT

Mr. HATFIELD. Mr. President, recently, the Senate Subcommittee on Soil Conservation and Forestry of the Agriculture Committee held hearings on S. 1832, which would enact the National Timber Supply Act. In Oregon, I might remind my colleagues today, the Federal Government owns 51 percent of my State's land. Much of this is in national forests, and is administered by the Forest Service.

Because the lumber industry is of such importance to my State where one out of every five lumber producing trees in the United States grows, and because our Nation is falling behind in meeting its housing goals, I am calling the attention of my colleagues to this bill and the need for its passage. The lumber industry today is in a period of a slack market, and the bill should be considered now, when extreme pressures are absent that were experienced when the lumber prices rose so rapidly last year.

This bill would assist the Forest Service in its management of our lumber producing areas. It would help the lumber industry which employs 85,000 Oregonians to produce enough timber to meet our Nation's growing lumber needs. It would help our homebuilding industry and our many new home buyers by helping keep down the price of new houses.

Although they are not in support of this bill, I think it would benefit the conservation groups who want to protect our timberlands from any encroachment by lumber interests. If we make better use out of lands now classified as commercial timberland, this will lessen pressures for timber in other forest areas. Our country needs pure wilderness areas, where a person can be free from all encroachments of man. We need easily accessible recreation areas, so that a majority of the population can get out into our forests to enjoy their many pleasures. In addition, Oregon must realize the importance of its lumber based industries, and see that those interests are not overlooked in a "cut no trees" campaign. We can protect our wilderness and recreation areas better through intensified management of our timberlands.

Mr. President, I ask that the Senate think seriously about this problem. To those Senators who represent States without timberlands. I remind them of our Nation's housing goals. We must see that sufficient lumber is available—not just in 1970, but also in 1980 and 1990—to meet these housing goals. A decent home for every American should be a prime goal for those of us who are concerned with urban problems. We here in the Senate who represent States with substantial timberlands are aware of the need for this bill, S. 1832, to pass and be put into effect.

I ask that unanimous consent be given to the printing of my statement in support of S. 1832 to the Subcommittee on Soil Conservation and Forestry at the conclusion of my remarks.

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

STATEMENT OF SENATOR MARK HATFIELD

As a cosponsor of S. 1832, the National Timber Supply Act of 1969, I was most gratified that your Subcommittee conducted hearings today on this measure of such fundamental importance to not only the State of Oregon but all other timber producing states of the nation.

While Oregon produces the largest volume of timber products among the fifty states; it is, like every other state, facing a growing crisis in housing its people adequately. There is a direct correlation between the production of lumber, plywood and other wood products and the realization of our national goals of a decent home for every citizen. Unless the Congress acts now to assure optimum production of wood fiber from the vast area of commercial timberlands on the National Forests, we will never be able to fulfill the demands for the timber-based building materials we must have to build 26 million new housing units by 1978.

The forests, as I have indicated, are of critical importance to Oregon. They are the basis for 85,000 jobs in the state; one of every five trees made into lumber and plywood anywhere in the United States are grown in Oregon; three-quarters of those trees are standing on Federal timberlands within the state. It is apparent, therefore, that the destiny of Oregon is directly related to the effectiveness with which the National Forests are managed. S. 1832 provides the means for the Forest Service to attain the high quality timber management practices which are already commonplace among industrial ownerships and on state and Bureau of Land Management commercial timberlands in Oregon.

The Forest Service has demonstrated that it has the skills to do an effective forest management job given the long-range financial assurances it must have to undertake intensified timber growing and harvesting. It would be wrong for the nation to consign these highly qualified and dedicated professionals to the caretaker activity of the past when they have the ability to contribute substantially to both the economic and social well-being of the nation.

Intensified management of Federal lands already classified as commercial timberlands will aid materially in assuring retention of other forest lands for wilderness and primitive areas and I consider this of vital importance.

I support the approach that generally high yield funds should be reinvested in the National Forests that produced the revenue. This would assure that the government gets the best return on ite investment.

In conclusion, it is my conviction that S. 1832 should be passed promptly by the Senate and I would urge that the Subcommittee on Soil Conservation and Forestry act with dispatch to move the measure towards the floor for adoption by the Senate. Action should be taken now, while high mortgags rates have caused a temporary lull in demand, if we are to meet the clear needs of the future.

STORAGE AND PRODUCTION OF POISON BULLETS

Mr. NELSON. Mr. President, in 1946, Dr. Theodore Rosebury, a scientist who served as chief of the airborne infection department of Fort Dietrick during the Second World War wrote:

The mere availability of offensive biological weapons constitutes a hair trigger mechanism, ominous in its capability for damage which may possibly be irreversible. The pursuit of a policy of offensive development must foster military rivalry between nations . . . it must tend to stimulate an international race in armaments of mass destruction.

While many proponents of CBW work often argue that defensive research and development is necessary for our Nation's security, it is often difficult to discern the fine line distinction between offensive and defensive research and offensive and defensive weapons. In fact, many contend that the distinction between the two is so fine that to talk in terms of offensive and defensive weaponry is meaningless. However, the military has argued that CBW research and development are necessary so this country can build up adequate defenses in case of a CBW attack.

Last Friday, an article, entitled "20,000 Poison Bullets Made and Stockpiled by Army," written by Robert M. Smith, and published in the New York Times, reported that the U.S. Army had produced and stockpiled bullets filled with the disease germ botulinum. While it is widely known that the United States has experimented with biological weapons, it is a matter of grave concern to find out that munitions have actually been produced and are in our arsenal—ready for use.

It is pretty clear that bullets loaded with infectious diseases are weapons of combat—designed to kill an enemy. Such devices in no way provide a measure of protection to ourselves as would a gas mask or other defensive weapons.

Several months ago, the Senate by a unanimous vote of 91 to zero passed an amendment to the military procurement authorization bill. In that amendment the Senate made known its feelings about the development of systems capable of delivering biological weapons. It was unanimously agreed that we should not continue our work in developing delivery systems specifically designed for biological weapons. The purpose of this provision was to make clear to the Department of Defense that the U.S. Senate does not approve of the use of biological weapons for war. The Senate, in short, was saying to the Department of Defense: If you find it necessary to do research on biologicals so the United States will know what the enemy scientists are capable of doing, and if our research endangers neither people nor the environment, then go ahead and continue research. But what was clear also was that the Senate did not want the Army to go ahead and put these biological weapons into capsules or munitions that could be used against an enemy.

Earlier this month I was encouraged by the news that the Secretary of Defense had recommended to the National Security Council that our work on biological weapons be completely halted. This proposal seems wise and I hope it is accepted.

What seems obvious is that there is disagreement within the Defense establishment about biological warfare weap-

There is another point which concerns me greatly, a point which has largely been ignored in the arguments surrounding the Philadelphia Plan. Section 202(1) of Executive Order 11246 requires Federal contractors to hire and treat their employees "without regard" to their race, color, religion, or national origin. It seems to me that those two words, "without regard", mean exactly what they say. They are clear and unambiguous.

Since all the sections of a law must be construed together, it is in the context of those words, "without regard," that the more general concept of "affirmative action" must be placed. Yes, the Executive Order requires affirmative action, but only affirmative action which is taken "without regard" to race, color, religion, or national origin. It is here that the Philadelphia Plan is fatally defective. It compels contractors to make decisions based precisely on those four considerations. The Plan is in conflict not only with Title VII of the 1964 Civil Rights Act, it also is in conflict with the very Executive Order under which it was created.

Whatever the courts may have decided about considering race as a factor in remedying inequities, those precedents cannot apply to the Philadelphia Plan. The language of Executive Order 11246 places an ironclad ban on racial considerations in employment by Federal contractors. It is no more legal for the Labor Department to reverse the meaning of the words "without regard," than it would be for the Department to mis-spend a Congressional appropriation.

I do not argue that the labor unions are violating the 1964 Civil Rights Act, and I want to make it very plain that this hearing is not designed to criticize labor organizations in any way. However, I must point out—and I am sure that the Labor and Justice Departments are aware—that the 1964 Civil Rights Act gives them ample tools to bring suits against labor organizations if they have sufficient evidence of discrimination and can prove it in open court. It therefore appears to me illogical and unfair that the Department of Labor prefers to attack the alleged problem of exclusion by penalizing the contractors, who play no role in the membership practices of labor organizations.

During the course of the Philadelphia Plan controversy, the Comptroller General has been accused of exceeding his authority in finding the Plan unacceptable because it violates Title VII. I want to comment on that criticism now. Under 31 U.S. Code 65, the Budget and Accounting Act of 1921, the Comptroller General is directed to determine whether "financial transactions have been consummated in accordance with laws, regulations, or other legal requirements." Without question, that statute provides the Comptroller General with the authority to check the Philadelphia Plan against any and all laws, not merely those which deal with procurement.

Finally, the Subcommittee has before it S. 931, a bill introduced by Senator Fannin, which would make Title VII the sole means of enforcement and remedy in the field of equal employment. It would suspend the use of Executive Order 11246. We welcome the comments of our witnesses on that bill.

EVERETT McKINLEY DIRKSEN

Mr. ERVIN. Mr. President, I deeply regret that I was unable to be present at the memorial service for our late colleague, Everett McKinley Dirksen.

Everett Dirksen did not go gentle into that good night.

With advancing years, his light grew even brighter. As illness crept upon him, his spirit, his will, his great intellect raged against the idea of a dying light—until the tragic and sudden end when he could rage no more. If his life had great meaning for those he loved, and who loved him, his absence has greater meaning. Everett Dirksen's empty chair is a symbol of the untruth of that great maxim which in our overzealous modesty or our attempt to avoid duties, we sometimes quote too easily: the adage that "no man is indispensable." I think we who served with him shall find that this man was indispensable and that his place will not be filled. Certainly the Senate will never be the same.

This was a man placed by history, by circumstances, and by his own vast talents in a unique position. It is one of the blessings of our Constitution and our system of government that at a critical moment, such a man is cast into the American political process, to help mold and eventually to help govern it. This Senator from Illinois was one of those who truly helped to govern. He held power, and not just power in a structured, legal sense. Had he chosen that path, he might, I believe, have been President of the United States, for surely he had the requisite qualities of mind and heart and an uncanny sense of the popular will. Rather, his power lay in those incalculable and intangible weapons of experience, of accumulated wisdom, of infinite ability to influence and persuade others to his view.

For the young people, especially those in Illinois, who may find him in their history books, it should be emphasized how proudly this man brought to his national service the sum total of his experiences and his successes under our form of government. As a youth, he knew poverty and he worked hard to achieve his education.

He served in the Army in World War I on the western front where he was constantly exposed to enemy fire, a fact which helped him to develop a unique outlook on life and its brevity. He served 16 years in the House of Representatives and 19 years in the Senate. He was minority leader, a member of the Judiciary and Finance Committees and of the Special Committee on Aging. For the people of Illinois, he performed constant services, officially and unofficially.

Many people have said he was an old-fashioned man. Of one thing we can be sure, his life, while full of rare grace and style, was no anachronism. He was the embodiment of the truth that the greatest fulfillment of man's God-given abilities is realized through meaningful service to his fellowmen and through his relationships with society. In this age, when many about us cry of alienation and irrelevancy, Everett Dirksen's life testifies to total involvement with the social and political processes of our society. He believed deeply that these processes are relevant for the problems of today. Endowed with an innate sense of what is enduring, he did not dismiss modernity.

Devoted to the ideals of constitutional liberty, he fought in the Senate to assure that under our form of government the individual will never be irrelevant.

While he helped to fashion many laws, it might be said that his greatest contribution to freedom was his prevention of passage of ill-advised laws which would have done violence to our political liberty.

He was a family man, a religious man, a professional man, a political man, a man who gloried in the happinesses of life that come with love of friends and family, with the beauties of nature, and with service to his country. We shall not see his like again.

Mrs. Ervin joins me in extending deepest sympathy to Mrs. Dirksen and to members of his family.

OPPOSITION TO JUDGE HAYNSWORTH BASED UPON HIS CIVIL RECORD

Mr. GOODELL. Mr. President, on October 2, I announced publicly that I would vote against the nomination of Judge Clement F. Haynsworth to be Associate Justice of the United States. I urged the President to withdraw his nomination.

At that time, I said that, although I was deeply troubled about the alleged conflicts of interest which had been raised against him, he had not profited from those conflicts of interest directly and I would not vote against him on that basis alone. I said that I opposed him because of his past decisions in the area of civil rights. I reiterate that position today.

I oppose him because we are in the midst of a social revolution in this country. This is a central fact of our time. That revolution is a reaction to the inequality of our past and present society, democratic in concept, but never fully responsive to the needs and rights of all of our people.

On the great social issue of our time, that of civil rights, Judge Haynsworth has been found wanting.

Time and again he has rejected demands of the landmark 1954 decision of the Supreme Court in Brown against Board of Election.

He spoke for segregation when he voted to allow the school doors of Prince Edward County, Va., to remain closed to Negro children, by supporting "freedom of choice" in the public schools in that State's "massive resistance" scheme.

He spoke for segregation when he defended discrimination against Negroes in federally aided hospitals.

I supported the nomination of Judge Burger to be Chief Justice of the United States. I believe that the unanimous decision of the Supreme Court in its ruling on Wednesday calling for immediate integration in Mississippi and rejecting two precedents written by Judge Haynsworth which called for delay is further reason to oppose his nomination. If confirmed, Judge Haynsworth would become the first Justice to breach the Supreme Court's apparently solid front on civil rights matters.

We must heed promptly the just demands of our contemporary American revolution. This imperative requires us to act affirmatively to prevent the appointment of Judge Haynsworth.

Although the President normally should have the broadest latitude in selecting men of his own choice for high office, I believe that a Supreme Court

nominee, who is appointed for life, must be subject to special scrutiny by the Senate. That special scrutiny was afforded last year when President Johnson appointed Justice Fortas to be Chief Justice of the United States.

Judge Haynsworth has failed the test on civil rights. He has been consistently wrong in his judicial capacity on one of the most important issues facing our country.

I again, therefore, urge President Nixon to withdraw the nomination of Judge Haynsworth.

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.

NOMINATION OF CLEMENT F. HAYNSWORTH, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. MOSS. Mr. President, in the discussion carried on concerning the nomination of Judge Haynsworth to the U.S. Supreme Court, one often hears that it is unprecedented to question a nomination and that the Senate should accept the President's choice unless it could be shown that the individual is either corrupt or incompetent. Mr. Anthony Lewis has written an article which appeared in the Sunday Times of October 19, 1969, to show that the Senate has very often refused to confirm nominees on grounds other than corruptness or incompetence. For the purpose of illuminating the dialog, I ask unanimous consent that this article be printed 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 their philosophy or politics or 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 NOMINATIONS

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 Missisippi, 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 would 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.

WISE WORDS OF ERNEST GRUENING

Mr. YOUNG of Ohio. Mr. President, one of the first Members of either branch of Congress to speak out against our involvement in an ugly civil war in Vietnam was former U.S. Senator Ernest Gruening of Alaska.

As far back as 1964, former Senator Gruening clearly recognized that we were involved in an immoral war in a little faraway Asiatic country of no importance whatever to the defense of our Nation. From that time until the time he left the Senate, Senator Gruening spoke out loud and clear in denouncing our involvement in this land war in Southeast Asia. He was among the small band of Senators and Representatives who repeatedly denounced President Johnson's escalation of that civil war into an undeclared American air and ground war. He was one of two Members of the U.S. Senate who voted against the Tonkin Gulf joint resolution in August of 1964. Citizens of our country are indebted to him for his leadership in helping to bring to their attention the folly of our Vietnam involvement.

On moratorium day, October 15, 1969, former Senator Ernest Gruening addressed five public meetings of citizens who had gathered to urge the Nixon administration to expedite the withdrawal of our forces from Vietnam and to hasten efforts toward peace. He spoke at the Georgetown University Law School, at a public meeting at Farragut Square in Washington, D.C., at Johns Hopkins University in Baltimore, Md., and before a crowd of 10,000 assembled at the city hall in Baltimore.

His speech was a masterly presentation of the case for ending our involvement in Vietnam at the earliest possible date and for bringing more American GI's home, instead of a mere token number that have been brought home to date.

I commend this address to my colleagues, and I ask unanimous consent that it be printed in the RECORD at this point.

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

ADDRESS BY ERNEST GRUENING, MORATORIUM DAY, OCTOBER 15, 1969

If the war in Southeast Asia is to be ended—this totally unjustified, needless, illegal, immoral, monstrous war—it will be ended only by an uprising of the American people, of which, let us hope, today's demonstrations are just the beginning.

For it has long been clear that the war will not be ended by the Executive Branch, which after nine months in office, has failed to carry out its campaign promise to end the war. Meanwhile, our boys are continuing to die, and they are dying in vain, as indeed they have since they were first sent to fight in Southeast Asia. Nor will the war be ended by the Legislative Branch, which could do so by refusing to vote for the military authorizations and appropriations to carry on this war. There are, to be sure, hopeful signs of revolt on the part of a few enlightened Senators and Congressmen, but unfortunately they are still a small minority in each body. There is in my judgment no likelihood that the sound and sane proposals of Senator Goodell of New York or Representative McCloskey, and others to call for the withdrawal of all troops by a date certain will receive the needed majority in the Senate and House, desirable as that would be. I wish I could call the names of this minority for it is an honor list which deserves recognition and acclaim.

The ASSISTANT LEGISLATIVE CLERK. A bill (S. 1442) to amend section 131 of title 23 of the United States Code, relating to control of outdoor advertising along Federal-aid highways, in order to authorize one or more pilot programs for the purpose of such section.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Public Works with amendments, on page 1, line 8, after the word "out", strike out "one or more"; at the top of page 2, insert "Preference shall be given to any State or States which have undertaken agreements with the Secretary and private individuals or business concerns to carry out the provisions of this section."; in line 9, after the word "are", insert "hereby"; in the same line, after the word "appropriated", strike out the comma and "out of any money in the Treasury not otherwise appropriated,"; in line 11, after the word "exceed", strike out "$5,000,000" and insert "$15,000,000"; in line 13, after the word "shall", strike out "remain available until expended.'" and insert "be available in accordance with the provisions of subsection (m) of this section."; and after line 16, insert a new section, as follows:

(3) The Secretary is directed to report to the Congress on the results of any pilot programs funded under this section together with such recommendations as he deems necessary to improve the administration of the policy set forth in this section.

So as to make the bill read:

S. 1442

A bill to amend section 131 of title of the United States Code, relating to control of outdoor advertising along Federal-aid highways, in order to authorize one or more pilot programs for the purpose of such section

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 131 of title 23 of the United States Code is amended by inserting at the end thereof a new subsection as follows:

"(o)(1) The Secretary is authorized to enter into agreements with one or more States for the purpose of carrying out pilot programs to determine the best means of accomplishing the purpose of this section. Preference shall be given to any State or States which have undertaken agreements with the Secretary and private individuals or business concerns to carry out the provisions of this section. Any such agreement shall provide for the payment of the Federal share, prescribed in subsection (g), of the cost of the program, and shall be in accordance with the other provisions of this section to the extent applicable for the purpose of this subsection.

"(2) There are hereby authorized to be appropriated not to exceed $15,000,000 to carry out the provisions of this subsection. Amounts appropriated for the purpose of this subsection shall be available in accordance with the provisions of subsection (m) of this section.

"(3) The Secretary is directed to report to the Congress on the results of any pilot programs funded under this section together with such recommendations as he deems necessary to improve the administration of the policy set forth in this section."

Mr. MOSS. Mr. President, I am pleased to speak in behalf of S.1442, a bill to create a pilot outdoor advertising sign removal program, which I introduced March 7, 1969.

This bill would permit one or more pilot programs for the removal of nonconforming billboards under the highway beautification program. It is the result of more than 2 years of discussions and meetings with Salt Lake advertising executive Douglas T. Snarr and numerous of our key highway officials.

Basically, the program calls for acquiring by contract all the nonconforming signs of a company at one time, and authorizing the owning company to dismantle and remove the signs on an agreed time schedule.

The alternative is to remove nonconforming signs on a highway beautification project which involves the condemnation of signs on a sign-by-sign basis. Research by the Utah State Department of Highways proves such a procedure, the second procedures, would be extremely expensive, costing up to two to three times as much money.

Under the provisions of my bill the very people who built the signs and know where they are would be the ones to go out and take them down. There would be no problem of unfamiliarity and it would permit an orderly procedure with the sign companies cooperating rather than walking away and simply abandoning their signs and leaving them to be removed by some other contractor or State employees.

The Federal Highway Beautification Act of 1965 has been ineffective, and there is danger that it will create a great amount of damage within a number of States.

We need to move ahead and answer some basic questions.

How are signs to be taken down, under what procedure? How are they to be paid for, on a per sign basis which would cost two to three times the amount of the purchase under a per company approach? Can the financing be long termed? Can the Federal Government fulfill its contractual responsibilities by allowing the States to float bonds which the Federal Government will help to liquidate? Where are the signs to be taken? What salvage can be made of them?

We need money authorized and appropriated and given to one or two pilot States to work out these details in a practical demonstration which would at the same time show the good faith of the Federal Government. The need is now while other programs are on the books and States are prepared to go forward. The need is now while the small sign companies can still salvage some of their business and before the giant companies gain an absolute monopoly.

I appreciate the support this bill received from the Public Works Committee. In fact, it was the committee which raised the authorization figure from the $5 million I had requested to the present $15 million.

This bill is important for the beautification of our country, and I urge its approval by the Senate.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

NOMINATION OF HON. CLEMENT F. HAYNSWORTH, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. GURNEY. Mr. President, the distinguished majority leader announced yesterday that the nomination of Judge Clement F. Haynsworth, Jr., to be Associate Justice of the Supreme Court may be brought to the floor next Wednesday. This is welcome news. The nomination is of the greatest importance and it is the hope of this Senator that we will be able to act upon it next week.

I understand that the committee reports are having the final touches put on them and should be available soon for the study and consideration of all Senators. An enormous amount of work has already been made available to us by our colleagues on the Judiciary Committee and the issues have been pretty well drawn. The distinguished junior Senator from Indiana (Mr. BAYH) has provided a bill of particulars for our consideration. The ranking Republican on the Judiciary Committee (Mr. HRUSKA) and the distinguished junior Senator from Kentucky (Mr. COOK), who also serves on the committee, have made several excellent speeches on the floor and have distributed to each Senator three memorandums dealing with the issues of ethics, civil rights, and labor. These distinguished gentlemen and all members of the Judiciary Committee are to be commended for their efforts to clearly draw and define the issues.

Mr. President, I have reviewed the materials and the issues and I intend to vote for the confirmation of Judge Haynsworth. It is clear to me that Judge Haynsworth is a man of honor and high ethical standards. His opinions are scholarly, and they exhibit the intellectual honesty that is the mark of a truly impartial judge.

A great deal has been written and said about this nomination. The primary source, the hearing record, itself, is 762 pages long. Observers and commentators, union officials, Senators, and the President of the United States have all spoken.

Judge Haynsworth's personal and judicial philosophy differs from that of some other recent nominees. There is no question about that. I will not attempt to define this philosophy or predict his behavior on the Court because history has amply demonstrated the futility of such a course. I will observe that it is not surprising, in view of type of man and philosophy that President Nixon wanted to serve on the Supreme Court, that those of a contrary philosophy have waged a war against this nomination. This was to be expected.

The adverse arguments brought forward by those philosophically opposed to Judge Haynsworth's nomination deserve our careful study. No Senator can intelligently cast his vote if he knows only one side of the question.

What are of greater interest to me,

however, are the testimony and observations of many who, although philosophically opposed to Judge Haynsworth, commend the nomination or, at least find the criticism of him unjust. The opinions of those who speak against their own philosophical interests should be entitled to great weight.

Mr. John P. Frank, attorney, testified in favor of Judge Haynsworth. He served as law clerk to Justice Black, he has taught at Yale and Indiana Law Schools, and has written about the Supreme Court, he is a member of the Advisory Committee of the Supreme Court and the Judicial Conference on Civil Procedure. He filed the first brief calling for total school desegregation in 1950 in the case of Sweatt against Painter. He was the first to write in favor of what has become known as the one-man, one-vote rule. He was cocounsel in Miranda against Arizona. In his testimony he said:

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 truly an unjust criticism which cannot be fairly made.

This quotation is from page 123 of the hearings record.

Mr. Frank's testimony was directed toward the issue of Judge Haynsworth's ownership of a one-seventh interest in Carolina Vend-A-Matic and whether he should have disqualified himself in the Darlington case. His brief was persuasive. The overwhelming weight of authority required Judge Haynsworth to sit in the case, not to disqualify himself.

Prof. G. W. Foster, Jr., teaches law at the University of Wisconsin. A devoted civil rights advocate, Professor Foster played a prominent role in the promulgation of the original Department of Health, Education, and Welfare school desegregation guidelines in 1965. In his prepared statement which was submitted to the committee and is a part of the record, Professor Foster says:

My presence today is explained by my wish to speak to the charges that Judge Haynsworth is a racial segregationist. Judge Haynsworth is not a segregationist . . .

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. . . . (H)e will make a first-rate Associate Justice.

Prof. Alexander Bickel, of Yale Law School, summed up, in a recent article for New Republic, as follows:

But President and Senate are partners, and the Constitution gives the President the initiative. If in order to refashion the Court so as to please himself, he were to attempt to move it beyond an ideologically moderate position, senators who are of a different mind ought to resist. But Judge Haynsworth is no reactionary. His civil rights record is centerist, although mors cautious than some senators might 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.

Speaking during the hearings primarily on the issue of Judge Haynsworth's labor rulings was Louis B. Fine who is a former president of the Virginia Bar Lawyers Association, a member of the board of governors of the American Trial Lawyers Association, and who has served as counsel for the Teamster, the Painters Union, the Carpenters Union, and the Longshoremen's Union of Norfolk. He testified:

I think it is manifestly unfair to have said that Judge Haynsworth was antilabor when, as a matter of fact, he only decided the cases and only wrote one opinion out of 10 that were reversed out of a total of 47. Even the Lord couldn't do much better under the total circumstances, and I say that while I have been and am representing labor, labor is not in a fraternity house with the judicial administration of justice. It is just like any other litigant, and that labor must depend upon the economic and social justice as it appears to a conscientious judge.

The evidence is overwhelming that Clement Haynsworth is a conscientious judge. Those who knew him best, his fellows on the Fourth Circuit Court of Appeals, have affirmed their confidence in his integrity and his ability.

The American Bar Association Committee on the Federal Judiciary interviewed a cross-section of the legal community that worked with Judge Haynsworth. Attorneys from each State in the Fourth Circuit were contacted: some represented plaintiffs in personal injury cases, some represented defendants, two were deans of law schools, two represented labor unions, one did admiralty work for shipowners, another represented seamen and longshoremen, two were outstanding Negro lawyers. As Judge Walsh said in summarizing the investigation:

All of the persons interviewed regarding Judge Haynsworth expressed confidence in his integrity, his intellectual honesty, his judicial temperament and his professional ability.

I am impressed by this testimony, the abundance of it, and the sources from which it comes. Judge Haynsworth is not an average, colorless official as some have charged. He has a justly deserved reputation for scholarly analysis and well-written opinions.

I commend President Nixon for making this nomination. The attacks have been furious and the smoke they threw up has been thick, but they have been shown to be without foundation. President Nixon has been unwavering in his support for the nominee. Judge Haynsworth deserves such support.

I yield the floor.

AMENDMENT OF THE CONSUMER PROTECTION CREDIT ACT

The Senate resumed the consideration of the bill (S. 823) to enable consumers to protect themselves against arbitrary, erroneous, and malicious credit information.

Mr. PROXMIRE. Mr. President, this is the fair credit reporting bill, which has been reported by the Committee on Banking and Currency, I believe by a unanimous vote.

The purpose of the fair credit reporting bill is to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information in a credit report. The bill also seeks to prevent an undue invasion of the individual's right to privacy in the collection and dissemination of credit reports.

Whenever an individual is rejected for credit, insurance, or employment because of an adverse credit report, the individual is given the right to be told the name of the agency making the report.

Credit reporting agencies would be required to inform the consumer of all the information in his credit file. Following disclosure, the consumer would be given an opportunity to correct inaccurate or misleading information in his credit file. In addition, the bill requires that the information in a person's file be kept confidential and used only for legitimate business transactions. Under most circumstances, adverse information older than 7 years could not be reported. The legislation also establishes the right of a consumer to be informed of investigations into his personal life.

The bill covers reports on consumers when used for obtaining credit, insurance or employment. However, the bill does not cover business credit reports or business insurance reports.

The bill recognizes the vital role played by credit reporting agencies in our economy. Those who extend credit or insurance or who offer employment have a right to the facts they need to make sound decisions. Likewise, the consumer has a right to know when he is being turned down because of an adverse credit report and to correct any erroneous information in his credit file. The procedures established in the bill assure the free flow of credit information while at the same time they give the consumer access to his credit file so that he is not unjustly damaged by an erroneous credit report.

GROWTH OF THE CREDIT REPORTING INDUSTRY

Mr. President, few Members of the Senate, and I think few people in our country, realize the terrific scope of credit reporting, or realize how rapidly the consumer credit industry has grown. The figures are really astonishing.

One of the phenomenal growth records since the end of World War II has been the growth of the consumer credit industry. At the end of 1945 the American consumer owed less than $6 billion, whereas he now owes over $116 billion. With the growth of consumer credit, a vast credit reporting industry has developed to supply credit information. The growth of computer technology has facilitated the storage and interchange of information on consumers and opens the possibility of a nationwide data bank covering every citizen.

As a matter of fact, it is my understanding that almost every adult in America has a credit file containing information on him. Few individuals realize that these credit files are in existence. However, such a file can have a very serious effect on whether a man gets em-

and for other purposes, permission be granted to file additional views.

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

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

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

NOMINATION OF JUDGE HAYNSWORTH TO THE SUPREME COURT

Mr. MILLER. Last May 5, in my speech to the Senate regarding the disclosure that Mr. Justice Fortas had received a $20,000 fee from a family foundation of financier Louis Wolfson, recently sentenced to prison for violating our securities laws, I expressed the hope "that any future nominations to the Supreme Court and, for that matter, to any other court, will be given far more thorough scrutiny by both the administration and the Senate Judiciary Committee than was the case with the nomination of Mr. Justice Fortas."

Although I deeply regret the discomfort and inconvenience caused Judge Haynsworth by the fact that his nomination to the Supreme Court has been before the Senate since last August 18, I nevertheless believe my words of last May have been heeded and that it has been in the public interest that they were.

Until recently, the confidence of the public in the Supreme Court had reached what might be termed an all-time low. In a Gallup poll published on July 10, 1968, only 36 percent of the public was indicated as giving a favorable rating to the Court. With the resignation of Mr. Justice Fortas and the appointment of Judge Burger to be Chief Justice, this confidence has begun to be restored. I believe I have a duty, as a Member of the Senate, to do what I can, through the confirming power of the Senate, to see to it that public confidence in the Supreme Court is fully restored. Unless it is, all of our democratic institutions are threatened.

As I said on July 26, 1968, during the debate on the Fortas nomination:

> But a time comes when every Senator should search his conscience to see whether the exercise of the confirming power by the Senate is for the good of the country—not for the good of the White House, not for the good of the Senate, but for the good of the people of this country. The people are the ones who ultimately count in our governmental system. . . . The rights of the people are supreme. They are supreme over the right of the President or the right of the Senate.

The revelations about Mr. Justice Fortas, following his nomination by former President Johnson to be Chief Justice, and about Mr. Justice Douglas, who continues to sit on the Court, the sponsorship in 1965 by the now senior Senator from Massachusetts to secure confirmation to a Federal judgeship of a Boston lawyer who possessed few qualifications except that he had been a faithful family friend, and whom the American Bar Association's Committee on the Judiciary chairman described as the worst qualified judicial candidate it had ever encountered, and the recent scandals involving several justices of certain State supreme courts—these and other incidents have combined to undermine the confidence of the people in our system of justice. Nor are these events lost on the young people of our country, many of whom feel that their ideals have been betrayed, are disillusioned with their Government, and are dangerously inclined—illogical though this may be—to condemn the American system of government rather than those who abuse it.

I have concluded that confirmation of Judge Haynsworth would, for reasons which I shall presently discuss, delay the restoration of public confidence in the Supreme Court which is so necessary and urgent. Accordingly, I cannot vote for his confirmation.

Let me say, first, that I have been deeply troubled by some of the charges of prejudice made by some of the opponents of this nomination. I have been equally troubled by the unnecessary and most unhelpful exaggerations which have attended some of these charges. "Trial by the press" lends itself to political assassination, which is hardly in keeping with the role of the U.S. Senate in advising and consenting on Presidential nominations.

For too long, now, appointments to the Supreme Court have been based not so much on ability and judicial temperament as on whether the appointee's views are strongly in favor of, if not actually biased toward, a certain socio-economic philosophy. When, as in Judge Haynsworth's case, there is a nominee who has expressed views which, on balance, stamp him as a "neutral" rather than strongly in favor of, or biased toward, a certain socio-economic philosophy, it is unfair when those who do not like neutrality charge him with bias and prejudice.

When I use the term "neutral," I refer not to certain carefully selected decisions and opinions, but to the entire record—such as presented in the analysis of Judge Haynsworth's record on civil rights cases by Prof. G. W. Foster, Jr., of Wisconsin University, and the analysis of his record on labor-management relations cases provided by Senators HRUSKA and COOK. These demonstrate that Judge Haynsworth took an objective and judicious approach in his work—granted that some of us might not agree with some of his decisions and opinions.

However, Judge Haynsworth's own careless approach to the Canons of Judicial Ethics is at least partly responsible for some of the feeling that he was biased and prejudiced. These canons emphasize that a judge should not only avoid improprieties but should avoid the appearance of impropriety. The Supreme Court itself has declared that not only should a judicial tribunal be unbiased, but "must avoid even the appearance of bias." *Commonwealth Coatings Corp.* v. *Continental Casualty Co.*, 393 U.S. 145 (1960). The reason, of course, is to avoid a reasonable suspicion in the public mind that a judge is biased or acting improperly—whether or not he actually is—because such suspicion undercuts the confidence of the people in our system of justice.

Thus, for example, it seems to me that a foundation was laid for such reasonable suspicion by Judge Haynsworth's connections with the Carolina Vend-a-Matic Co.—which had five substantial contracts with Deering Milliken, Inc.—at the time the Deering Milliken subsidiary case was argued on June 13, 1963, and decided on November 15, 1963—in favor of the subsidiary—Darlington Mfg. Co.—by a 3 to 2 vote of the Fourth Circuit Court of Appeals, with Judge Haynsworth voting with the majority. The "connections" were as follows:

Owner of one-seventh of the stock of Carolina Vend-a-Matic which Judge Haynsworth disposed of on April 8, 1964, for $437,000.

A director of Carolina Vend-a-Matic before his appointment to the Court and during his tenure on the Court until October 31, 1963. He received directors fees of $2,600 in 1963 alone.

A vice president of Carolina Vend-a-Matic before his appointment to the Court and during his tenure on the Court until September 1963.

A trustee of Carolina Vend-a-Matic's profit sharing and retirement trust from 1961 to 1964.

His wife, the secretary of Carolina Vend-a-Matic in 1963 and 1964.

In fairness it should be pointed out that the losing party in the Darlington case—the Textile Workers Union of America—asked the then chief judge of the fourth circuit, Simon E. Sobeloff, to investigate a rumor that Deering Milliken, Inc., intended to throw the vending machine business of its subsidiaries to Carolina Vend-a-Matic after the favorable decision by the fourth circuit in the Darlington case. Judge Sobeloff and the other members of the court found the charge completely unfounded and exonerated Judge Haynsworth of any improper action in the case. The then Attorney General, Robert F. Kennedy, to whom the court's investigative report was forwarded, noted the findings and expressed "complete confidence" in Judge Haynsworth.

The trouble is, however, that Judge Haynsworth's connections with Carolina Vend-a-Matic, which was doing business with Deering Milliken, Inc., were such as to lay a foundation for a reasonable suspicion of bias when and if these connections became known. The union did not know about any of these connections until after the case was decided; and then, in December of 1963, it only knew about his connection as vice president.

Apparently this troubled Judge Haynsworth, too, because he testified—page 71 of the record—that his stock ownership did not become known to the Textile Workers Union, lawyers, and members of the court until December 1963, and added:

> But then I was concerned that others might know, and this is what impelled me to take extraordinary steps to rid myself of the stock at that time.

The anomaly is that the union strongly protests—page 188 of the record—that it did not know of the stock interest, but only of his connections as vice president. Moreover, it was not until 4 months later that Judge Haynsworth disposed of his stock—a delay which does not appear to square with his testimony—page 43 of the record—that "I moved to do that as quickly as I could."

Judge Haynsworth testified—page 64 of the record—that it "did not occur to me at all" that he should disqualify himself when the Darlington case came before the court. However, it is understandable that the union thinks it should have been notified of his connections with Carolina Vend-A-Matic. But the judge's answer to that is simply:

> I was not consciously aware of any connection I had [with the litigant], and I certainly was not aware of any financial interest I might have in the outcome of that law suit.

Nevertheless, taking the judge at his word, and I do so, the seriousness is his carelessness with the canon of ethics which, if my reading of them is correct, should have caused him at least to divest himself of the vice-presidency and directorship of Carolina Vend-A-Matic, if not his stock ownership, before the Darlington case ever came before the court. Between 1958 and 1963, customers of Carolina Vend-A-Matic were involved in litigation before Judge Haynsworth's court on six different occasions. Canon 26 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 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 relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

It is disappointing that Judge Haynsworth's explanation of his understanding of this language—page 284 of the record—implied that, because it would be unreasonable for a judge owning stock in American Telephone and Telegraph, which would naturally have as its customers every litigant that would come before the Court, to be required to divest himself of A.T. & T. stock, it would be unreasonable to require him to divest himself of his interests in Carolina Vend-a-Matic because its customers were "apt" to be involved in litigation before the Court. It is also an indication of carelessness when he testified at page 95 in his interpretation of the word "apt":

> 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.

Nowhere in Canon 26 do the words "with frequency" appear.

The last sentence of Canon 26 quoted above would certainly appear to cover Judge Haynsworth's connections with Carolina Vend-a-Matic. And it is no answer at all to say that there was "no conflict of interest" on the part of Judge Haynsworth in the Darlington case. That sentence of the canons is directed at the appearance of a conflict of interest, whether or not the conflict actually existed.

Perhaps, as some have testified, it was Judge Haynsworth's duty to sit on the Darlington case. That is not the point. The point is that it was his duty to abide by Canon 26, so that not only would there be no conflict of interest, but there would be no connection with Carolina Vend-a-Matic that would arouse the suspicion that he was biased in his judgment. All of this could have been prevented if he had exercised that duty before the Darlington case ever came before the Court.

Another indication of carelessness over the canons of ethics appears in Judge Haynsworth's testimony—page 71 of the record—giving his interpretation of that last-quoted sentence from Canon 26, which I repeat:

> 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 said:

> Well, this is directed, I suppose, to relations with gamblers and people like this, with backgrounds that were suspect or shady. And I have had no such relations.

Such a narrow construction hardly squares with his testimony elsewhere—page 285:

> The canons are written in broad language. Of course, they are subject to very broad construction. . . .

A further indication of carelessness appears in his testimony at page 64:

> I would say that what is important, of course, is not a technical office one holds unless he is active—if he is an active officer, of course, that could have all sorts of influence on what he did as a judge. In this instance, I had no active office with respect to its outside affairs, though I was in 1963 a director and vice president. But the only influence that was borne on me was my interest as a stockholder. And this could have resulted in some financial interest if my interest as a stockholder was known and someone doing business with Vend-a-Matic sought to influence my vote by doing something I otherwise would not have done.

Such a statement suggests that the canon is only concerned with relationships which are "known"; that relationships which are not known are not proscribed. That is not what the canon says, and it requires no imagination to realize that when connections with Carolina Vend-a-Matic—which were not known during the Court's consideration of the Darlington case—eventually became "known," the very suspicion Canon 26 seeks to avoid began to arise.

Canon 29 provides that a judge "should abstain from performing or taking part in any judicial act in which his personal interests are involved." Nothing is said about exempting its proscription when those interests are not "known."

As a Member of the Senate, I am concerned over certain testimony of Judge Haynsworth before the Senate Judiciary Committee which does not square with the facts. On June 2, 1969, he testified before the committee's Subcommittee on Improvements in Judicial Machinery as follows:

> 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 . . .

The connections with Carolina Vend-a-Matic which I listed earlier, most of which were maintained for more than 6 years after he went on the bench, cannot be reconciled with that testimony. I am not, by any means, contending that Judge Haynsworth was trying to deceive the committee, because I do not believe he was. Rather, I believe that his view toward the canons caused him to make this statement in pursuance to a careless fixation that only connections which were "known" were important.

The record reveals that Judge Haynsworth owned some 700 shares of stock in the J. P. Stevens Co. when he went on the bench in April 1957 and still owns 551 shares, worth approximately $25,000. From 1965 to 1969, this company has had litigation on four different occasions before Judge Haynsworth's court. Still, in the face of Canon 26, he has not seen fit to dispose of his stock. One can understand that the word "apt" would not be intended to require divestiture just because the company happened to show up in the judge's court on one occasion; or even two. But after four times, it would seem that the company is, indeed, very "apt" to become involved in litigation before the Court. But Judge Haynsworth appears untroubled by this, because he testified—pages 96 to 97 of the record—that even if he had sold the stock, he would not have sat on these cases in view of his past close relationship with the company in his law practice before he went on the bench.

This amounts to the judge writing his own canon of ethics—ignoring the proscription in Canon 26 whenever, for some other reason, a judge sees fit to disqualify himself from a case. Of course, by disqualifying himself, he can say that he satisfied any possible conflict-of-interest problem. But that is not necessarily the only problem. The appearance of a judge having a substantial interest in a party litigant, even though he disqualifies himself, would not relieve concern over his influence over other members of the court. Moreover, people unskilled in the law might not realize that the judge had disqualified himself. One can be sure there were reasons for the canons of ethics, and the principal reason was to maintain public confidence in the integrity of our courts.

It may be contended that Judge Haynsworth's holdings in J. P. Stevens Co. were very small in relation to the total 6 million shares outstanding, and that, therefore, he did not have a substantial interest warranting proscription by the canons. However, the judge himself felt that his 1,000 shares in Brunswick, out of 18 million shares, was "substantial"—page 305 of the record.

Another instance of carelessness to-

ward the canons of ethics and, indeed, toward the Federal disqualification statute itself, occurred in the Brunswick case.

The statute 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 at the trial, appeal, or other proceeding therein.

The words "other proceeding" are particularly significant.

Canon 29 follows naturally from the statute and provides that a judge "should abstain from performing or taking part in any judicial act in which his personal interests are involved."

What happened was that the Brunswick case was heard by Judge Haynsworth's court on November 10, 1967, and immediately decided by the court the same day. On December 15, Judge Haynsworth approved his broker's recommendation to purchase 1,000 shares of Brunswick stock—a recommendation which appeared to have no relationship whatsoever to the case before the court. On December 18, 1967, the purchase was made at $16 per share. On December 27, 1967, Judge Winter circulated the opinion he had drafted in support of the court's decision on November 10, and Judge Haynsworth gave his concurrence in the opinion. Finally, on February 2, 1968, the written opinion was released to the public.

It can be argued that, since the decision had already been made, the subsequent purchase of the stock did not amount to a violation of either the statutes or the canon—although it was theoretically possible that the decision might be changed after the opinion was drafted. But in the eyes of the average person, who is not a lawyer, the purchase of the stock before the opinion was released to the public would make this look like a conflict of interest.

On March 12, 1968, the losing party filed a petition with the court to extend the time to file a petition for rehearing—the time having expired 30 days after the release of the opinion on February 2. It appears that the losing party's attorney claimed that he had not received notice of the opinion until February 27. Judge Haynsworth forwarded an order of denial of the petition to the clerk of the court on March 26. Again a petition and supplemental petition to reconsider the petition for an extension of time were filed on April 3 and 4, 1968; and these were denied on August 26, with all three judges joining in the denial.

The point is that the consideration and disposition of each of these various petitions constituted an "other proceeding" covered by the statute and a "judicial act" under Canon 29. Accordingly, it would seem that, at the very least, there were technical violations by Judge Haynsworth—granted that these proceedings might have been more or less perfunctory.

The question then arises over whether Judge Haynsworth's ownership of 1,000 shares of Brunswick stock constituted a "substantial interest" for purposes of the statute and a "personal interest" for purposes of the canon. It would seem that the phrase "personal interest" should be interpreted in light of the statute to mean a "personal and substantial interest."

The point is made that the outcome of the Brunswick case, assuming the most favorable result to Brunswick, would have been diluted among 18 million shares and would have amounted to a total of $5 benefit to Judge Haynsworth's 1,000 shares. Therefore, it is argued that the judge did not have a "substantial" interest. I do not so read the statute or the canon, however. To do so would reduce them to a mere conflict-of-interest proposition—and, of course, one could hardly argue that the $5 constituted a meaningful "conflict of interest" sufficient to sway the decision of a judge. Rather, they go beyond mere conflict of interest and cover the "appearances" to the general public, which must have confidence in the integrity of the court. The average nonlawyer—and these are the people we must consider when it comes to "appearances"—would not have the information required to enable him to conclude that only $5 was involved as far as Judge Haynsworth was concerned. What would count with him would be realization that the judge had 1,000 shares of stock in a company in whose favor he decided a case. Even Judge Haynsworth himself recognized this when he testified—page 305 of the record—he would not have sat on the Brunswick case if he had owned the stock at the time of the hearing.

As far as a conflict of interest is concerned, more than just the sum involved in a case could be involved. A favorable precedent established by the decision could inure to the benefit of the company and its future operations, for example. But, to me, the matter of overriding importance is the impact on public opinion of the "appearances."

It has been contended that we must not construe the canons of ethics too harshly. This only begs the question over whether such a construction is, indeed, "harsh." I would agree that one must avoid interpretations which would favor "unreasonable" suspicion in the public mind. To do so would ratify false accusations and innuendoes which a trusting or gullible public might accept as fact. It is very easy for an opponent to plant suspicion in the public mind so that a nominee would become "controversial" and therefore "not acceptable." All of us in public life understand such techniques very well, because many of us have had them worked on us. The point is that Judge Haynsworth's own carelessness laid a foundation for a substantial amount of the controversy. And I say this in the firm belief that he is an honest judge who has not benefited personally or financially from any of his decisions.

It is argued that too strict construction of the Canons of Judicial Ethics would mean that only lawyers who are paupers or law school professors would be eligible for consideration; because anyone who owns some stock or investments will find that his company is "apt" to come before his court in a lawsuit. I do not believe such a conclusion follows at all, and certainly the drafters of the canons—going clear back 45 years ago—would hardly have intended such a conclusion. What they did intend, however, was that judges handle their portfolios in such a manner as to maintain public confidence; and if this might take some doing, then they should do it, or forget about serving on the bench.

It is contended that the American Bar Association's Committee on Federal Judiciary has endorsed this nomination—not just once, but a second time following a meeting to reconsider the nomination. This may be regarded as a factor to be taken into account—although this same committee—granted there are now some different members—undertook to recommend approval of Mr. Justice Fortas' nomination to be Chief Justice last year even before the hearings of the Senate Judiciary Committee were commenced. And following the revelations in those hearings, this same committee did not even undertake to reconsider its prior recommendation.

Another point on this subject is that the ethics committee of the American Bar Association has never considered Judge Haynsworth's case, and it is the ethical considerations which trouble me—not the other qualifications which are the prerogative of the Committee on Federal Judiciary.

In conclusion, I would not wish to suggest that nominations to the Supreme Court, or to any other court, be made or evaluated on the basis of "popularity." Judges, in the exercise of their sworn duties, often have to make unpopular decisions—just as Members of Congress, if they are to live with their consciences, must occasionally cast some unpopular roll call votes. 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. For this they can expect and will deserve public approbation—if not popularity.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate stand in recess, subject to the call of the Chair.

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

(At 5 o'clock and 25 minutes p.m., the Senate took a recess subject to the call of the Chair.)

the use of a gun in committing a crime a separate and distinct offense punishable with a mandatory sentence. This is the so-called Lesnick bill. And what it says is that the growing use of guns by criminals and the resultant homicide rate in this country is going to be met with punishment that fits these acts of violence.

I believe the contents of this bill will provide a degree of deterrence that does not now exist. I am hopeful that this proposal will be favorably considered during the Judiciary Committee's deliberations.

I have strongly endorsed these efforts to meet all of these problems in our society—obscenity, drugs, and gun crime. I speak for the entire Senate in expressing the hope that these proposals are written into the law books before the session adjourns.

ORDER OF BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that I may proceed for 10 minutes.

The PRESIDING OFFICER (Mr. NELSON in the chair). Without objection, the Senator from Kansas is recognized for 10 minutes.

THE NOMINATION OF CLEMENT F. HAYNSWORTH, JR.

Mr. DOLE. Mr. President, the responsibility of the Senate imposed by the Constitution to advise and consent to a President's nomination is among the most vital and far reaching with which we are vested.

As an attorney, I also have a professional responsibility to carefully consider the nomination of Clement F. Haynsworth, Jr.

Like most of my colleagues I followed the course of the Judiciary Committee's hearings. I examined the daily reports listened to the speculation and accusations and rebuttals which circulated and kept a close watch on the sometimes sensational media coverage of the proceedings. To obtain further insight I have discussed the nomination with members of the committee.

I have had an opportunity to discuss the Haynsworth nomination with members of the executive branch. The President has made known his views to me and I have discussed several points raised in the course of the hearings with the Attorney General.

However, the best source of information from which to learn the facts, consider the arguments, weigh the responses, and make a judgment is the public record. Consequently, I examined the Judiciary Committee's hearings, read all the testimony, reviewed the exhibits and examined the pertinent cases and points of laws therein.

This review was conducted as a Senator and as a member of the bar. I discussed the nomination with members of the Kansas bench and bar whose competence, judgment, and sensitivity to matters of ethics and probity are highly regarded by the legal community and the public in the State of Kansas.

I sought advice and discussed the Haynsworth nomination with three sources: The bar of my State, the Kansas judiciary, and the Federal judiciary. I felt it not only my right but my duty to engage in this consultation.

It was impossible and impractical to consult with all members of the Kansas bar, thus I sought the counsel of a number of members of the associations' executive council, as individual members of the bar, not in their official capacity. Their comments were solicited upon the full record which they had before them. Their opinions were overwhelmingly in favor of confirmation of Judge Haynsworth.

I then contacted Judge Harold Fatzer of the Kansas Supreme Court and asked him to contact the other justices and the two Kansas Supreme Court commissioners. Judge Fatzer reported to me that members of the supreme court and the commissioners were unanimous in their view that Judge Haynsworth should be confirmed.

I also consulted senior Federal District Judge Arthur J. Stanley who has known Judge Haynsworth for years through service together on the Judicial Conference of the United States. Judge Stanley was strong in his praise of Haynsworth as a judge and a man of honesty and integrity.

Former Associate Justice of the U.S. Supreme Court Charles Evans Whittaker was also most helpful. Justice Whittaker who served with great distinction on the U.S. Supreme Court from 1957 to 1962 stated that it would be a "travesty" if the Senate failed to confirm Judge Haynsworth. Justice Whittaker had read the complete record and in his opinion there was no violation of law or the canons of ethics.

Now having done this, of course, the decision to vote for or against confirmation is still mine. The one point which caused me concern was the purchase of Brunswick stock. As the record shows the original opinion in the case in question was agreed upon November 10, 1967, and on December 26, 1967, a month before the decision was made public Judge Haynsworth purchased 1,000 shares of Brunswick stock for approximately $16,000.

Unquestionably, this was a mistake. I am impressed, however, with the fact that the Brunswick stock was purchased not at Haynsworth's request but at the suggestion of Arthur C. McCall, Judge Haynsworth's broker. On page 263 of the Committee Hearings, Mr. McCall states:

> I recommended to him that he buy Brunswick stock. His was no isolated case. I had recommended it to any number of accounts of mine who had bought it.

There is no evidence that Mr. McCall had any knowledge of any case pending involving Brunswick Corp. This coupled with the fact that McCall had been recommending Brunswick stock to a number of other clients "and I think the record will indicate about 45 other clients" convinces me that while a mistake was made it should not be considered a fatal one.

The testimony of Judge Harrison L. Winter, who also sat on the Brunswick case is highly important. He stated on page 252 of the committee hearings in response to a question from Senator TYDINGS:

> Well, that is correct. My answer to the question, my answer to Senator Tydings' question, is I was convinced at the time, and I am firmly convinced in my own mind, that this case was over on November 10, 1967, True the opinion had not been announced. True it could have been modified theoretically up to the moment it was announced. True it could have been modified after it was announced theoretically, and also true that the parties did not know the outcome until February 2. But there was not any question in my mind as to what the decision was that we had reached, and that it was final, in addition to which if what I understand, and believe me I know only from what newspaper publicly has been given these hearings, but from what I understand about Judge Haynsworth's participation in Brunswick, I think that you could make a strong argument that there was not a substantial personal interest involved, that it was a de minimis interest as far as the outcome of this case is concerned.

Personally, I have no problem resolving the other questions and arguments raised by the opponents of Judge Haynsworth as they relate to judicial proceedings in which he participated. Should I then vote against Judge Haynsworth because of a technical mistake in one case when he has participated in approximately 3,000 cases since becoming a Federal judge in 1957, and because of other accusations which have not been proved. Admittedly, I have reviewed the entire record as outlined above, in an effort to justify voting for confirmation.

This I have done because of my strong feeling that the President of the United States, whoever he may be, has a right to nominate whoever he chooses to the U.S. Supreme Court. The President's discretion is a part of the constitutional foundations of our Government. His right should be preserved when the nominee is a man of honesty, morality, and professional integrity. The appointive power is the only power of the executive over the judicial branch and there is not and should not be a prohibition of nominating a man whose philosophy might generally be that of the President. The record reveals that even the opponents of Judge Haynsworth have not questioned his morality, integrity, or honesty. They appear to be "hung up" on what they state is his antilabor, anticivil rights record and his alleged "insensitivity." Those who have read the complete record know this charge is unfounded. Unfortunately, some who may not have read the record or attended the hearings by their statements and reports to the American people have cast a cloud upon this nominee and perhaps upon the Court itself. The motives of some of those who have made the strongest attacks on Judge Haynsworth have been questioned.

There are some who ask whether all opposition is based upon concern for the Court or perhaps some on allegiance to special interest groups.

Nonetheless, the issue will soon be before the Senate and the matter will be resolved for or against the nominee. Perhaps the easy choice would be to vote "no" and announce, for all the world

to hear, that Judge Haynsworth though honest and a man of integrity is "insensitive" or otherwise unqualified.

Having said this, let me state my conclusions:

First. Purchase of Brunswick stock was a mistake, but a technical one. There is not one scintilla of evidence of any profit due to the purchase of the stock before the decision in the case was published.

Second. A reading of the testimony and a summary of the cases does not indicate that Judge Haynsworth's record is antilabor. On the contrary, it appears his record is a balanced one.

Third. He is not anticivil rights. The record clearly indicates this as does the testimony, particularly of G. W. Foster, Jr., professor of law and associate dean of the law school at the University of Wisconsin.

Fourth. There is no similarity between the Haynsworth and Fortas cases.

Fifth. Judge Haynsworth has fully cooperated with the Judiciary Committee and has answered every question propounded to him and furnished all records demanded of him.

Sixth. The record clearly indicates that Judge Clement F. Haynsworth has no allegiance to any special interest group.

Seventh. There have been deliberate attempts by some segments of the media groundlessly to discredit Haynsworth in the eyes of the public.

CONCLUSION

Finally, the question posed is not whether I might have made a different nomination, but whether Judge Haynsworth possesses the qualifications required to become an Associate Justice of the U.S. Supreme Court.

The American Bar Association's Canon of Professional Ethics No. 1, states in part—and, as a lawyer, I like to refer to that:

> Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor.

Mr. President, there has been an abundance of unjust criticism and clamor in this instance, and unless there is some valid revelation, not heretofore made, when the roll is called, I shall vote "yea."

JUSTICE DEPARTMENT OFFICIALS PUSH PANIC BUTTON

Mr. YOUNG of Ohio. Mr. President, the refusal of the administration to permit antiwar demonstrators to march down Pennsylvania Avenue between the Capitol and the White House is an insult to every American who is opposed to the undeclared, unpopular and, in fact, immoral war we are waging in Vietnam. That broad, beautiful stretch of Pennsylvania Avenue, reaching from the Capitol to the White House, is the most historic thoroughfare in our Nation. It has witnessed parades and demonstrations celebrating the Nation's finest hours and mourning some of our saddest.

In addition, Pennsylvania Avenue has traditionally been a place where citizens could voice their protests to their elected officials—one of the most precious rights guaranteed to all Americans in the first of the 10 amendments to our Constitution, which we affectionately term the Bill of Rights.

Citizens should be free to express their disagreement with official policy, even in time of war. It may be dangerous to permit certain opinions to be expressed. It is more dangerous to attempt to suppress the expression of such opinions. To attempt to prevent an explosion in a boiler by sitting on the safety valve is obviously foolish. It invites disaster. That was the method of the Czars of Russia, the Bourbons of France, and of Adolf Hitler of Germany. They failed miserably.

The suppression of protest against administration policy in Vietnam, even when the President feels that it may hamper the execution of that policy, must be accorded the fullest freedom consistent with public safety.

Deputy Attorney General Kleindienst told a press conference that the violence anticipated by the Justice Department will be more difficult to contain on Pennsylvania Avenue. Hogwash.

The Department of Justice has conjured up all sorts of horrifying possibilities of violence. If there is going to be any violence whatever—and I for one seriously doubt that—it will come whether the line of march is on Constitution Avenue or Independence Avenue or any other street. It will not come from the great army of patriotic protestors forming a broad-based demonstration to tell the President and their Congressmen of the deep yearning of the American people for peace.

If there is any violence, it will be caused by a few firebrands desiring to bait the police into the use of excessive force. There should and will be ample police protection to control any that might occur. Surely the Washington, D.C., police force and the National Guard are capable of handling any such situations. Laws and ordinances must be enforced. Anyone who breaks them should be dealt with swiftly and firmly.

Mr. President, I have served as chief criminal prosecuting attorney of Cuyahoga County, Ohio—the most populous county in my State—and I believed then, as I believe now, that certain punishment, like a shadow, should follow the commission of acts of violence. The proposed arbitrary action on the part of administration leaders prohibiting a peaceful demonstration or parade on Pennsylvania Avenue, I fear, may stimulate violence. People generally react strongly against unjustified and arbitrary orders.

Nothing is clearer in our Constitution and traditions than the right of the people peaceably to assemble and to petition the Government for a redress of grievances. Where in the United States is a better place for such peaceful assembly than the Pennsylvania Avenue in the heart of the Capital of our country? This may inconvenience a lot of people. It may cause traffic jams. It may require the Government to go to some expense to maintain order. This is a very small cost indeed for the precious right of citizens to petition their Government for a redress of grievances.

The action of officials of the Justice Department constitutes a needless provocation and denial of constitutional rights. It goes further toward undermining and alienating the majority of those Americans who will be in Washington and do not intend to break any law whatsoever. It plays squarely into the hands of a small, but vocal, minority.

Rules for this demonstration, or for any other, must be established. However, they should be generous and reasonable and in the spirit of a free people. They should be designed to give maximum opportunity for orderly expression, while minimizing the opportunity for fomenting violence.

The Attorney General has evidently chosen the path of repression. He has evidently not yet learned that you cannot exterminate ideals with clubs or by shunting demonstrators off to side streets. You only scatter them. The Department of Justice has pushed the panic button. I hope that the President will recognize that fact and reverse the order prohibiting the demonstration on Pennsylvania Avenue next Saturday. Let us hope that reason and justice will prevail.

CONSULAR CONVENTION WITH BELGIUM AND AGREEMENT WITH CANADA ON ADJUSTMENTS IN FLOOD CONTROL PAYMENTS

Mr. MANSFIELD. Mr. President, as in executive session, I ask unanimous consent that it be in order, at this time, to request the yeas and nays on the two treaties which will be voted on, beginning at 2 o'clock p.m. today.

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

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. MANSFIELD. I thank the Chair.

THE EXTRAJUDICIAL ACTIVITIES OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Mr. ERVIN. Mr. President, the Judicial Conference of the United States, made up of the Chief Justice of the Supreme Court and the chief judges of the Federal judicial circuits, recently took two actions which should be of great concern to us all.

The Conference, on separate ballots, voted to disapprove of two measures which are now before the Congress: Senator MURPHY's amendment to Office of Economic Opportunity legislation which would give State Governors the power to veto federally financed legal aid programs, and a provision in the organized crime bill sponsored by Senator MCCLELLAN which would enlarge the powers of Federal grand juries.

I was amazed, quite frankly, to read that the Conference had taken these actions. My first thought was that the newspapers must not have reported accurately what the Conference had done. But it appears that the reports are true.

When the Congress first established the Judicial Conference in 1922, it intended for the Conference to act as

ance needed for disabilities which are service connected, extended nursing home care, income support, and of special significance is veterans educational benefits.

In 1944 the GI bill was enacted. Since then some 11 million veterans have taken advantage of the benefits by returning to civilian life and entering school. We will never be able to measure the benefits accrued from this legislation, but its value in human terms is very clear. We have supported in whole or in part the realization for millions who fought in our behalf—a better education—and in this way helped them achieve a better life.

The Senate recognizes the importance and recently passed a 46-percent increase in veterans educational benefits. I am proud to have helped achieve Senate approval of this increase. I believe it serves as a useful symbol of our country's continuing recognition and remembrance of America's veterans.

Let us remember our veterans not only on November 11 but on all days, and in all ways. Let us remember them in their youth and help them obtain an education, let us remember them if they are disabled by providing the best available medical care, and let us remember them in their old age with income support if warranted.

All veterans deserve our unfailing support and our gratitude for giving generously in times of our country's greatest need.

Mr. MANSFIELD. Mr. President, for myself and on behalf of the distinguished Republican leader (Mr. SCOTT), I ask unanimous consent to have printed in the RECORD a letter dated November 7, 1969, addressed to us by Shaffe T. Courey, national commander of the Military Order of the Purple Heart.

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

MILITARY ORDER OF THE PURPLE HEART,
Washington, D.C., November 7, 1969.

HON. MIKE MANSFIELD,
U.S. Senator, Montana,
Majority Leader,
HON. HUGH SCOTT,
U.S. Senator, Pennsylvania,
Minority Leader,
U.S. Senate:

Whereas the Senate has elected to conduct business on the National holiday, Veterans Day, November 11, I sincerely hope that it will set aside a few moments at 11 a.m. to pay respect to the 38.5 million men and women who have contributed to the security of our Nation in seeking peace with honor. The military order of the Purple Heart is host for the National Veterans Day Observance at Arlington National Cemetery, in addition to nine regional ceremonies throughout the Nation. Never before have we witnessed such keen and sincere interest in the observance of Veterans Day as this year. Most ceremonies in schools, churches and other public meeting places are to commence at 11 a.m., signifying the time that peace came to the world on November 11, 1918. I hope that Members of the Senate will not overlook this revered occasion and will appropriately pay respect to the more than 27 million living veterans at 11 a.m., Tuesday, November 11. This will be a clear demonstration to our citizens and the rest of the world that we have united love and respect for our flag, our Nation and for those who time and again have sacrificed to maintain peace with honor.

Official:

RICHARD P. GOLICK,
Adjutant General.
SHAFFE T. COUREY,
National Commander, Military Order of the Purple Heart.

STATEMENT OF SENATOR RANDOLPH WITH RESPECT TO CONSULAR CONVENTION WITH BELGIUM AND AGREEMENT WITH CANADA ON ADJUSTMENTS IN FLOOD CONTROL PAYMENTS

Mr. RANDOLPH. Mr. President, yesterday in the Senate there were votes on two matters and inadvertently I was not recorded as favoring those measures had I been present.

The first vote was on Executive F, 91st Congress, first session, and dealt with Consular Convention with Belgium. The second vote was on Executive H, first session, 91st Congress, the agreement with Canada on adjustments in flood-control payments.

Had I been present I would have voted "aye" in both instances.

Mr. President, I was in West Virginia at the time of these rollcall votes. Earlier I had attended the funeral services in Fairmont for William D. Evans, who was a beloved and respected journalist and editor for approximately 40 years in our State.

I express at this time, for unnumbered West Virginians, their appreciation for the fruitful life Bill Evans lived and for the day-by-day counseling he gave thousands and thousands of our citizens.

JUDGE HAYNSWORTH

Mr. COTTON. Mr. President, the time is approaching when each Member must vote for or against the confirmation of Clement F. Haynsworth, Jr., as Associate Justice of the Supreme Court of the United States.

Every Senator has enough homework to do if he studies the testimony and masters the details of matters coming out of his own committees. On other matters he is justified in depending to a certain extent on the reports of the committees handling them and upon the recommendations of colleagues in whom he has confidence, who serve on the committees involved.

In this instance, however, I feel that the issues at stake in the confirmation of Mr. Haynsworth are so important, the public interest so keen, and the controversy so heated, that it is the duty of every Senator to make his own study of the testimony before the Committee on the Judiciary and not take his information secondhand either from his colleagues, the White House, or the Department of Justice, and certainly not from press reports, columnists, and commentators. Therefore, I have taken the time during the past three weekends to familiarize myself with all the evidence brought forth in the committee hearings. I do not claim that I have read every word of every witness, but I did review his testimony enough to analyze his position and I read and in some cases reread with great care the more vital testimony that bore on Judge Haynsworth's conduct as a jurist and his attitude as an individual.

As a result, I arrived at certain conclusions which I shall state as briefly as possible.

First, I did not need to rely on the searching analyses of the alleged improprieties of Judge Haynsworth by the able Senator from Nebraska (Mr. HRUSKA) and the able Senator from Kentucky (Mr. COOK) to reach the inescapable conclusion that these matters have been magnified far out of proportion to their significance and do not reflect in the slightest degree upon the honor and integrity of Judge Haynsworth. It is absurd to believe that a man of substantial wealth, both inherited and accumulated through long years of professional practice, would be swayed in his decision on a case by the remote possibility that it could affect his own pocketbook by a few cents or at most a few dollars.

If that were true, the President could not carry out his avowed intention of appointing to the Supreme Court men with previous judicial experience, because the probability is that no man with any means at all who has participated in many decisions would be entirely immune from such attack. We would have to vote upon those without judicial experience who were only practicing lawyers, as we have at least three times in recent years, or the nominations would be confined to those who were not successful enough in their profession to have acquired any of this world's goods. Indeed, most of us in the Senate would ourselves be subject to attack for much of the legislation upon which we act could affect even the least affluent of us if a dollar or a fraction thereof is to be the test.

A man's reputation should be the determining factor in a situation like the one now before us. I cannot believe that Judge Haynsworth could have spent most of his 56 years practicing law in a medium-sized town, and sitting as Judge of a Federal court of appeals having jurisdiction over the southeastern part of the country, without having left in the minds of the people with whom he is associated a clear picture of what kind of a man he is. One of the tasks undertaken by the American Bar Association committee, in connection with the making of its recommendation, was to interview both lawyers and judges who have been associated with the nominee. The chairman of the association's committee, Judge Lawrence E. Walsh, gave this testimony about those interviews:

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.

The six other judges of the Court of Appeals for the Fourth Circuit, on October 9, sent Judge Haynsworth the following telegram:

Despite certain objections that have been voiced to your confirmation, we express to

you our complete and unshaken confidence in your integrity and ability.

I find this support from the people who know the nominee best much more impressive than the hit-and-run tactics of the opposition. I find it a good deal more convincing than the journalistic ramblings of some instant experts on ethics which this nomination seems to have produced.

I have too high a regard for the integrity of all my colleagues in the Senate and am too conscious of my own frailties to question the motives of any, but I am forced to conclude that, though they may be unconscious of the fact, these alleged irregularities are not and could not be the real reason for the opposition to Judge Haynsworth—they are only a smokescreen. The basis of the opposition to his confirmation within and without the Senate is that his opponents have an instinctive feeling that Judge Haynsworth is a biased and bigoted individual, incapable of the detachment and objectivity which is a required qualification for one who sits in judgment and interprets the law. They see in Judge Haynsworth a member of an old southern family who for five generations have practiced law in the same South Carolina community. Therefore, they assume he must be race conscious and weak on civil rights. They know that members of his family have long been identified with the textile industry. Therefore, he must be against labor.

In the 12 years that he has sat on the U.S. Court of Appeals for the Fourth Circuit, Judge Haynsworth's record is a complete refutation of these suspicions.

In the case of Lankford against Gelston, he participated in the opinion 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."

In Hawkins against North Carolina Dental Society, Judge Haynsworth wrote the opinion which desegregated the North Carolina Dental Association. He joined in North Carolina Teachers' Association against 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 joined the Court's decision applying the Civil Rights Act in the case of Newman against Piggy Park Enterprises.

In addition to these, I note that Haynsworth wrote an opinion holding, over vigorous dissent by other members of the court, that a Federal court had properly released Rap Brown on his own recognizance—Brown against Fogel.

Mr. President, a judge, whatever his background and tradition may be, who insists, over opposition, in according to Rap Brown the full measure of his rights can hardly be charged with racial prejudice.

Reference should be made to the testimony of Prof. G. W. Foster, Jr., who prefaced his detailed statement by saying:

> By faith I am a liberal Democrat, and while Judge Haynsworth would not have been my first preference . . . 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.

Reading charges made by the AFL–CIO, one might assume that Judge Haynsworth had never written a pro labor opinion. Yet, as it was subsequently pointed out, opinions in eight cases sustaining decisions by the National Labor Relations Board against various corporations were written by him, and he has participated in at least 37 pro labor decisions.

I can find no reason to believe that Judge Haynsworth has allowed any prejudice to affect his service on the court.

Mr. President, there has been so much discussion in the press and elsewhere concerning Judge Haynsworth's fitness and impartiality that too little has been said about what he can bring to the Supreme Court of the United States.

I believe that what the Supreme Court needs now, more than it needs a doctrinaire "liberal" or a doctrinaire "conservative," is a judicial craftsman who can write clear, concise opinions so that judges, lawyers, legislatures, and citizens throughout the country will be able to know exactly what the law is. Those who have objectively evaluated Judge Haynsworth's abilties and temperament believe that he is ideally suited to fill that role. Prof. Charles Alan Wright, himself a distinguished scholar of the law, 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 policy preferences.

Professor Wright added that Judge Haynsworth's 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.

One area of concern to the Congress and to the country alike is the field of criminal law, in which many people have felt that the present Supreme Court has placed too great an emphasis upon the rights of a criminal defendant, as opposed to the rights of society. Here I think Judge Haynsworth will bring a needed balance. His opinions in the field of criminal law are neither those of a "hanging judge" nor those of a "bleeding heart." Instead, they are ably written and pragmatic solutions to thorny questions, which reasonaly balance the right of every criminal defendant to a fair trial against the right of society to be protected.

In United States against Chandler, Judge Haynsworth wrote for his court a masterful opinion canvassing the law of "insanity" as a criminal defense, and concluding that the best rule was that previously formulated by the American Law Institute. But even as he adopted this modern rule which gives more latitude to modern psychiatric knowledge, he stated that "Criminal law exists for the protection of society."

In another case, Rowe against Peyton, he combined scholarship with practicality to conclude that an old Supreme Court precedent was harmful to both the prisoner and to the State, and therefore would ultimately be overruled by that Court. He proved correct in this prediction. In yet another case, Hayden against Warden, he wrote a separate opinion urging the overturning of an earlier doctrine which he felt unnecessarily restricted police in their scientific investigation of crime. In this view, he was ultimately upheld by the Supreme Court.

In his years on the bench, Judge Haynsworth has demonstrated high legal capacity. He is in every sense of the word a "lawyer's lawyer" and a "judge's judge."

The American Bar Association's Committee on Judicial Selection rates Judge Haynsworth as "highly acceptable from the viewpoint of professional qualifications."

Mr. President, I shall vote to confirm Clement F. Haynsworth because I believe him to be honorable, because I believe him to be fair, because I believe him to be competent.

It is always a grave responsibility when the Senate has to pass on the qualifications of an individual nominated by the President of the United States to serve for life on the highest court in the land. Certainly it is the duty of each Senator to satisfy himself most carefully as to the character and ability of the nominee before placing the mark of his approval upon him. It is no less the duty of each Senator to be very sure of his grounds before he votes to reject. It would indeed be a tragedy to place a stigma on one who has been universally honored and respected by his fellow citizens through long years of practice at the bar and service on the bench. In my opinion, we are not justified in doing that except for the gravest and most serious reasons. No frivolous or purely technical objections would ever justify such action.

Nor, in the opinion of this Senator, are we justified in voting to reject a nominee because we think we might not agree with his political or social philosophy. In my service here I have voted to confirm nine Justices of the Supreme Court, with whose political philosophy in the majority of cases I was quite sure I differed. Early in my service here, it was impressed upon me by those seniors who were steeped in the traditions of the Senate that the sole test which we were justified in requiring from the President's nominee was character and ability. Mr. President, I believe it would be

most unfortunate if we now change that test. For if Judge Haynsworth should be rejected, I believe it would be purely because of his supposed background and beliefs and not for any other reason.

Therefore, Mr. President, in voting to confirm him, I am not only, according to my own conscience, doing justice to Clement Haynsworth but I am also in a deeper sense voting to preserve the standards of this Senate. It will be a sad day when we let politics sway our judgment on the character of men.

Mr. THURMOND subsequently said: Mr. President, the very able and distinguished Senator from New Hampshire has given a great deal of thought and study to the record concerning the nomination of Judge Haynsworth to the Supreme Court. As a result of this careful and detailed reading of all the evidence, Senator COTTON has announced his intention to support Judge Haynsworth.

It is heartening to see a man of such high character and such dedication to principle come out strongly for the confirmation of Judge Haynsworth. Senator COTTON has noted the objectivity with which Judge Haynsworth has approached various issues before him and has determined that he is a man who possesses the character, ability, and integrity to serve with honor on the U.S. Supreme Court.

I should like to commend the distinguished Senator from New Hampshire for his fine remarks and to express the hope that all those Senators who have doubts regarding this matter will study the record as carefully and thoroughly as Senator COTTON has.

BOTH SIDES SHOULD BE HEARD

Mr. MOSS. Mr. President, last week on the Senate floor and in the newspapers some dissatisfaction was expressed concerning President Johnson's efforts to provide a modern nursing home for the senior citizens of Austin, Tex. The home that was constructed features the kind of innovation that I find all too lacking in my investigations of nursing homes in America. As chairman of the Subcommittee on Long Term Care for the Elderly, I have spent many days and weeks in hearings on adequate nursing homes.

So, although I have no direct knowledge of the transactions involved, I do believe that both sides should be heard. Accordingly, I ask unanimous consent that a letter to the editor of the Washington Post from former Secretary Wilber J. Cohen be printed in the RECORD.

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

SCHOOL OF EDUCATION,
UNIVERSITY OF MICHIGAN,
Ann Arbor, Mich., November 4, 1969.

EDITOR,
Washington Post,
Washington, D.C.

Usually the reader of the Washington Post can find on its editorial pages (whether he agrees or disagrees) some of the most intelligent and thoughtful discussions of the major issues of our day.

I was shocked, therefore, to read your editorial of November 3, 1969, relating to Senator John William's charge concerning the Geriatric Center in Austin, Texas. It reflects a disregard of all the facts and a judgment rendered out of that ignorance.

As Undersecretary and Secretary of Health, Education, and Welfare during 1965–68, I am thoroughly familiar with President Johnson's efforts to stimulate the construction and operation of an innovative model nursing home since all of us were appalled at costs and conditions in nursing homes.

Those efforts go back at least to 1966 (if not earlier) when President Johnson began urging us in the Department of Health, Education and Welfare to develop a model Geriatric Center in this country with modern research capability which would include nursing home facilities and housing for the elderly. I brought one of the most distinguished experts in this field from England, Dr. Lionel Cosin, to meet with the President and myself in order to plan a nursing home program which among other things, would help to rehabilitate persons for self-care.

On October 12, 1966, President Johnson established a Task Force, including health experts and architects, to put together the basic framework for a model Geriatric Center and Nursing Home.

In January, 1968, when federally-owned land at the National Training Site in the District of Columbia became available, President Johnson asked that it be used to build a "new town in town"—including housing and schools as well as a model nursing home.

At that time, it was believed that it would be possible to build the project promptly, since no one was living on the land (and therefore no one would have to be displaced), and since the Federal Government owned the land in an essentially federal city, the District of Columbia.

President Johnson and the Department of Health, Education and Welfare also encouraged the National Medical Association Foundation, a group largely composed of Negro doctors, to put the nursing home project together. The concept provided for operation in conjunction with the Medical School of Howard University. It was hoped this would set an example for the rest of the country; that it would encourage cities and states to use surplus or available government land to build new innovative projects within existing cities, complete with housing and medical facilities.

Due to a variety of local problems, and despite every effort by President Johnson to achieve this goal, it was not feasible to use this Washington site. Nevertheless, a number of ideas which we wanted to utilize had been developed for the construction and operation of an experimental nursing home.

It should be kept in mind that Congress had spelled out in Section 1902(a)(28) of the Medicaid law a series of six requirements for nursing homes and in Section 1908, six requirements for nursing home operators. I felt strongly then—as I do now—that we needed more experimental projects in this entire area.

In 1968, when the tract of Federal land in Austin, Texas became available, it seemed like a stroke of good fortune to try and utilize it for a nursing home experimental project. This land had originally been purchased by the City of Austin 30 years before for $11,000. At that time the then Congressman Lyndon B. Johnson prevailed upon the city to give this land to the Federal Government for use as a fish hatchery.

In 1968, the Department of the Interior in two separate actions, found this land to be excess to its needs. In August 1968, the first portion of this tract of Federal land to be declared excess was used to construct model low-cost housing. Ten houses were built on that land, each costing less than $8,000, in an experiment with new building materials and techniques that many feel is the genesis of "Operation Breakthrough."

The second portion of this land which was declared excess involved the remaining 26 acres, on which it was decided to build the modern geriatric center. Originally, the plan was for the University of Texas to operate the experimental nursing home. Because of legal limitations, the University of Texas was unable to finance and operate a nursing home and therefore were unable to accept the land. Therefore, a non-profit public corporation was formed for this purpose.

The three directors of that corporation during its organizational phase were Frank Erwin, Chairman of the Board of Regents of the University of Texas system; Roy Butler, President of the Austin School Board; and John Burns, President of the City National Bank of Austin and a member of the Austin Public Housing Authority. (J. C. Kellam signed the original papers as director but resigned after 3 days and was replaced by John Burns).

Mr. Erwin was chairman of this public group because it was contemplated that the University of Texas would monitor this project and would deploy its academic, medical and other scientific expertise for experimentation and research in care of the elderly. Messrs. Butler and Burns were chosen not merely because of their high standing in the Austin community, but because both were directors of St. Jude's, a non-profit organization which operates two nursing homes and a psychiatric center.

The Interior Department declared the land "excess" in late 1968. This "excess" property was declared "surplus" property shortly thereafter, a legal act solely and fully within the authority of the Administrator of the General Services Administration.

Under the law, the Administrator "in his discretion" assigned this surplus property to the Secretary of HEW for health purposes including research. This was perfectly appropriate, since the law places total discretion in the Administrator. At that time, the Administrator of GSA and his deputy indicated that there was ample precedent for such action without regard to the 30 day waiting period.

Under the law, the Secretary of HEW in fixing the value of property "shall take into consideration any benefit which has accrued or may accrue to the United States from the use of such property . . ." As is common in such cases where property is to be used for schools, hospitals, or nursing homes, I directed that the property be donated under this provision to the public non-profit corporation with every expectation that with the full cooperation of the University of Texas, the research results which would accrue to the people of the United States would be many times the value of the property.

The organization which received the land was a non-profit public corporation, to be qualified under the Internal Revenue Code and to become a tax supported institution under State law.

Subsequently, by an Act of the Texas State Legislature, the public non-profit corporation was provided tax exemption for the operation of the geriatric center and in effect made a tax-supported institution.

As I understand it, the Internal Revenue Service has already granted tax exemption under Section 501(c)(4) of the Internal Revenue Code. Technically, such exemption should be under Section 501(c)(3) of the code, but I understand that the public non-profit corporation had applied for this exemption and that no problem should exist on this point.

The salient points to remember are: 1) No one that I know of stands to make any profit out of this institution. The only beneficiaries will be the elderly poor in Austin and

lems of growth abroad. Within the United States, we have to overcome our crisis of the spirit if we are to heal our divisions and reunite our people.

Finding the right role for the United States in the world at large, a role consistent with our historic ideals, would go far toward quieting the torment in our land. Then the United States once more would stand as tall as it rightly should in the community of nations.

NIXON WILL NOT CUT AND RUN

Mr. YOUNG of North Dakota. Mr. President, one of the best editorials that has come to my attention on our involvement in Vietnam is entitled "Nixon Makes One Point Abundantly Clear: He's Not Going To Cut and Run," published in North Dakota's largest newspaper, the Fargo Forum.

The editor, Mr. John Paulson, I believe speaks for the great majority of the people in North Dakota in the sentiments he so ably expresses in the editorial. I ask unanimous consent that it be printed in the RECORD.

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

NIXON MAKES ONE POINT ABUNDANTLY CLEAR: HE'S NOT GOING TO CUT AND RUN

In his broadcast report to the nation on the war in Vietnam, President Richard M. Nixon made one point abundantly clear: He is not going to cut and run, thereby telling the world that the 40,000 American lives went down the drain in an unworthy cause.

He is going to reduce the American military commitment to whatever extent possible as the South Vietnamese become stronger and capable of effective defense for their people and their government.

Understandably, the campus protesters and the congressional critics were disappointed. The President didn't bow to their wishes and say that the war would end by next June 30 or next Nov. 1 in abject surrender and complete admission that America was wrong from the beginning in everything it did in Vietnam.

The President asked for a convincing display of support from the American people for his present course of action. Thousands of telegrams have poured into the White House showing that a substantial number of Americans—perhaps a clear majority—support President Nixon in his effort to end American participation in the Vietnam conflict.

These three accomplishments stand out:

President Nixon has brought about a reduction in the number of American troops committed to Vietnam. The troop reductions ordered to date total 60,000, and President Nixon says that further reductions in the near future should be accomplished on even a faster scale than had been anticipated when the first troop reductions were ordered.

American casualties in recent months have declined dramatically. If the North Vietnamese and the Viet Cong keep the battlefield lull going, the American troop reductions will proceed that much faster.

There apparently is no way to negotiate a settlement with the Viet Cong and the North Vietnamese. They will never, apparently, say anything or sign anything that would make it possible for America and the South Vietnamese to claim that a "just peace" had been achieved.

But if President Nixon is successful in his program to replace American troops with South Vietnamese troops and bring most of the American troops home, the North Vietnamese can claim they have achieved their objective, the elimination of American troops from Southeast Asia.

Mr. Nixon explained it this way:

"We really have only two choices open to us if we want to end this war. I can order an immediate and precipitous withdrawal of all Americans from Vietnam without regard to the effects of that action. Or we can persist in our search for a just peace through a negotiated settlement, if possible, or through a continued implementation of our plan for Vietnamization, if necessary, a plan in which we will withdraw all of our forces from Vietnam on a schedule in accordance with our program as the South Vietnamese become strong enough to defend their own freedom.

"I have chosen the second course. It is not the easy way—it is the right way. It is a plan which will end the war and serve the causes of peace—not in just Vietnam but in the Pacific and in the world."

Now the critics say that Johnson's war has become Nixon's war, but they have no other solution except an immediate and complete withdrawal, without regard for the consequences to South Vietnam and the world.

President Nixon is taking a decided gamble for peace, and for his own political future. He is not going to adopt a course that would appease the draft dodgers, the student radicals, the big spenders who would rather spend the money being used on the Vietnam war on some far-out government aid programs.

President Nixon made it clear he realizes that most Americans want the fighting to end, want the boys to come home, but he cannot turn his back on the course that this nation has set through the presidents who preceded him in office, and on the Congresses which have endorsed American action every step of the way through their elected representatives. The fact that some members of Congress now are shifting their attitudes with the political winds when they refused to make a thorough study of the war issues during the period of escalation doesn't change the obligations of Mr. Nixon as President.

He has chosen the only course open to him. He has asked for a significant show of support from the people who support his efforts to bring the war to an end, and he is getting this support through telegrams and letters and petitions.

Maybe the flood of messages will help convince the protesters that they too are born with a commitment to support their country in times of stress, rather than to echo the claims of the enemy that America is an imperialist nation, dedicated to supporting corrupt governments. America has made some mistakes, unquestionably, in its Southeast Asia policies, but we are not in Vietnam to establish a colony or a possession. We have participated in the war in an effort to protect what we believe was the safety of one nation against outright aggression.

When the threat of this aggression goes away, American troops will come home. We should give Mr. Nixon every chance to carry out his program.

AMERICAN TRIAL LAWYERS ASSOCIATION OPINION POLL ON THE NOMINATION OF JUDGE HAYNSWORTH

Mr. BAYH. Mr. President, it is expected that this week the Senate will have before it the question of the confirmation of the nomination of the Honorable Clement F. Haynsworth, Jr., to the Supreme Court of the United States.

Recently the American Trial Lawyers Association conducted an opinion poll of approximately 1,000 of its members on their attitude toward this important nomination.

In order that the Senate may have before it, in convenient form, the results of the poll, I ask unanimous consent that there be printed in the RECORD the text of the letter from the president of the association to its members explaining the poll; a letter from a certified public accounting firm setting forth the results which had been received by October 23; a tabulation, State by State, of the returns from the poll; a letter to Senators from the president of the association summarizing the results; a resolution adopted by the board of governors of the association opposing the confirmation of the nomination; and a press release from the association dated October 31, which further sets forth its views on this issue.

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

AMERICAN TRIAL LAWYERS ASSOCIATION,
Cambridge, Mass., October 15, 1969.

DEAR ATL MEMBER: Pursuant to a vote taken at a telephonic conference of the Executive Committee, I sent telegrams to the White House and every member of the United States Senate "firmly cautioning (them) against prematurely approving" the appointment and confirmation of Clement F. Haynsworth, Jr., to the Supreme Court of the United States "until and unless all available information is fully and fairly considered and properly evaluated."

I stated that there may have been approval "by a few individual members of this Bar Association", but that our Bar Association "has not yet evaluated or taken a position upon either his appointment or his confirmation".

I pointed out that the American Trial Lawyers Association lauds and approves without reservation the basic concept "that membership of the Supreme Court should be composed of men of unquestionable scholarly ability, and who also have demonstrated they are unquestionably discreet and sensitive in all matters that might undermine public confidence in the integrity of the Supreme Court and its membership, consistent with the need of an independent judiciary".

I further stated that since our Bar Association consists of a "large segment of the knowledgeable trial lawyers of America . . . representing the interest of the public . . ." that I would poll approximately 1,000 members—such as yourself—to obtain their opinions as to whether:

1. The Nomination should be approved;
2. The Nomination should be disapproved; or
3. The Nomination should be withdrawn.

The poll will be unsigned and confidential.

Although I stated that I would inform you that the full text of the Senate Judiciary Hearings on this appointment will be available through that committee and that the position of the White House is available through its legal counsel, some people have informed me that they have endeavored to obtain this information but without success. If you too experience such difficulty, I respectfully suggest that you respond to this poll, basing your response upon an objective analysis of the information disseminated through the communications media.

An immediate reply and prompt return of your opinion is urgent since our poll must be completed and evaluated before the Board meets next week. Hence, *your response must be received in Cambridge, Massachusetts no later than Wednesday, October 22, 1969.* Kindly send it to us via air mail.

Your anticipated prompt consideration of this matter is appreciated.

Sincerely,

LEON L. WOLFSTONE,
President.

Mail to: President Leon L. Wolfstone, American Trial Lawyers Association, 20 Garden Street, Cambridge, Mass.

CHECK THE BOX OF YOUR CHOICE

1. The Nomination should be approved ☐.
2. The Nomination should be disapproved ☐.
3. The Nomination should be withdrawn ☐.

No signature required.

BOSTON, MASS.

LEON L. WOLFSTONE, ESQ.,
President, American Trial Lawyers Association:

In accordance wtih your instructions, we have tabulated the results of the poll mailed by the American Trial Lawyers Association on October 15, 1969 with respect to the appointment of Clement F. Haynsworth, Jr. to the Supreme Court of the United States. The tabulation of the replies to the poll are attached hereto.

We understand that on October 15, 1969 the American Trial Lawyers Association mailed 1,204 questionnaires to a selected sample group of its total membership of approximately 24,000. The replies to the questionnaire were returned directly to the office of the Association. We then had a member of our staff call for and return the unopened envelopes to our office for tabulation. In most cases, we were able to correlate the responses to the list of members to whom the poll was sent.

Accordingly, the enclosed summary represents only the results of the 715 replies that were received at our office through October 23, 1969.

PEAT, MARWICK, MITCHELL & CO.
OCTOBER 24, 1969.

AMERICAN TRIAL LAWYERS ASSOCIATION TABULATION OF HAYNSWORTH POLL REPLIES OCT. 23, 1969

Total number of questionnaires sent	1,204	
Replies received	715	
Percentage of total received to total sent		59.39
Votes for approval	191	
Percentage of approval to total receipts		26.71
Votes for disapproval only	264	
Percentage of disapproval to total receipts		36.92
Votes for withdrawal only	174	
Percentage of withdrawal to total receipts		24.34
Votes for disapproval and withdrawal (note)	86	
Percentage of disapproval and withdrawal to total receipts		12.03
Total	715	100.00

Note: Some replies recommended both disapproval and withdrawal of the appointment. These votes were tabulated and reported above as a separate classification and are not included in either the disapproval or withdrawal category.

AMERICAN TRIAL LAWYERS ASSOCIATION TABULATION OF HAYNSWORTH POLL REPLIES BY STATE, OCT. 23, 1969

State	Number of questionnaires sent	Number of replies received	Approval	Disapproval	Withdrawal	Disapproval and withdrawal [1]
Alabama	16	10	9			1
Percent		62.5	90			10
Alaska	4	1		1		
Percent		25		100		
Arizona	20	12	4	5	3	
Percent		60	33	42	25	
Arkansas	10	5	3	1	1	
Percent		50	60	20	20	
California	96	46	6	24	10	6
Percent		47.9	13	52	22	13
Colorado	21	14	5	4	4	1
Percent		66.7	36	29	29	6
Connecticut	23	14	1	6	3	4
Percent		60.9	6	43	22	29
Delaware	6	4	2	2		
Percent		66.7	50	50		
District of Columbia	22	7	2	1	4	
Percent		31.8	29	14	57	
Florida	63	39	16	9	10	4
Percent		61.9	41	23	26	10
Georgia	16	11	7	2	1	1
Percent		68.8	64	18	9	9
Hawaii	5	1	1			
Percent		20	100			
Idaho	5	1			1	
Percent		20			100	
Illinois	52	35	6	17	9	3
Percent		67.3	17	49	26	8
Indiana	25	19	7	7		5
Percent		76	37	37		26
Iowa	16	10	3	2	4	1
Percent		62.5	30	30	40	10
Kansas	16	11	3	3	3	2
Percent		68.8	27	27	27	19
Kentucky	17	12	5	3	3	1
Percent		70.6	42	25	25	8
Louisiana	31	17	10	5	2	
Percent		54.8	59	29	12	
Maine	15	10	1	4	5	
Percent		66.7	10	40	50	
Maryland	17	12	2	4	4	2
Percent		70.6	17	33	33	17
Massachusetts	48	27	1	13	10	3
Percent		56.3	4	48	37	11
Michigan	50	32	6	11	8	7
Percent		64	19	34	25	22
Minnesota	25	21	2	6	8	5
Percent		84	10	29	38	23
Mississippi	13	8	7		1	
Percent		61.5	88		12	
Missouri	31	22	4	11	6	1
Percent		71	18	50	27	5
Montana	9	5	3	1	1	
Percent		55.6	60	20	20	
Nebraska	13	5	2	3		
Percent		38.5	40	60		
Nevada	11	5	1		2	2
Percent		45.5	20		40	40
New Hampshire	6	3	1		1	1
Percent		50	33		33	34
New Jersey	37	17		9	7	1
Percent		45.9		53	41	6
New Mexico	9	7	1	3	1	2
Percent		77.8	14	43	14	29
New York	75	30	3	10	8	9
Percent		40	10	33	27	30
North Carolina	15	12	8	2	2	
Percent		80	66	17	17	
North Dakota	6	4		3		1
Percent		66.7		75		25
Ohio	62	37	8	14	10	5
Percent		59.7	22	38	27	13
Oklahoma	13	7	3	2	2	
Percent		53.8	42	29	29	
Oregon	19	14	4	7	2	1
Percent		73.7	29	50	14	7
Pennsylvania	47	33	3	16	6	8
Percent		70.2	9	48	18	25
Puerto Rico	6	2		2		
Percent		33.3		100		
Rhode Island	6	4		2	1	1
Percent		66.7		50	25	25
South Carolina	12	5	2	1	2	
Percent		41.7	40	20	40	
Sout Dakota	8	6	3	2	1	
Percent		75	50	33	17	
Tennessee	33	24	14	5	5	
Percent		72.7	58	21	21	
Texas	51	29	3	15	9	2
Percent		56.9	10	52	31	7
Utah	7	5		3	1	1
Percent		71.4		60	20	20
Vermont	8	2	1	1		
Percent		25	50	50		
Virginia	28	19	6	7	6	
Percent		67.9	32	36	32	
Virgin Islands	2					
Percent						
Washington	25	16	6	5	3	2
Percent		64	38	31	19	12
West Virginia	7	5	2	1	2	
Percent		71.4	40	20	40	
Wisconsin	21	15	3	7	2	3
Percent		71.4	20	47	13	20
Wyoming	5	3	1	2		
Percent		60	33	67		
Total	1,204	715	191	264	174	86
Percent		100	26.71	36.92	24.34	12.03

[1] Some replies recommended both disapproval and withdrawal of the appointment. These votes were tabulated and reported above as a separate classification, and are not included in either the disapproval or withdrawal category.

AMERICAN TRIAL LAWYERS ASSOCIATION,
Cambridge, Mass., October 26, 1969.

DEAR SENATOR: In fulfillment of the commitment of the American Trial Lawyers Association to conduct a poll of over one thousand of its members with regard to the appointment and confirmation of Judge Clement Haynsworth to the Supreme Court of the United States as set forth in our telegram to you of October 13, 1969, you are informed as follows:

(1) The promised poll was immediately conducted of 1204 members, consisting of 680 present and former officials of this bar association, plus 524 of its membership selected by taking in proportion to the number of members in each state every 40th name, selected at random but with a special effort that at least one be polled from each city or town in which there are members of this bar association. A total of 715 responded.

(2) Those polled were informed of the availability of the record of the Senate Judiciary Committee and the position papers of the White House.

(3) Those polled were requested to submit their views as to whether:

1. The nomination should be approved;
2. The nomination should be disapproved;
3. The nomination should be withdrawn.

(4) Considering the time limitation for response, the return of 715 opinions was (as

compared to other polls by mail) unusually high and geographically widespread.

(5) The returns from the poll, when received, were turned over in unopened envelopes, to an independent firm of certified public accounts for tabulation and also for correlation of the responses to the list of members to whom the poll was sent.

(6) The results of that poll and the covering letter to that firm of certified public accountants is attached. Briefly and fairly summarized it states that only 26.71% of those responding favored confirmation, whereas 73.29% favored either withdrawal or disapproval of the confirmation of the nomination. It should be noted that some indicated *both* of the latter choices, namely "withdraw" and "do not approve." No other dual opinions were received.

(7) The poll was carefully considered by the Executive Committee and the Board of Governors of the American Trial Lawyers Association. The transcript of the "Hearings before the Senate Judiciary Committee" was extensively discussed. After full discussion, the Board of Governors adopted a Resolution, a copy of which is attached. Summarized, the Resolution states that the American Trial Lawyers Association opposes confirmation of the nomination and strongly urges withdrawal or disapproval.

(8) The American Trial Lawyers Association is always willing and anxious to fulfill its professional responsibility and public duty to weigh carefully the advisability of this or any other judicial appointment and transmit this information and recommendation to those who have the constitutional right and duty of decision.

Very truly yours,

LEON L. WOLFSTONE,
President.

RESOLUTION BY THE AMERICAN TRIAL LAWYERS ASSOCIATION

Whereas, the nationwide poll conducted by the American Trial Lawyers Association among 1204 of its members established that 73.29% of the attorneys returning the questionnaire believe that Judge Clement Haynsworth's nomination to the United States Supreme Court should be withdrawn or disapproved and that only 26.71% of the attorneys returning the questionnaire believe that his nomination should be approved, and

Whereas, the Board of Governors of the American Trial Lawyers Association believes that public uncertainty over the ethical conduct of any nominee to the United States Supreme Court seriously affects public confidence in the integrity of our judicial system, and

Whereas, the Board of Governors of the American Trial Lawyers Association concurs and affirms that it is essential that there be the highest degree of public confidence in the United States Supreme Court, and

Whereas, the Board of Governors of the American Trial Lawyers Association is persuaded, based upon the record before the Senate Judiciary Committee, that Judge Clement Haynsworth has failed to demonstrate that sensitivity to the high standards of conduct required and expected of nominees to the United States Supreme Court, and

Whereas, the Board of Governors of the American Trial Lawyers Association believes that the confirmation of Judge Clement Haynsworth would not help in maintaining public confidence in the United States Supreme Court, but would instead undermine such public confidence, and

Whereas, it is clear, based upon the testimony before the Committee on the Judiciary of the United States Senate, that the confidence of our citizenry in the fairness and impartiality of the judicial system would be impaired by the confirmation of Judge Clement Haynsworth, and

Whereas, the Board of Governors of the American Trial Lawyers Association had available and considered the testimony presented in "Hearings before the Committee on the Judiciary of the United States Senate on the nomination of Judge Clement F. Haynsworth, Jr. to the Supreme Court of the United States," and

Whereas, the Board of Governors of the American Trial Lawyers Association believes that there are many eminent judges and attorneys in all sections of the nation who are qualified to serve on the United States Supreme Court, and whose selection would not undermine public confidence in the Court,

Now, therefore, be it resolved that the Board of Governors of the American Trial Lawyers Association opposes the confirmation of Judge Clement Haynsworth's nomination to the United States Supreme Court and urges that said nomination be withdrawn or disapproved.

Be it further resolved that the President and Officers of the American Trial Lawyers Association are hereby authorized and directed to take all such action as may be necessary and appropriate to oppose said nomination and cause its withdrawal or disapproval.

PRESS RELEASE BY AMERICAN TRIAL LAWYERS ASSOCIATION, OCTOBER 31, 1969

Today's news reports on the various radio stations, based upon three United Press information releases from Washington, D.C., advise that the White House has mounted a nation-wide campaign amongst local Republican organizations, businessmen's groups, trade associations and others *to swamp senatorial offices with letters urging the confirmation of the appointment of Judge Clement Haynsworth to the Supreme Court of the United States.*

In 1906, Dean Roscoe Pound, who before his death was the editor-in-chief of the Bar Journals of this Bar Association, shook America by pointing out the impaired public confidence in the judicial system in the United States.

In 1969, the American Trial Lawyers Association, a responsible bar association composed of over 24,000 trial lawyers throughout America, being similarly disturbed at the present apparent or threatened loss of public confidence in the Supreme Court of the United States, conducted a poll of 1204 of its knowledgeable members as to whether the nomination should be: (1) approved; (2) disapproved; or (3) withdrawn.

After a prolonged discussion and evaluation of the sworn testimony and records before the Judiciary Committee of the United States Senate, together with consideration of the position papers of the White House in support of the nomination, and after consideration of all points of view in a lawyer-like manner, this bar association, acting through its Board of Governors, adopted a resolution urging that the nomination be withdrawn or disapproved.

Although the White House and other supporters of the nomination of Judge Clement Haynsworth to the Supreme Court have accused the press media of having presented biased and unbalanced points of view with regard to the nomination, I feel that in the aggregate and overall the press media has presented all points of view, pro and con, with regard to this nomination.

Although it clearly would be better if all now advising their Senators of their points of view had fully read and considered the transcripts of the hearings and the other available information, and had had the benefit of prolonged discussion as did the Board of Governors of this bar association, nonetheless I do feel that the public has been substantially well informed by the press media. Similarly I feel that the entire body public has been so informed and should be invited to express its views rather than those limited and select groups included in the UPI press releases, namely urging that those supporting the nomination so advise their Senators.

To the contrary, I urge that all Americans, wherever they may be, and of whatever political or philosophical persuasion, notify their Senators immediately of their views as to whether: (1) the nomination should be approved; (2) the nomination should be disapproved; or (3) the nomination should be withdrawn.

The American Trial Lawyers Association does not urge upon the American public its point of view. The American Trial Lawyers Association is, however, seriously concerned that all points of view be promptly and clearly presented to the United States Senators who have the constitutional responsibility of providing the White House with their advice and who have the constitutional responsibility of deciding whether or not to give their consent to the nomination of Judge Haynsworth.

It is imperative that the American public have full and undiminished confidence in the integrity and sensitivity of the members of the Supreme Court of the United States less public confidence in the Supreme Court and indeed the entire judiciary be undermined.

I concur wholeheartedly with the statement by President Bernard Segal of the American Bar Association reported in the October issue of the American Bar News in his discussion of the appointment of a committee to update the canons of judicial ethics. In his statement he puts it so well when he says that: "Since public confidence in the courts rests heavily upon the reliance of the people in the integrity of their judges."

We fear that in this instance that public confidence may have been or may become impaired. Hence we urge that the entire public rather than limited and select groups express their views to their respective Senators.

We urge that insofar as possible and practicable that the members of the public read and fully consider the transcript of the proceedings before the Judiciary Committee of the United States Senate and the position papers of the White House.

PRESIDENT ANNOUNCES RURAL AFFAIRS COUNCIL

Mr. PEARSON. Mr. President, last Thursday, President Nixon announced the formation of a Cabinet-level Rural Affairs Council. I consider this to be an announcement of extreme importance, and I commend the President for taking this action. Also, because this announcement has not received the attention it deserves I want to take this opportunity to call it to the attention of the Senate and the public. Therefore, I ask unanimous consent that the President's statement announcing the creation of the Rural Affairs Council be printed in the RECORD at the conclusion of my remarks.

Mr. President, within the past 2 or 3 years there has been a growing national recognition of the great need to expand the economic and social opportunities of the countryside and our smaller towns and cities so that those who would prefer to live in such communities will have the freedom to do so rather than being

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the able Senator from Colorado (Mr. ALLOTT) is recognized.

Mr. ALLOTT. Mr. President, I yield to the distinguished majority leader, and I also want at this time to thank him very much for his accommodation with respect to this particular time.

Mr. MANSFIELD. It is a pleasure.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate today.

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

ORDER FOR ADJOURNMENT

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

(Later in the day the Senate modified this order, to provide for the Senate to adjourn to 9:45 a.m. tomorrow.)

THE NOMINATION OF HON. CLEMENT F. HAYNSWORTH, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. ALLOTT. Mr. President, recently the most distinguished Senator from Michigan (Mr. GRIFFIN) submitted for printing in the RECORD, his individual views, as an outstanding member of the Judiciary Committee, on the President's nomination of Judge Clement F. Haynsworth to be one of the Associate Justices of the U.S. Supreme Court. Because of my profound respect for the opinion of the Senator from Michigan, I have most carefully reviewed this document in order to determine if it contained anything that would cause me to conclude that my judgment of the matter was in error and that my vote should be against the choice of the President.

Mr. President, I found nothing to cause me to doubt my previous conclusion. I am compelled to say to my good friend from Michigan that I believe his first impressions were right. When he said on a prior occasion that Judge Haynsworth could not be rejected on the basis of his philosophy, he was right. And, when he questioned whether Thurgood Marshall or Arthur Goldberg would have been confirmed if the criteria had been the nominee's philosophy, he was right.

He was right when he said it would be an error for a judge to attempt to avoid hearing a case by merely pointing to some remote or insubstantial interest and that if this were allowed it would not only snarl the procedures of the courts but would unfairly burden the other members of the judiciary.

I wholeheartedly agree with his assessment then, that the same judge who is required to disqualify himself when he has a substantial interest in a case is under an equally compelling duty not to disqualify himself in cases where he does not have a substantial interest. I affirm his conclusion, arrived at after reviewing all of the pertinent facts in regard to the Darlington Mill case and the Judge's interest in Carolina Vend-A-Matic Inc., that "Judge Haynsworth did not have a substantial interest in the Darlington case, decided by his court" and that "not only was he not guilty of impropriety, interestingly enough, under accepted doctrines of judicial ethics, he really had a duty to hear and decide it."

I hasten to emphasize that the September 14 speech of my good friend from Michigan did conclude with the reservation of a right to change his mind, if new facts should develop to necessitate it. What I am saying today, is simply that I have now carefully reviewed the individual views and there are no new facts recited which convince me that Judge Haynsworth should not be confirmed by this body.

Most of us, here in the Senate, have been studying this matter closely, and will soon come to the point of debate concerning it. That debate and the prior expressions of both opponents and the proponents are calculated to provide a full airing of the charges against the nominee so that each of us may cast an informed vote, and together arrive at a just conclusion. To this end, and only this end, it is my purpose to briefly review the matters set forth in the individual views as I see them, based on a complete reading of the hearing transcript.

I

Under the caption of "Genesis of Doubt," the initial matter mentioned is that of the June 2, 1969, testimony of Judge Haynsworth before the Judiciary Committee's own Subcommittee on Improvements in Judicial Machinery. It is a tribute to Judge Haynsworth that he was asked to testify as a most respected member of the Federal judiciary in connection with desired congressional improvements to upgrade our judiciary. It is important that he was not testifying in regard to an inquiry concerning his personal conduct as a judge, but instead was testifying as an adviser to the subcommittee. On June 2, the subject before the committee was judicial disclosure, not the business interests of Judge Haynsworth. By the way, I am a cosponsor of the Senator from Michigan's bill, S. 2109, on the subject of judicial disclosure which attests to his sincere interest in this matter.

Mr. GRIFFIN. Mr. President, will the Senator yield for a half moment?

Mr. ALLOTT. I am happy to yield.

Mr. GRIFFIN. I do not intend, of course, to debate the matter with the Senator this morning. I should like to have it clear, however, that the preliminary statement I made, indicating a tentative conclusion, was made before the hearings on the Committee on the Judiciary began, and that such facts as were subsequently revealed came to light during the hearings of the Judiciary Committee, the record of which the Senator is now about to turn his attention to.

Mr. ALLOTT. I thank the Senator.

The judge has been an ardent supporter of judicial reform and in these June 2 hearings, he was asked his opinion about requiring a disclosure of business interests by Federal judges, upon assuming the bench. Judge Haynsworth replied, stating that he supported such a requirement. That answered the question asked of him, but he went on to comment that he, himself, had resigned from "directorships and things of that sort" with the exception of a trusteeship of a small foundation when he became a judge. It is stated by the Senator from Michigan that when Judge Haynsworth appeared before the Judiciary Committee in connection with his appointment to the Supreme Court, he "found it necessary to admit" his testimony in June on this other matter was erroneous.

First, I am afraid that this statement could readily be misconstrued as an indication of an admission of false testimony or misleading testimony by those not as intimately familiar with the proceedings as the Senator from Michigan. It is my view that while we well could be concerned if it had been revealed that the judge had misstated his business connections at a time when that matter was the subject of an inquiry, I am convinced that it would be wholly erroneous for us to, in any way, construe this volunteered comment as any kind of false testimony.

Secondly, although the important thing is that the statement on June 2 was not an incorrect answer and did not mislead the subcommittee, I believe that it is entirely reasonable and logical to conclude that when Judge Haynsworth went before the subcommittee in June to testify with respect to guidelines to be laid down by Congress for men serving as judges in the future, he would not have taken an inventory of his past business relationships or in any way be prepared to testify concerning them. Particularly, not for the year 1957 to which his offhand comment in 1969 pertained, a period of 12 years prior to that.

Third, as a footnote to the matter, I deem it worthy of note that the judge's relationship to Carolina Vend-A-Matic when he became a judge in 1957, which he neglected to mention on June 2, was not secret in the court of appeals where he was then a judge; nor was it a secret to the Justice Department. Exactly the contrary is true. It had been dramatically focused upon in 1963, when the Textile Workers Union tried to use it to gain a reversal of a case which they had lost. Even if there had been some reason for Judge Haynsworth to attempt to deceive the subcommittee, I find it hard to believe that anyone would think the judge would have tried it in regard to that instance. Commonsense leaves only the conclusion that I urged; namely, that there was no false testimony or thought of false testimony and there is nothing whatsoever of value in our considering the testimony given on June 2 in making our determination.

The next matter discussed in the individual views of my esteemed colleague is that of the judge's testimony before the Judiciary Committee with respect to his appointment.

On page 91 of the hearing record, the

Senator from Indiana (Mr. BAYH) again brought up Carolina Vend-A-Matic, Inc. He asked Judge Haynsworth when it was that he resigned as one of the vice presidents of Vend-A-Matic. The judge replied that he had thought he had formally severed the connection with the company when he assumed the bench in 1957, but in effect, later in 1963 when he decided to resign as a director, he found he was still being carried in the minute book of the company as one of its vice presidents and he resigned that post also. Again, the implication is that of false testimony; that he had given previous false testimony.

There is no false testimony here. The judge's account of when he resigned is not contested. Instead, the statement of the judge as to his belief in 1963 of what he had done in 1957 is made the issue. For what purpose? There was nothing wrong legally, ethically, or morally, in the judge being shown as a vice president in that minute book during those years, and I think this is very important. What I suppose is inferred is that, when the judge said he thought he had previously resigned as a vice president, it is net reasonable for him to have thought that. As evidence of this alleged wrong the fact brought out by the judge himself, that he continued to be shown as a director and vice president is cited. I must confess that I cannot find logic in this at all.

The matter of whether the judge did, or did not, know he was a vice president, as I have said, is of no importance, in my view, yet it is taken one step further: It is said he must have known he was a vice president because these yearly pages in the minutes from 1958 through January 1963 contain his signature acknowledging receipt of notice of the yearly meetings. Then, as additional proof that Judge Haynsworth knew he was a vice president from 1957 to 1963, it is pointed out that his wife should have known it because she was the secretary of the corporation, and that she prepared the minutes. In connection with this, the individual views give page 92 of the hearing record as the source of the statement of what Mrs. Haynsworth's role was and I am constrained to point out that the testimony on that page gives quite a different picture. I want to read the pertinent part but before I do, lest there be some misunderstanding, it should be noted that Mrs. Haynsworth was the "secretary" of the corporation in the sense that she was a corporate officer. By title, she was its secretary. The statement on page 92 pertaining to the preparation of the minutes and Mrs. Haynsworth is in testimony of Judge Haynsworth as follows:

> As far as the minutes are concerned, I am sure *she signed what was prepared and what was handed to her*, and she did sign the minutes in 1962 and 1963.

To the best of my knowledge there is nothing to the contrary in the transcript. As I said, however, I am not convinced that there is any justification for even delving into the matter of whether the judge was a vice president, or whether he or his wife knew it but beyond that, the Senator from Michigan fails to convince me that the judge came before the committee and erroneously stated what his knowledge was.

Before I move on to other grounds in these individual views, I want to refer to page 67 of the hearing record for the Judge's explanation of why he believed his name continued to appear as one of the vice presidents of this corporation formed and controlled by his friends:

> Senator TYDINGS. In your statement that you submitted to the committee, you stated that your recollection was that you resigned as vice president of Carolina Vend-A-Matic in 1957. Can you explain why you were carried on the books of the company as vice president until 1964?
>
> Judge HAYNSWORTH. Yes. It's a case of the shoemaker's children. The meetings we had were extremely informal, as I said, usually at lunch, and I am sure what happened was that after this a motion was made to reelect the same group to serve as officers from the year before, and the minutes for that year were picked up for the next year.
>
> Senator TYDINGS. Did you ever receive any salary or remuneration as vice president of Carolina Vend-A-Matic while you were on the Federal bench?
>
> Judge HAYNSWORTH. No, sir.

The next ground in the individual views recites that Judge Haynsworth testified in regard to the vice presidency of Carolina Vend-A-Matic after he was appointed to the bench: "I did not have any active duties in that office," and the letter of the Chief Judge of the Fourth Circuit Court of Appeals, written at the time the Textile Workers Union attempted to use Judge Haynsworth's connection with Carolina Vend-A-Matic as a reason for reversal of the Darlington case, is quoted:

> 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.

That letter, as these individual views relate, absolved Judge Haynsworth of criticism in connection with the Darlington case.

However, the Senator from Michigan says:

> A perusal of the corporate records does not leave one with the assurance that the nominee had no active participation in the affairs of Vend-A-Matic.

What this amounts to is, at least, a conclusion that there is a substantial question as to the truth of the judge's testimony before the committee and the accuracy of the investigation and report in the Fourth Circuit Court of Appeals. I might add I think it amounts, in effect, to asking the judge to prove himself innocent before any charges have been made against him. I see nothing in the record for any conclusion of substantial question raised as to the truth of his testimony.

In support of this ground, my esteemed friend from Michigan has cited what appears to me, on the basis of my previous practice of law in Colorado, which occurred over some 25 years, a routine type of paragraph that the attorneys, who were actually responsible for keeping the corporate minutes, probably inserted in the corporate minute book on June 3, 1957, right after Judge Haynsworth had been appointed by President Eisenhower to the Fourth Circuit Court of Appeals. I, personally, cannot squeeze one drop of suspicion or doubt of the testimony of Judge Haynsworth or the report of the Fourth Circuit Court of Appeals, out of this "before the fact" insertion in the corporate minute book, particularly in view of the evidence which was elicited in the hearings which pertained to the actual facts as they did occur from the time Judge Haynsworth was appointed until he completely severed his contacts with Carolina Vend-A-Matic.

As I recall, there is a rule of law that would preclude its use in a court as evidence, under circumstances such as we have here, to prove what he did, in fact, do. The uncontradicted unaltered testimony of Judge Haynsworth, from the beginning of the hearing record to the end, as to what he did for Carolina Vend-A-Matic from the time he assumed the bench until the time he decided to resign, comes through loud and clear. Never was there a deviation nor a doubt. His testimony coincides with all other testimony perfectly. I specifically refer to the following pages of the transcript as examples: 15, 20, 26, 42, 43, 59, 60, 61, 62, 67, 87, 91, 292, and 311.

Still directed to the testimony of Judge Haynsworth and the findings of the Fourth Circuit Court of Appeals in regard to his connection with Carolina Vend-A-Matic, the next allegation pertains to the nominal director's fees received by Judge Haynsworth—to which there is no question that he could legally or ethically receive. The first reason in support of this ground is that the judge failed to provide information to the committee. The Senator from Maryland (Mr. TYDINGS) was inquiring as to the highest amount of fees received, at page 61 of the transcript, and Judge Haynsworth thought it was what he received in 1963 and provided that figure to the committee, but he also said he could not at that point locate the figures for the previous years, to be sure. Four or five sentences previous, on the same page, he had just reminded the committee that it had his income tax returns and reiterated that the figures could be seen there. But, as part of the colloquy, the Senator from Maryland said:

> Well, you can supply that report for the record.

And the judge responded affirmatively. However, it was after that that he produced the 1963 figure. In view of the fact my colleague from Michigan could have either inspected the income tax returns filed with the committee, or advised the judge that the committee was expecting a separate report, I believe that this aspect of the reasons for not confirming the appointment is, at best, not well taken. That the committee had the income tax returns can also be seen from the judge's letter of September 6, on page 25 of the hearing record, and I have also noted that this letter specifically notified the committee that the director's fees appeared in those income tax returns—page 26. I certainly would favor checking the

income tax returns before citing the figures contained in the newspaper article as is done in these individual views. Nevertheless, even with the figures contained in the newspaper article—$12,270 total for 8 years—I am not personally persuaded to doubt the testimony in the hearing record with respect to the duties the judge performed for the corporation. He testified that he was no longer "active" in the corporation as a vice president, and that a Mr. Wade Dennis was hired in 1957 to take over those duties performed prior to his appointment. As a matter of fact, Wade Dennis later became a vice president. The Judge specifically advised the committee that the only real duty he continued to perform was acting as an endorser of some of the company's notes—see, for instance, pages 42 and 43. It should be noted at this point that the testimony of Judge Haynsworth on page 60 of the hearing record, as set forth by the Senator from Michigan, is apparently the same testimony that resulted in the Senator from Indiana's so-called bill of particulars containing a statement that:

Judge Haynsworth endorsed notes for the corporation in amounts as high as $501,987.

Which statement, in turn, prompted the able Senator from Nebraska to call it to our attention on October 15 (30220) together with a correction. He pointed out that the last such endorsed loan was made on January 14, 1960, and was repaid on February 16, 1960. He further directed our attention to the fact that Judge Haynsworth never endorsed "notes in amounts as high as $501,987" and that, as a matter of fact, the cumulative total of endorsed loans ever outstanding for the corporation was only $55,550.

Mr. President, under these circumstances, I find the statement of the Senator from Indiana that Judge Haynsworth had endorsed notes for the corporation in amounts as high as $501,987 not only a great error but also a great injustice to Judge Haynsworth. I think it calls for an apology and I think it should be forthcoming. This statement has been quoted in the newspapers, in articles, and in columns all over the country and it should be set to rest once and for all, because upon this statement many people have formed snap judgments as to the part Judge Haynsworth was playing in the affairs of Vend-A-Matic.

Mr. HRUSKA. Mr. President, will the Senator from Colorado yield?

Mr. ALLOTT. I am happy to yield to the Senator from Nebraska.

Mr. HRUSKA. With reference to the notes for the $501,987 as cited by the Senator from Indiana, is it not a fact that the records of the Securities and Exchange Commission show that that was corporate indebtedness, and did not disclose the amount of the personally endorsed notes of any of the stockholders, including Judge Haynsworth?

Mr. ALLOTT. Yes. That is my understanding, that it always was, and always was considered corporate indebtedness, although Judge Haynsworth did endorse the notes.

Mr. HRUSKA. I called the attention of the Senate to that fact and included in the RECORD the letters and communications from the Securities and Exchange Commission. I carefully and meticulously pointed out that I would not fault the Senator from Indiana for assuming something that had probably been given to him by his staff or by investigators on whom he relied. I still hold that feeling, because I know the Senator from Indiana would not participate in anything that is not founded upon fact.

I agree with the Senator from Colorado in the suggestion that the Senator from Indiana should confess to the inaccuracies contained in his statement, because otherwise it will continue to be batted around back and forth and reference will be made to that statement when, plainly, it is not so. A clear acknowledgment of that on the part of the Senator from Indiana would be very much in order, and I believe that he would feel better if he did so.

Mr. ALLOTT. I thank the Senator from Nebraska very much. As he said, it is one of the things that came out early and will be batted around for a long time unless those who used it put it to rest.

Personally, I can understand how the Senator from Indiana might have been led into a trap, in that he might have said to some of his staff, "For how much did he obligate himself?" and so they went back through all the corporate records and the notes and total them up and said, "It is $501,987." Thus, he might have made his statement in very good faith but, at the same time, it is a statement which has caused incredible mischief and has helped to create an aura of emotionalism based on inaccurate facts which could preclude a decision on this matter, based upon the true facts.

I believe, as the Senator from Nebraska has suggested, it should be corrected. I thank the Senator very much.

Mr. President, as we consider the details of Judge Haynsworth's life under a microscope with an apparent fervor for locating inconsistencies and discrepancies, I have been interested to observe how many mistakes we are making ourselves.

In any event, the thrust of this particular reason for my respected friend from Michigan's opposition to the appointment is summed up by him with the conclusion that Judge Haynsworth was in fact "active" in the affairs of Carolina Vend-A-Matic after becoming a judge while he believes that Judge Haynsworth denied it. I most respectfully suggest to the Senator from Michigan that I cannot agree. What is "active" is subjective. I might buy 10 shares of common stocks and consider myself exceedingly "active" in the stock market, but if my next door neighbor only had those shares, he well might not consider that he was in the stockmarket at all.

Mr. President, I interpolate here to say using this example, that I believe I also could take my combined wealth and invest it in some common stock on the stock market and consider myself extremely "active," while other Senators who invested the same amount would consider it a very, very minor or negligible position in the stock market.

We both could find people who would agree with our view. I have already demonstrated that Judge Haynsworth spoke out loud and clear and defined very clearly just what he meant when he said he was no longer active as a vice president of Vend-A-Matic, and I cannot disagree with him. Prior to assuming the bench, the judge and several members of his law firm had conceived the idea of a vending machine business. I think how this matter originated is very important.

They incorporated and organized the business structure. They started out small in 1950 with a coffee machine here and a coke machine there, and then they built the business into a bigger one. The company had no credit and the organizers had to cosign its notes at first in order to be able to buy machines. Judge Haynsworth handled the arrangements with the banks.

I might, by way of interlineation, presume that there are a great many Members of the Senate who have done just exactly the same thing in their lifetimes with the commencement of small corporations.

Seven years or more later, Judge Haynsworth was named a judge of the Circuit Court of Appeals. He immediately took steps to remove himself from his prior role, the one that went with being a vice president. Wade Dennis was hired to take over those duties the judge had performed. The record is uncontroverted on this. The only thing the judge did continue was to endorse those notes where his signature was required for the company to get its loans, but even this ceased in 1960. On the basis of these clearly established facts, I do not believe that Judge Haynsworth lied to the committee, nor do I have any doubts about it. I do believe, from the record, that the first thing in his thinking in regard to whether or not he was "active" in the business was his state of mind about the company. Prior to 1957 he was actively interested in doing what he could to advance the business. After he assumed his judicial responsibilities, I believe the facts bear out the conclusion that he was no longer actively interested in promoting the interests of the business, but he could not, in view of his responsibilities to his associates, immediately terminate all contact with the business. However, the wheels were put in motion to accomplish that result and, on the basis of the record, it is my personal belief that it was accomplished in January 1960, when he endorsed his last note for the company. His being present at the weekly gathering of his law partners at what they termed weekly luncheon meetings of "Directors," I am convinced, was, as the judge testified, only an occasion for him to see them when he was in town from Richmond. The only other remnant of activity was his initial occasional giving of advice to Wade Dennis and others about obtaining financing. As I said, I readily accept and believe Judge Haynsworth when he said he ceased to be "active" in the company upon being appointed to the Circuit Court of Appeals.

I must say I see nothing in the record that would cause me to believe otherwise.

(At this point Mr. GRIFFIN took the chair as Presiding Officer.)

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

Mr. ALLOTT. I am happy to yield to the distinguished Senator from Nebraska.

Mr. HRUSKA. We are dealing with an honorable man, who has a high reputation for integrity, and therefore his statements should be taken as the truth in this regard. In addition to that, let me ask the Senator from Colorado whether his perusal of the record disclosed any testimony or evidence of any kind which would controvert the judge's testimony regarding his dealings with Carolina Vend-A-Matic, which the Senator has so commendably set forth in his statement.

Mr. ALLOTT. I cannot recall a single thing which points to facts other than as stated by him. He, according to the record, in fact, became inactive in 1957. It is unquestioned that Wade Dennis was employed to take over the functions he performed for the company. He did, it is true, have to continue his name on the notes. Probably the company would have gone out of business if he had not continued to endorse the notes until 1960. At that time he separated himself completely from it.

I point out that there is nothing in those few things he did contrary to the oath of office he took. There is nothing contrary to such action in the Federal statute. It also does not violate the judicial code of ethics in any way.

Mr. HRUSKA. Nor did it violate any court rule on that point. It was not until later, when the Judicial Conference in 1963 issued a resolution which made it improper for a judge to continue any directorship or office in a corporation. At that time Judge Haynsworth resigned from the directorship of the family corporation, which was a closely held corporation, and which was not of interest to the public, as well as from the directorship of the Carolina Vend-A-Matic corporation. Is that true?

Mr. ALLOTT. That is correct.

Mr. HRUSKA. I want to corroborate what the Senator from Colorado has said about the absence of any testimony controverting the testimony of Judge Haynsworth on the point of his involvement in Carolina Vend-A-Matic. The Senator from Nebraska was present at most of the hearings. I have reviewed the record carefully and diligently. I know of no evidence that controverts the judge on this point. Yet that issue of his activities is belabored, obviously as a pretext, obviously for the purpose of supporting the conclusion, "We do not want him on the Supreme Court." In my opinion this conclusion is desired by some because they do not agree with the nominee's philosophy. They do not agree with President Nixon's idea of lending a little balance to the Supreme Court personnel by appointments such as this.

I commend the Senator for spreading the facts on the RECORD in such a splendid way.

Mr. ALLOTT. I thank the Senator very much for his remarks. I personally know how much time he has devoted to the hearings and to an analysis and study of the case. His advice and counsel on this matter have been extremely valuable, not only to the Senator from Colorado but to everyone in the Senate.

I am reminded, with respect to his remarks, that someone once said that one can take any statement, no matter how ridiculous or how absurd it may be, and if it is repeated often enough, people will start to believe it. So with the repetition of these statements by certain people in the news area who are totally committed to a kind of philosophy which would make them wish to see Judge Haynsworth defeated we can see that many members of the public would become perturbed and would believe, in fact, that something was wrong, when, in fact, nothing was wrong. It is our duty to see through these things, not perpetuate them.

Again, let me emphasize that it is my opinion that there was nothing illegal, unethical, or immoral in the judge's doing those things that he did after he became a judge. The only way that this has been suggested is in connection with his participation in the textile union—Darlington case, which reasoning I cannot accept. My good friend from Michigan (Mr. GRIFFIN) also apparently does not accept it, as his individual views do not even mention that case and the charges which some have been trying to generate from it.

That, Mr. President, concludes my review of the grounds of the Senator's individual views, which appear under the caption of "Genesis of Doubt."

II

The second portion of these individual views is entitled "Participation in Brunswick and Other Cases." Initially, the Federal statutes, 28 United States Code 455, is set out. It provides that a judge shall disqualify himself in any case in which he has a substantial interest—and "substantial interest" is underlined. Next, the highly regarded Senator from Michigan notes that Judge Haynsworth's stockbroker purchased 1,000 shares of stock in the Brunswick Corp. for him on December 26, 1967, and sets out an excerpt from page 305 of the transcript as follows:

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 more substantial than I think a Judge should run the risk of being criticized.

Then the fact that Judge Haynsworth had sat on a case, together with two of his fellow judges, involving the Brunswick Corp. on November 10, 1967, is stated, and it is then further stated that the written decision on this particular case was not issued until February 2, 1968. By now, it starts to appear that here, indeed, Judge Haynsworth truly did violate the statute, but the additional facts set out make it appear worse. One of the other judges—Judge Winter—is quoted as saying that, under law, no case is really concluded until the written decision is filed and the losing party has had an opportunity to file any available motions directed at that decision. Subsequently, it is recited that in the Brunswick case, on March 12, 1968, the losing party did, in fact, file a postdecision motion which was denied in an order signed by Judge Winter and Judge Haynsworth, and later, on April 3, 1968, the losing party filed a motion asking the court to reconsider its order of March 12. This motion was denied by an order prepared by Judge Haynsworth. Those are the facts set out in the individual views of the Senator from Michigan.

Mr. President, I have considered other aspects of this matter in arriving at my conclusion that the Brunswick case should not prevent Judge Haynsworth from assuming the place on the Supreme Court to which President Nixon has appointed him.

As is stated, the Brunswick case was heard by Judge Haynsworth, sitting with two other judges of the court, on November 10, 1967, and the decision was issued in February, 1968; but I do not think we can stop with knowledge of those facts alone. I deem it a prerequisite that we consider all of the facts in connection with that case. I would expect Judge Haynsworth to consider all of the facts if I had a case in his court and I believe I must give him the same consideration here. First, what was the Brunswick case—what did it involve? It was a case where the court of appeals was doing just what its name implies, hearing an appeal of a decision of a trial court. The decision made by the trial court, on the basis of hearing the evidence and applying the law, was affirmed by the circuit court of appeals in a decision written not by Judge Haynsworth, but by Judge Winter—hearings record, page 240. In other words, there was no trial as such of a lawsuit before the three judges in common vernacular. They reviewed the record of what transpired in the trial court and listened to the arguments of law by the attorneys as to whether or not the trial judge had properly applied the law.

What was involved in the case, according to Judge Winter—hearing record, page 237—was some used bowling alley equipment that Brunswick had sold to a bowling alley when new. The purchase price had not been completely paid and Brunswick wanted to repossess it. However, the landlord of the bowling alley had not been paid his rent, which was in arrears, so he claimed he had a lien on the equipment not only for the unpaid back rent but for future rent.

So we had these two people, the one that sold the bowling equipment and the other the landlord on whose property the bowling equipment was located, quarreling as to who had the prior right to a lien upon the equipment. Brunswick was willing to pay the unpaid rent but did not think it should pay the future rent. That is what the lawsuit was all about. Then the case was heard in the trial court, the judge there agreed with Brunswick and so ruled.

What were the proceedings before the court of appeals when the landlord appealed? As I said, the three judges heard the legal arguments of the attorneys on

November 10, 1967, long before Judge Haynsworth owned any Brunswick stock. It was the third case the judges had heard that day, and when they left the courtroom, they briefly put their heads together and agreed unanimously that the trial judge had made the right decision. Judge Winter was assigned the task of writing the opinion to reflect this determination, and Judge Haynsworth, of course, proceeded in the following days, to continue to hear the numerous cases of the court.

The Brunswick case was not a close case; there was no reversal of the decision of the trial judge—it was routine. It involved no "inside information" on Brunswick—page 251—and there was no reason at all for Judge Haynsworth to single out the names of the parties to it for preservation in his memory. As a matter of fact, it was properly testified to that the appeals court judges do not pay any attention to the names involved in the cases. What they are interested in is understanding the legal arguments so they can make a proper decision. Particularly when Judge Haynsworth was not assigned to write the opinion, I cannot in good conscience charge him with the knowledge that one of the cases of the court had involved the Brunswick Corp. when on December 15, 35 days later, he perfunctorily met with his stockbroker to approve his recommendation for the reinvestment of some funds that had recently become available. The stockbroker recommended Brunswick, as he had to his other clients, and the judge approved.

Up to this point there was no error, no illegal act, or anything at all about which a question could be raised. The only thing which occurred subsequently was that Judge Haynsworth finally received the opinion which Judge Winter had been assigned to write on November 10. At that time Judge Haynsworth noticed the name of Brunswick and remembered he had, in the interim, agreed to the Brunswick stock purchase. The written opinion, however, only contained what he had agreed upon with the two other judges when they heard the appeal and the judge determined that he should go ahead and sign it. It has been suggested that he should have notified the other judges and disqualified himself which would, by the way, also disqualify them, and cause the whole case to be reheard and all their efforts to be for naught. The judge did not think this was necessary and I agree.

The motion for rehearing by the landlord was filed after the time prescribed for filing such motions and I find no fault in Judge Haynsworth remaining in the case, thus keeping the other two judges in, by signing the order denying that motion and the same is true as to the later motion asking the judges to change their minds about the late filing. The expert on judicial disqualification, Mr. Frank, was not provided with the facts on the Brunswick case and, therefore, could not comment on it. Judge Winter, however, under very specific cross examination, stated that he did not view the Brunswick facts as being either a violation of the canons of ethics—page 252—or of the statute cited by the distinguished Senator from Michigan, 28 United States Code 455—page 259.

That Judge Haynsworth did not own the stock when he sat on the case, had no inside information, the manner in which he came to purchase Brunswick stock, and that he only became an owner of one hundred eighteen ten-thousandths of the stock of a company which only has 3 percent of its activities in bowling related matters also persuades me that the Brunswick matter does not merit recognition as a reason for not voting for the nomination. The question of the Senator from Maryland (Mr. MATHIAS) and the reply of Judge Haynsworth set forth initially in the individual views and mentioned by me previously, I believe, can be better understood on the basis of the facts as I have here related them. I also suggest that knowledge of the context in which that statement was made could be of help. The question immediately preceeding the quoted exchange is as follows:

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.

Following the quoted portion set out in the Individual Views the Senator from Maryland (Mr. MATHIAS) asked Judge Haynsworth if the two orders entered on the posttrial motions involved the application of discretion, and Judge Haynsworth correctly answered that they did not.

I think it is very important, and want to emphasize, that these two subsequent orders did not involve discretion for the court, but were ministerial. The motions were passed their statutory time for filing, and there was really no discretion on the part of the court.

It is clear that to those knowledgeable in the field, including Judge Haynsworth, what was a "substantial interest" to prevent him from sitting on the case when it was argued and decided was not a substantial interest when it came merely to performing the ministerial tasks of signing the written order and denying motions when the time for filing had already elapsed.

I quote the Senator from Indiana's own assessment of the substance of this interest:

I do not suggest for a moment that the $16,000 or $18,000, whichever price you want to take on this particular Brunswick stock, is of such significance that *any man*, particularly Judge Haynsworth would be tempted by the case in question. I am just trying to arrive at some line of demarcation (page 249).

An interest that is not of such significance to "tempt any man," I submit, is an insubstantial interest. I am told that even if it had been possible to give the landlord everything he sued for, including punitive damages, the charge, or expense, to the judge's interest in the company would be no more than $5.

After the Brunswick case, the respected Senator from Michigan goes on to mention, in less detail, five other court cases as being further evidence of why the nomination of Judge Haynsworth should not be confirmed:

First. Farrow against Grace Lines, Inc.: It is stated that the nominee participated in this case despite his ownership of 300 shares of W. R. Grace & Co., the parent company of Grace Lines, Inc.

The jury in the trial court had returned a damage award of $15.12 for overtime to a seaman which he claimed was due him because of overtime he would have been able to work if he had not injured his wrist while working.

The trial court increased the award to $50. Here truly was a momentous case. Then the case was appealed. All Judge Haynsworth did was to join the other judges of the court in issuing a per curiam opinion upholding the decision of the jury, as increased by the trial judge. Even if Judge Haynsworth had owned stock in Grace Lines—which he did not—it is doubtful that he would have had a "substantial interest" in it as the statute cited by the Senator requires. However, he did not own stock in that company. He had a very small fraction of the stock in its, so-called, "parent company" which owned at least 53 subsidiaries companies of which the litigant was only one. The maximum that was asked for by the seaman in this case was $30,000—and I think we all know that it is a pretty common practice when a lawsuit of this type is filed, to ask for the sky—and of course he did not get $30,000, but got only $50—but if he had been awarded the full amount it still would only calculate out as being a 48-cent charge against the judge's stock interest on this subsidiary company.

Second and third. Maryland Casualty Co. against Baldwin and Donahoe against Maryland Casualty Co.: As the individual views state, Judge Haynsworth owned no stock in the litigant. And the distinguished Senator is very frank in saying this. The connection which has been ferreted out is that he did own stock in its parent company, American General Insurance. There was no showing whatsoever that Judge Haynsworth knew or even suspected, that American General had this subsidiary named Maryland Casualty Co. among its 12 subsidiary companies. His interest was anything but "substantial," if it can be said there was an interest at all.

I point out by way of interlineation that until this case came up, I did not know that Maryland Casualty was a subsidiary of American General Insurance either. I believe that I represented the Maryland Casualty Co. locally in Colorado for perhaps as many as 20 years of the 25 years that I practiced law. And I never had any idea that it was owned by the American General Insurance Co., the parent company in which Judge Haynsworth owned stock. I would wager that among the many lawyers who are Members of the Senate, and have probably done business with the Maryland Casualty Co. and tried cases either for or against that company, few, if any, knew this until the case was brought up during the hearings.

The interest in the parent company figures out to 0.0059 percent of its common stock and 0.0015 percent of its preferred stock. As far as I can tell, no one has even attempted to calculate the infinitesimal fraction of indirect interest the judge is said to have had in the litigant in these two cases or in the results of the cases.

Fourth and fifth Nationwide Mutual Insurance Co. against Akers and Toole against Nationwide Mutual Insurance Co.: I must confess my surprise that these cases are cited. The only thing I know is that it had been indicated Judge Haynsworth had some sort of interest in the Nationwide Mutual Insurance Co. as a result of his owning a small number of shares in companies named Nationwide Life Insurance Co. and Nationwide Corp. The Senator from Indiana (Mr. BAYH) mentioned this matter on page 288 of the hearing record but, when he did, Judge Haynsworth replied that he once made an inquiry to see if there was some relationship but was told that Nationwide Mutual was, in fact, a mutual insurance company and thus had no stock which the Nationwide Corp. or Nationwide Life Insurance could own so as to tie it in with those companies. The Senator from Indiana (Mr. BAYH) stated that he accepted that explanation and thanked Judge Haynsworth for clearing it up. I am sure he was remembering cases such as those pertaining to the J. P. Stephens Co. where the judge did disqualify himself because he knew he had a stock interest—hearings record page 96.

The general counsel for the Industrial Union Department of the AFL–CIO made a passing reference to the Nationwide stock but did not claim Nationwide Mutual was in any way related—page 334 of hearing record.

I assume that when the word "affiliate" is used in these individual views to describe Nationwide Mutuals' relationship to the company in which Judge Haynsworth owned stock, it was intended to distinguish this situation from the relationship that existed between Maryland Casualty Co. and American General. As to these, the latter is denominated the "parent company." Even without the very strong doubt that the judge had any kind of interest in Nationwide Mutual when it was before his court, however, I believe his uncontroverted testimony—and it is uncontroverted—that he endeavored to check on this and he then believed, and still does believe, that he had no interest in the case before his court is a complete answer. In view of it, I find no ground of criticism of Judge Haynsworth in participating in these cases. For the record, however, I still would appreciate my learned friend from Michigan (Mr. GRIFFIN) advising us of what the relationship is that constitutes Nationwide Mutual an "affiliate" of Nationwide Corp.

In trying to check it out, I found that perhaps Nationwide Mutual happens to have Nationwide Corp. stock in its portfolio. If this is the connection, it would only mean that both Judge Haynsworth and the litigant before his court owned stock in the same company; and I have no doubt that judges all across the land have heard cases where one or both, of the litigants happened to own stock in the same corporations as they. I have never heard that there was any impropriety or illegality in that.

In closing his discussion of this part of his individual views, the most able Senator from Michigan (Mr. GRIFFIN) said it is difficult for him to understand how Judge Haynsworth could tell the committee by letter dated September 6, 1969, that he had disqualified himself in all cases in which he had a stock interest in a party. This, as I see it, is a reversion to his first section where he questions the integrity of the testimony given by Judge Haynsworth. I differ in that I do not believe that this statement of Judge Haynsworth has been shown to be erroneous but actually believe that, by the record, it has been demonstrated to be correct.

III

The third phase of the individual views of my worthy colleague pertains to the allegations that Judge Haynsworth sat as a member of the circuit court of appeals in cases where he should not have because clients of his former law firm were litigants. Canon 13 of the judicial code of ethics and Opinion 594 interpreting it are set out as being the criteria. Only two cases are mentioned. The client is the same in both cases: the Judson Mills Division of Deering Milliken Research Corp. However, there are two key reasons why the canon of judicial ethics and Opinion 594 are not applicable.

First, when Judson Mills appeared in the cases cited, it was not represented by the judge's former law firm but of equal importance is the fact that it really was not the same Judson Mills his firm had represented previously. Previously, it was run and owned by an entirely different company; and when the mill was sold, the Haynsworth law firm lost the mill as a client—pages 97 and 134. The fact that it was the same physical plant—if it was—does not violate the canons, the opinion, or any statutes.

The opinion of the American Bar Association—No. 594—as cited by the Senator from Michigan says:

(1) A Judge *may* sit on a case where his former law firm is providing representation, but,

(2) He should not sit on such a case (where his former law firm is involved) when the client they are representing was also a *regular* client of the firm when the Judge was a member of the firm.

If anyone can tell me how, in this instance, he could have violated the canon of ethics and this opinion, when the company that his law firm represented had been sold to someone else and his firm had extinguished its relationship with it at the time of the sale, I would be very happy to be so informed. If I do not understand this, then I cannot read English.

There are no other cases cited in the individual view as examples of violation of the requirements of Opinion 594, but there is a reference to a portion of the testimony of the president and the general counsel for the International Union of Electrical Radio & Machine Workers, AFL–CIO. I have read the pages referred to and find no indication there that the two factors contained in Opinion 594 are alleged to be present in the cases the union mentions. What I do find is only a charge that former clients of the law firm later were involved in cases that came to the Fourth Circuit Court of Appeals. In one case cited, both parties were former clients of the firm. It is hard to imagine that the union could seriously urge that case as being one where someone was prejudiced because Judge Haynsworth was one of the judges who heard it. As to that case, and the others cited by the union, there is no reference to the key facets of Opinion 594 of first, whether his former law firm was the attorney for the former client when they appeared in court and second, whether the former client was a regular client of the firm when the judge was a member of it.

In the light of the failure of any showing that Canon 13, as interpreted by Opinion 594, applies, and in view of all the favorable evidence in the record as to the judge's integrity and, further, in the absence of any indication that any litigant has ever complained because Judge Haynsworth heard a case and rendered an erroneous or prejudiced decision as a result of a litigant being a former client or because his former law firm was involved, I am not in the least persuaded that the judge has acted contrary to the guidelines mentioned. I also take cognizance of the reviews made by the American Bar Association of Judge Haynsworth's judicial activities and the clean "bill of health" it provided and also of his unequivocal statement, "I have not sat on any cases in which my law firm was interested"—page 98.

In further regard to my position on the allegations in connection with former clients or his former law firm and Canon 13, I noted in the hearing record that Judge Haynsworth did not hesitate to disqualify himself when a case came before the court where the litigant was represented by a law firm which employed his young cousin—page 95 of the transcript. Nor did he hesitate to disqualify himself from cases involving the J. P. Stephens Co. for which he had provided legal representation—pages 96 and 156.

As a matter of interest, after I reviewed pages 396, 397, and 400 of the hearing record, to which the individual views refer, I reread the testimony of the general counsel of the union and was interested to note that he compared the cases he mentioned on which Judge Haynsworth sat to the situation of one of the highly respected Members of the Senate, and, apparently, applying the same reasoning that brought forth his citation of these cases, on page 412, he also stated that this particular Senator should disqualify himself from those hearings of the Judiciary Committee, because as an attorney, he had once represented one of the companies with respect to which Judge Haynsworth was being questioned. I have difficulty in associating myself with that kind of thinking by accepting the conclusions in that testimony.

The esteemed Senator from Michigan (Mr. GRIFFIN) entitles his last section of these individual views, "Resolving the

Doubt." He says that the record raises legitimate and substantial doubt concerning Judge Haynsworth's "sensitivity" to the high ethical standards expected of those who are to sit on the Supreme Court. No one in the Senate expects a higher degree of sensitivity to these ethics than I. However, I, as I have said, am not caused to believe that there is any doubt of Judge Haynsworth's sensitivity to them. To the contrary, to be sensitive, according to the dictionary, is to be able to discern even slight differences. After studying the record in this matter I am led to believe that those things which the critics of Judge Haynsworth have seized upon to use against him came about as a result of a high degree of sensitivity on the part of Judge Haynsworth. He has demonstrated his ability to discern the cases in which he should not participate from those in which he had a duty to participate. A man of lesser sensitivity, or ability to draw the proper line, might have disqualified himself in all these cases where anyone by any stretch of their imagination, might suggest or might dream that there was impropriety and in doing so shirked his duty, merely because he was unable to properly apply the rules of judicial ethics.

Neither did Judge Haynsworth try to shift that job of making the distinction to his fellow judges. To those who are not of the legal profession I might say it would not be proper for a judge to try to shift this responsibility to his fellow judges. It is his responsibility to make this determination, whether it is respected here or not.

In the Brunswick case, he has been criticized for not asking the other judges whether he could do those remaining ministerial tasks necessary to bring that litigation to an end. I do not criticize him for making the decision for himself, but, instead, commend him. Likewise, in the Nationwide Mutual cases he was concerned about the possibility of a conflict of interest but investigated himself and concluded, applying his own "sensitivity" to the governing rules, that there was no conflict. The abiding conviction with which I am left after reviewing the record is that if Judge Haynsworth had not been possessed of a high degree of sensitivity, or ability, to distinguish the proper cases from the improper ones, he probably would have followed the probable course of those who do not have such competence, and disqualified himself in any case which has been searched out to use against him. I discount without hesitation the claims of those who say "yes, but, in the process, he created an appearance of impropriety" which is contrary to the canons of ethics, for the plain and simple reason that he was doing his duty as he saw it and because there is no evidence at all that anyone believed that there was an appearance of impropriety at the time the various matters mentioned transpired, or before the opponents to the nomination started making charges, with the lone exception of the Carolina Vend-A-Matic matter, which I have already discussed. In that case, the facts have been examined and there was no improper conduct by Judge Haynsworth. The only ones who ever claimed to believe there was an "appearance of improper conduct" were the unhappy losing parties to the case who later apologized.

Having reviewed the individual views of the astute Senator from Michigan in order to set forth my somewhat different thinking, I will conclude without providing this body with any sage words of wisdom from the past, or comments on other allegations which have been levied, but by telling my good friend from Michigan of my great admiration for his expression that the philosophy of the nominee is not a proper factor for our consideration, and for, thus, excluding it from his individual views.

With respect to the philosophy of the nominee, the Constitution provides the only test—that the nominee be bound by oath to support that great governing document of the United States of America.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter which I have received from Representative JAMES R. MANN, a Congressman from the Fourth District of South Carolina.

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

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., November 8, 1969.

Hon. GORDON ALLOTT,
U.S. Senate, Washington, D.C.

DEAR SENATOR ALLOTT: As the time for a decision on the confirmation of Judge Haynsworth approaches, I am hopeful that these few words from this member of the Democratic Party will be of some value to you.

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.

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 applied to my rights of life, liberty and property than that of any judge who graces the bench of this great nation.

Sincerely,

JAMES R. MANN,
Member of Congress.

Mr. ALLOTT. Mr. President, I wish to quote one paragraph from the letter written to me by Representative MANN. Ordinarily we receive many letters on many issues. Here is a man of another party, a distinguished man, recognized by his own State. Although I have asked to have the entire letter printed in the RECORD the last paragraph so gripped me that I would like to close my remarks by reading it.

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 applied to my rights of life, liberty and property than that of any judge who graces the bench of this great nation.

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

Mr. ALLOTT. I yield.

Mr. HRUSKA. Mr. President, again I wish to commend the distinguished Senator for his statement which is obviously the product of a very careful and diligent search of the entire record. He has served the Senate well and he has served the public well to bring out these facts in this readable and readily understandable fashion.

I was particularly interested in the part of the Senator's discussion in where "appearance" of impropriety is mentioned. I would like to ask the Senator if charges and attacks made upon a nominee, or on any person, for that matter, which are proven to be unfounded and unjustified, create an appearance of impropriety would it not be true that in cases of this kind, the fate of a man would be placed in the hands of his accusers? No one could ever be confirmed as long as someone would step forward and accuse him of a lot of things, whether justified or not.

Mr. ALLOTT. The Senator is correct and particularly if the Senator adds one other thing to his statement. The added ingredient is, having access to enough news media or advertising material to the point where it becomes a matter of widespread dissemination, as this has been; and, therefore, things that have no justification, no guts, no bone in them, if repeated often enough become an appearance of impropriety because people have come to accept what they read in newspapers and magazines or take what they hear over television or radio on the face of it.

So widespread dissemination of matter, whether there is any bone or substance to it or not, is an element the Senator has to add to his hypothetical situation. Then, there could be taken an appearance of impropriety because there are gathered along the way enough unthinking people who say, "Let us toss him out." Of course we all know that extolling the virtues of a man, especially one in, or slated for, public office, never seems to be any competition for the public eye and ear when there are allegations of corruption and vice on the menu for consumption.

Mr. President, I debated a long time in my mind before deciding to support the nomination of Judge Haynsworth. I am sure that every other Senator has given this matter the most serious consideration too. I did so with the experience of 25 years in the practice of law in Colorado. I hope I am not being immodest when I state that I believe it was a respectable career. I know the other considerations but I have made my decision on the basis of the hearing rec-

ord. I hope other Senators will also. That is where the facts are. Such a decision is one which I can never regret.

Shakespeare wrote:

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.

We have heard that many times. Since I came to the Senate—and the distinguished Senator from Nebraska preceded me—one case came up for consideration in which a nominee of President Eisenhower was defeated. It was not for the bench but for confirmation as Secretary of Commerce. I shall not mention his name here. I am sure the Senator knows about whom I am talking. Try as I may, I cannot recapture today one single argument that was used against the confirmation of his nomination. It was a personal vendetta. Those things which received so much publicity then had so little substance that I cannot recall them now, but I will never forget what we did.

This man is a good man, a great man; and he has a great intellect. He fulfilled a great place in this life and is still respected when he speaks. But the stigma of having been rejected for an important position by the Senate will never leave him, I am sure. There are probably few days in his life when the pain of that stigma does not come back to him.

Mr. President, there is no one that I know of, except Jesus Christ, to whom criticism could not be applied in one case or another, justified or not. We find that out very quickly around here.

Judge Haynsworth is a man who has made a success of his life. He has made a success of his chosen career. He is recognized in his own State as a great and honorable judge. My inquiries of members of the Judiciary Committee confirm that he is held in high esteem. Because of these attributes he was chosen to be a member of the Supreme Court.

But now, the opponents pick around the edges and bring forth such things as an "appearance of impropriety." They wish they had something of real substance but must, they believe, try to convince us that there is substance where there is none.

They take a case like the Brunswick case and say those facts are a reason that this man cannot be permitted to be a member of the Supreme Court. I ask myself, "GORDON ALLOTT, on the basis of such things, are you going to vote against this man? Are you going to destroy him?" If the Senate of the United States declares that he may be an improper person to sit on the Supreme Court, I cannot conceive how, out of his own pride, he would want to retain his seat on the Court of Appeals.

When I look at the whole career and the life of Judge Haynsworth, I can find no basis for destroying him.

I will not do so.

I will not vote to destroy him, because there is nothing in the record of any serious consequence. Nothing.

If there were, I would not hesitate to vote against confirmation of his nomination.

But, there is nothing in the record.

I will vote for him.

I want to thank the distinguished Senator from Nebraska very much for his kind remarks.

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

Mr. ALLOTT. I am happy to yield to the Senator from California.

Mr. MURPHY. Mr. President, I am glad that I was in the Chamber to have heard the clear and obviously carefully considered presentation of the distinguished Senator from Colorado.

I keep coming back to the use of the term "appearance of impropriety."

I am not trained in the law, but the word "appearance" indicates to me a lack of substance, that we are creating the appearance, that we cannot bring proof of substance of impropriety.

Those of us in public life know how easy and simple it is for those of bad character to make baseless charges, that once they are made publicly, create the appearance of impropriety.

I can recall years ago, when a man holding an important position in our Government headed by President Franklin D. Roosevelt, said to me, "You let me write the headlines and you can write the story, and my position will obtain." In other words, by writing the headlines he could create the appearance of impropriety—any appearance he wanted.

Mr. President, in listening to the Senator's excellent presentation, I recall an attempt to create the appearance of impropriety which was made on three occasions, to destroy the character and, therefore, the public life of the man who is now the President of the United States.

I stood next to him many years ago when the original announcement was made. No one took the time or the trouble to find out whether there was any basis of fact for it, whether there was any wrongdoing, or whether he had actually done anything that was improper. Merely by the pronouncement of an irresponsible individual, whom most people did not even know, not even his name before, the appearance of impropriety was immediately created in that case.

Then there was the second attempt. I know the details because I was party to it, at the request of the then candidate for President, General Eisenhower, when he said to me, "Will you go to Indianapolis, and will you ask the following questions, and come back directly to me and report the answers?" I had the unfortunate and unhappy duty to do that. Here again was the second attempt to create the appearance of impropriety. There was no substance whatever to it.

Then there was the third attempt, which was planned but never activated because it was obvious it would have exploded before it got off the ground, but here was a definite attempt by some—I do not know who they were—to destroy the character and the career, without any basis of fact, of a man who is now the President of the United States.

What a dangerous practice that is. What a terrible thing to be party to. What a terrible thing to whisper a rumor and then watch that rumor circulate until finally a man who, so far as I know, has had the high regard and respect of all the people in his community with the possible exception of a few who, as a result of his legal duties he may have found against, a man of high character and respect, what a terrible thing—as the Senator from Colorado has so carefully pointed out—that the life, the work, the reputation and the character of such a man can be destroyed, by a few who oppose him, not because there is an appearance of impropriety on their part. I would say that there is an actual case of impropriety on the part of some of those who are attempting to bring the charges which are so obviously without foundation.

So, I wonder if once again perhaps we are not looking for the improper action in the wrong direction.

I congratulate the distinguished Senator from Colorado. As I say, I am not trained in the law, but I can read. I read slowly, and I try to read carefully, and I try to understand what I am reading. I found nothing, from the standpoint of a layman—a U.S. Senator, if you will—that for the slightest moment gave me pause in what my decision will be when this name comes before the Senate.

I do know, from long experience in the past that, unfortunately, practices sometimes used by those who are leading the opposition. I do not refer to anyone in this Chamber. I mean those who have tried to bring forward the different points of impropriety. I have had great experience with pressures. I have had phone calls with regard to votes on this floor and decisions I would make. I know what it is. I understand. We all do.

I congratulate the distinguished Senator from Colorado for stating concisely and briefly, much better than I ever could, exactly his feeling in this matter, and for clarifying the case as completely as I think it could be clarified for any of those who are uncertain.

I would recommend that all study this presentation, and study it carefully, and take advantage of the clear and concise logic which it presents.

I again highly commend my distinguished colleague and would like to associate myself with his presentation. I wish I could take credit for some of the excellent logic and preparation of this paper.

Mr. ALLOTT. Mr. President, I thank the Senator. I am not sure what anybody has in mind by the expression "appearance of impropriety," but I suppose it would lead to the conclusion that he would do something, whether we believed it or not. I can give the Senate a specific example. I remember a Member of this body some years ago who was very well liked and very well respected. He was not adverse to taking a drink now and then. By no means could he have been considered an alcoholic. He was nothing more than what we call a moderate, social drinker, and he was moderate. He began to have some fainting spells. Many people were convinced that he had turned into a full-blown alcoholic. One day he suddenly keeled over and died. It was then found that he had a very serious disease. His actions, such as stumbling against a

desk were the result of the disease. That would be an appearance of impropriety. I might say that it was discovered he had a massive brain tumor. I think the record should be clear on that.

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

Mr. MURPHY. Mr. President, will the Senator yield to me for one second before he yields to our distinguished colleague from Kansas?

Mr. ALLOTT. I yield.

Mr. MURPHY. I knew that gentleman and Senator, and I remember the condition exactly as the Senator has described it. I recall that some of us who had been close to him suspected what was happening. I think he suspected it, as is so often the case in a serious condition. I also remember the condition of the other gentleman whose name has been brought before this body.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time of the Senator from Colorado be extended 15 minutes.

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

Mr. ALLOTT. I thank the distinguished Senator from West Virginia.

Mr. MURPHY. Reference was made to the other name that came up for approval. I know, from firsthand personal knowledge, the reason for the creation of the appearance of impropriety—shocking reasons, personal reasons—destroyed part of this man's spirit forever, in a manner which had no connection whatsoever with his duties. It was a personal matter, between two other people, entirely unrelated. This is the thing that disturbs me.

Of course, I lived through the time in Hollywood when a whisper about the character or association of some of my colleagues could do great damage to their public careers and their ability to continue. I am glad to say I was active in one group that, in a great many cases, had the good fortune to be able to destroy the appearance of impropriety and thereby preserve the good reputation of the character of those people.

I am very sensitive to this condition, but I think the distinguished Senator from Colorado has made possibly the most important point. The word "appearance" is a word without too much fabric. You can do it very easily. You can do it by a suggestion. You do not even have to make a straight declaration. You just whisper. You think it sometimes, and it begins to permeate and circulate. What a terrible manner in which to operate.

I thank the Senator for yielding. I apologize for commenting to such an extent.

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

Mr. ALLOTT. I yield.

Mr. DOLE. Again I want to commend my distinguished colleague from Colorado. I recognize the great amount of work and research he has done in an attempt to reach a fair conclusion.

I do not question anybody's motives with reference to the Haynsworth confirmation or any other matter before this body. In the course of my investigation, I have found there may be some who stated their position early, before the evidence was complete, and now attempt to justify that position. Many of these stated their opposition to Judge Haynsworth.

One whom I have consulted about the nomination is former Supreme Court Justice Charles Whittaker, who served on the court from 1957 to 1962. I called Justice Whittaker, seeking his advice and counsel. He stated, as I repeated on Monday, it would be a travesty if Judge Haynsworth were not confirmed. He also said, which I have not repeated, "If you cannot confirm Judge Haynsworth, you are going to have to find a trapeze artist." He did not say that lightly. He had read the press reports, listened to and watched the biased news media reports on the Haynsworth nomination night after night. But after reading the hearing record—the best place to ascertain the facts, as the Senator knows—he felt very strongly the nomination of Judge Haynsworth should be confirmed.

I was impressed by many things in the hearing record and as stated before had one serious question about the Brunswick case. I was also impressed by the statement by George Meany, who has said labor is going to block the Haynsworth nomination if it can. It is going to be interesting, in the next few days, to see how much "muscle" labor has. It was pointed out how labor helped block the nomination of Judge Parker, during the Hoover administration. It was pointed out, after Parker was blocked, that he became a great judge and perhaps labor leaders had made a mistake.

I think we should lay it on the line. The nomination in question is going to demonstrate just how much power labor has in America.

I would also remind some of my fellow Senators who still seem to think they should have the power of appointment that they did not win the election last year. The liberals lost the election last year. And as far as philosophical arguments are concerned, as the Senator has so well pointed out, this is no reason to reject any nominee; and no one, who really understands the process, feels we should reject a man who has been nominated for the Court because of his philosophy.

But aside from that, I am convinced and the Senator from Colorado is convinced that Judge Haynsworth has a good record and a positive record. There is no need to be defiant about Judge Haynsworth; he has a balanced record in civil rights and a balanced record with reference to labor.

So I thank the Senator for going into detail and setting forth his reasons, which will be helpful to all of us in the days ahead.

Mr. GRIFFIN. Mr. President, will the Senator from Colorado yield?

Mr. ALLOTT. I yield to my distingulshed colleague from Michigan.

Mr. GRIFFIN. I shall not attempt to present a rebuttal to the statement made by the able Senator from Colorado. I wish to say that to my mind he is one of the most distinguished Members of this body as well as an esteemed leader of my party. As he knows, I have the highest respect for him, as an individual, as a lawyer, and as a Senator. It is unfortunate, and it pains me a great deal, that we disagree on this particular issue. Fortunately, we do not disagree often, although when we do, we respect each other's views. I am particularly grateful to the Senator from Colorado for his reaffirmation of that fact as he made his statement today.

I wish to comment on two points. First, I think the Senator from Colorado does a service by making clear that no one should be misled by so-called appearance of impropriety which are created by those who may be in opposition to a given nominee. The only appearance of impropriety which are meaningful, and which are referred to in the cannons of judicial ethics, are those which are created by a member of the judiciary.

In a situation where a judge owns stock in a party litigant, it may be altogether true, as a subjective matter, that there is no conflict of interest as he views the particular matter. In his own mind, he might not be influenced in any way by the fact that he has some remote interest in a party litigant. But nevertheless, in a situation he—not someone else—has created the appearance of impropriety, an appearance which puts others in the position of having to make a subjective judgment as to what influenced him or did not influence him.

So I agree with the Senator; and I hope other Senators will not be misled. We should not be gulded astray by so-called appearances of impropriety which are created by persons other than the nominee. The only references I have made have been to appearances of impropriety which, in my judgment, have been raised by the nominee.

Let me make another point, and perhaps the Senator might have further comments. I am very much disturbed by some remarks which might be interpreted to indicate that, in the event Judge Haynsworth's nomination should not be confirmed, he would then not be eligible to serve in his present position on the Fourth Circuit Court of Appeals. I regret such interpretations because to my mind they diminish or reduce what I consider to be the appropriate role of the Senate in the matter of appointments to the Supreme Court.

Judge Haynsworth is not on trial for any crime. He is not being tried at all, and the test is not whether he is guilty of any particular charge. At least to my mind that is not the test. The question is whether the Senate, which shares the appointive power with the President, wishes to promote this particular nominee to the Supreme Court.

A similar question was before the Senate in the Fortas case, though the facts were different and the considerations were different. When the Fortas nomination was before this body, the Justice was not on trial. Rather, the question was simply whether the Senate agreed to his elevation to Chief Justice of the United States.

In the case of the Haynsworth nomination, Senators are going to arrive at their conclusions for a varying number of reasons. To read into a decision against Judge Haynsworth that he has been con-

victed in any sense would be very unfortunate.

It ought to be noted again, in passing, that more than one-sixth of all the nominees for the Supreme Court whose names have been submitted to the Senate in the history of the United States have been rejected. I am sure no one could say that rejection in each of those cases amounted to a finding of guilty of particular charges. In each case, the decision of the Senate was no more than a determination that the particular person should not be elevated to the Supreme Court.

Traditionally, the Senate has applied a different test with respect to nominees to the Supreme Court than it has applied with respect to those who have been nominated by Presidents to serve in the Cabinet or in the executive branch. I think the reference which the distinguished Senator from Colorado made earlier to the appointment, or attempted appointment, by President Eisenhower of a Secretary of Commerce is altogether appropriate, as far as his conclusions are concerned. Particularly with respect to nominations for the Supreme Court, however, I do not believe, as I have argued previously, that the Senate is limited to accepting every nomination merely because it cannot be proved that the nominee has beaten his wife, or has done this or that.

I think the responsibility of the Senate is much higher than that. Under the constitution, the President is vested with only one half of the appointing power. He nominates and the Senate confirms. Accordingly the Senate's advice and consent responsibility is at least equal to the President's responsibility in nominating.

If the judiciary is to be an independent branch of the Government, it is essential that, its members owe no greater indebtedness for an appointment to one particular branch of our Government.

So it pains me to hear a statement made that if the Senate rejects the nomination of Judge Haynsworth, he therefore will not be fit to sit on the court of appeals. That is not the question. The only question before the Senate is whether the nominee should be elevated to the Supreme Court of the United States.

Mr. ALLOTT. I hope the Senator is not attributing to me the last statement that Judge Haynsworth is not fit to sit on the court of appeals.

Mr. GRIFFIN. No.

Mr. ALLOTT. If he is, he has completely misunderstood me, because I did not say that.

Mr. GRIFFIN. Let us straighten that out.

Mr. ALLOTT. What I did say was that I thought that if the Senate were to refuse to confirm Judge Haynsworth's nomination, his services would probably be lost to the judiciary. I say this because I think he himself would be inclined to withdraw himself from the judiclary.

Mr. GRIFFIN. If I may continue, suggestions have been made in other quarters to the effect that if Judge Haynsworth's nomination is rejected by the Senate, then other members of the judiciary may be subject to impeachment, as though the test for impeachment were the same as the test for confirmation of a nomination. There is a world of difference between the two, as I understand the role of the Senate, and its responsibility with respect to confirmation of a nomination.

The PRESIDING OFFICER. (Mr. PELL in the chair). The Senator's additional 15 minutes have expired.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the Senator from Colorado may have an additional 5 minutes.

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

Mr. GRIFFIN. When an officer of the United States is impeached, it is the responsibility of the Senate, sitting as a court, clearly to find, by weighing the evidence, whether an accused is guilty of particular charges. But that is not the function of the Senate when a nomination is up for confirmation. I wish to make that point clear.

Mr. ALLOTT. I agree with the Senator from Michigan as to that. I do not think there is any reason for getting into that. It would only cloud the issue to get into the impeachment area at this time.

However, I must say, as I stated at the conclusion of my speech, that as to philosophy, the only qualification set up is that the nominee must support the Constitution of the United States. If the Senate does not confirm his nomination, it can only be for one reason: That is, that somehow, collectively, the Senate has reached a decision that the nominee is unfit for the office. There can be no other conclusion. So on this basis I stated how I felt about Justice Haynsworth and the effects of what some would do here.

I do not know whether Judge Haynsworth has a son or not. I do not know whether he has grandchildren or not. However, I am thinking of what it would do to him, to his children, and to his children's children. I have tried without passion to examine the record. I do not think that I have been unfair in any instance to my friend the Senator from Michigan. As I have looked at the record, I have come to the conclusion that I could not do this, no matter what other considerations depended on it. And I have had all the pressures that everyone else has had exerted on him concerning this matter. I refer to pressure from the pressure groups who are out to get the judge and to pressure from people who reason with their glands rather than their brains.

It is a price that I would not pay, nor could I do it to any fellow human being.

Mr. President, I yield the floor.

EXECUTIVE REPORT OF A COMMITTEE—(EX. REPT. NO. 91-12)

Mr. HRUSKA. Mr. President, as in executive session, on behalf of the Committee on the Judiciary and at the request of its chairman, I ask unanimous consent to file the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an associate justice of the Supreme Court, and the committee report together with individual views on the nomination.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

EXECUTIVE COMMUNICATIONS, ETC.

The Acting President pro tempore laid before the Senate the following letter, which was referred as indicated:

PROPOSED MICHAUD FLATS IRRIGATION PROJECT

A letter from the Acting Secretary of the Interior, transmitting a draft of proposed legislation to amend the act of August 31, 1954 (68 Stat. 1026), providing for the construction, maintenance, and operation of the Michaud Flats Irrigation Project (with an accompanying paper); to the Committee on Interior and Insular Affairs.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the ACTING PRESIDENT pro tempore:

A letter, in the nature of a petition, signed by Peggy and Earl Hanrahan, of Denver, Colo., praying for the enactment of legislation to provide that bank holding companies may not establish and maintain travel agencies; to the Committee on Banking and Currency.

A petition, signed by Daniel E. LeVeque, of Sheboygan, Wis., praying for a redress of grievances; to the Committee on the Judiciary.

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the Speaker had affixed his signature to the bill (H.R. 14030) to amend section 358a (a) of the Agricultural Adjustment Act of 1938, as amended, to extend the authority to transfer peanut acreage allotments, and it was signed by the Acting President pro tempore.

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. RUSSELL, from the Committee on Appropriations, with an amendment:

H.J. Res. 966. Joint resolution making further continuing appropriations for the fiscal year 1970, and for other purposes (Rept. No. 91-529).

BILLS INTRODUCED

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

By Mr. MUSKIE:

S. 3135. A bill to make available to certain organized tribes, bands or groups of Indians residing on Indian reservations established under State law certain benefits, care, or as-

routine morning business be limited to 3 minutes.

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

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SYMINGTON. 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. SYMINGTON. Mr. President, I ask unanimous consent that I may proceed at this time for 15 minutes.

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

Mr. BYRD of West Virginia. Mr. President, may we have order in the Senate.

The PRESIDING OFFICER. The Chair would request the Sergeant at Arms to keep the floor clear of staff members. Those staff members who are talking must be seated at once or must get out of the Chamber. This will be enforced throughout the day.

The Senator from Missouri may proceed.

THE NOMINATION OF JUDGE CLEMENT F. HAYNSWORTH, JR.

Mr. SYMINGTON. Mr. President, in making appointments to the Supreme Court, tradition is that the President has the right to name to that high and independent branch of government, men of his political persuasion; and insofar as his clairvoyance permits, those whose constitutional views he considers might carry the Court on a course which the Chief Executive believes to be in the best interest of the Nation.

There has been much written, and considerable discussion, about the strong objections to this appointment that has come from various important segments of the people in our land; and I do believe that an appointment, if it were possible, should be one that would help heal, rather than further fragment, the deep divisions that are now all too evident among millions of our citizens. But I do not believe that either geography or ideology should be the major factor in reaching a decision in this matter.

I do also believe, however, that as an individual Senator it is my obligation to evaluate the qualifications of the nominee in the light of all the circumstances; and a nominee to the Supreme Court of the United States is perhaps the most important nomination that ever comes before this body.

To a Supreme Court seat recently vacated by a Justice accused of errors in "personal judgment," as well as "injudicious conduct," the President has nominated Chief Judge Clement F. Haynsworth, Jr. of the Fourth Circuit Court of Appeals.

The nomination has been subject to lengthy and controversial testimony before the Senate Judiciary Committee; and by a vote of 10 to 7, that committee recommended this confirmation.

During the committee hearings a number of issues were raised concerning Judge Haynsworth's adherence to the principles embraced in the Canons of Judicial Ethics. Since each Senator now must make a judgment on those matters in deciding how to vote on this nomination, it is desirable to state the facts on which my decision turns; and this I now do.

In 1957, Judge Haynsworth was appointed to the Fourth Circuit Court of Appeals. Prior to his appointment, Judge Haynsworth had been a respected lawyer and a member of a South Carolina law firm that numbered many textile concerns among its clients.

Seven years before his appointment, Judge Haynsworth and some of his law partners organized and founded the Carolina Vend-A-Matic Co. With a $2,400 investment, he held one-seventh of the stock and served as vice president and a member of the board of directors.

The business of this company was to place coffee and food vending machines in business offices and industrial plants.

Upon his appointment in 1957, Judge Haynsworth resigned from whatever other company directorships he held, but retained his position with a company called the Main Oak Corp.; and also his directorship and vice-presidency of Carolina Vend-A-Matic.

From 1957 to 1963, while serving as a Federal judge, Judge Haynsworth was not an inactive officer and director in that company. He attended regularly weekly board meetings. He endorsed notes for the corporation, and his wife served for 2 years as secretary of the corporation. For 3 years he served as a trustee of the Carolina Vend-A-Matic "profit sharing and retirement" plan.

The record also shows that this one-seventh interest held in Carolina Vend-A-Matic was substantial. When Judge Haynsworth ultimately disposed of the stock in 1964, the amount involved almost a half-million dollars.

In addition, Judge Haynsworth's 1963 portfolio included stock investments in a number of textile companies.

Over the years, Carolina Vend-A-Matic grew and prospered, with sales increasing from $169,355 in 1951 to $3,160,665 in 1963. In that latter year, the large majority of its business was with textile concerns.

Carolina Vend-A-Matic had several contracts to supply vending machines to textile mills, including one with Judson Mills. That company, along with the Darlington Manufacturing Co. and 15 other textile plants, was owned or controlled by Deering-Milliken.

For many years, Judson Mills had been a client of the law firm in which Judge Haynsworth had been a partner; and when the management of Carolina Vend-A-Matic sought a new manager in 1957, they brought in Mr. Wade Dennis of Judson Mills.

In May 1963, when Carolina Vend-A-Matic set up a North Carolina subsidiary, it retained the law firm of McLendon, Brimm, Holderness & Brooks to incorporate the vending company. That law firm represented the Darlington Manufacturing Co. in the now-celebrated second case of Darlington Manufacturing Co. against National Labor Relations Board. That case was argued June 13, 1963, before the Fourth Circuit Court of Appeals sitting en banc; and was decided November 15, 1963.

Carolina Vend-A-Matic was not a litigant in the Fourth Circuit Court of Appeals. The Darlington case, however, was one of six coming before Judge Haynsworth in which one of the parties was a customer of Carolina Vend-A-Matic.

In regard to Personal Investments and Relations, canon 26 of the American Bar Association Canons of Judicial Ethics advises:

> 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 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.

Ordinary common knowledge of the growth and importance of the textile industry in the South would lead any reasonable person to anticipate that there would be a fair amount of litigation in the courts involving textile firms.

Prior to his judicial appointment, the nominee had represented a number of textile companies. For these reasons there would appear a need to exercise a higher degree of care to assure public confidence in his impartiality.

Judge Haynsworth, however, continued his financial investments in textiles; and also his business activities in a vending machine company primarily involved with textile plants.

Under these circumstances, the character of these ties would, in my opinion and according to the words of canon 26, "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."

Canon 29 provides:

> 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.

Despite the large number of stocks he held, and traded, Judge Haynsworth apparently made no effective arrangements to assure that he did not in fact sit on cases involving corporations in which he

owned shares and thus observe the principles of canon 29.

In three known cases, Judge Haynsworth held a financial interest in one of the corporate litigants, but did not disqualify himself. It is almost universally agreed that if a judge has a pecuniary interest in a party, he may not sit; and canon 29 so provides.

American citizens are more acutely aware than ever before that the highest standards of conduct should prevail in public office.

As skepticism has increased, so have the expectations of the American people risen in regard to the character and conduct of those who hold public office in all three branches of government. With particular reference to the judiciary, we should expect the highest sense of propriety, because from the standpoint of fact and appearance, the quality of impartiality is the cornerstone on which public confidence in our judicial system rests.

I believe Judge Haynsworth to be an honest man. Nevertheless I am persuaded that the record of lack of care exercised in avoiding reasonable grounds for suspicion of impartiality should not serve as a steppingstone to the Supreme Court.

The Court, a powerful and important institution in our democratic society, has the unique function of interpreting our Constitution; and through that interpretation, it has been only in recent years that many Americans have won important rights of citizenship.

The feeling of hostility and frustration which this nomination has evoked could only be exacerbated by honoring a jurist who does not have the highest sense of ethical considerations. At this stage in the development of our Nation, we are in great need of the service of men and women who can and will inspire confidence and unity.

Surely there are many such capable American judges and lawyers among us whose constitutional views may span a reasonably wide range of the spectrum.

It is for these reasons that I shall vote against the confirmation of Judge Haynsworth.

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

Mr. SYMINGTON. I am glad to yield to my friend from Kansas.

Mr. DOLE. Mr. President, I listened with great interest to the statement of the Senator from Missouri and understood, as I listened to his last few words, that the Senator feels Judge Whittaker is a man of integrity and a man of honesty. He does not question the man's honesty or question the man's integrity. He questions what others have termed his "sensitivity," which I have been unable to find reference to in any of the Canons of Ethics. But, assuming there are such canons, I would remind the Senator from Missouri that Justice Whittaker, whom he probably knows personally, served the Court with great distinction from 1957 to 1962. In an interview which appeared in the Kansas City Star, I believe, Sunday, Justice Whittaker is quoted as saying that he felt, after reading all the records and all the statements and every word of the testimony, that there were no grounds for believing that Judge Haynsworth was guilty of any improper or unethical conduct. I am wondering, therefore, what the Senator might wish to say in light of the statement of former Justice Whittaker.

Mr. SYMINGTON. Mr. President, what I was presenting was primarily a question of ethics. I say to my good friend from Kansas, that I do know Justice Whittaker and have great respect for him. It was my privilege to see him when he was here in Washington. I was only sorry he felt he was not able to continue with his work on the Supreme Court of the United States and therefore resigned from that body.

May I say to my good friend that I have read in the RECORD the Senator's statement with respect to Judge Whittaker, and also have great respect for him as a lawyer and a gentleman. After examining the case to the best of my ability for many weeks and having had an opportunity to look at both the majority and the minority reports, this does not change my mind.

Mr. DOLE. There is another basic issue in this case which will be explored in great detail. I do not want to take the time of the distinguished Senator from Missouri now but does the Senator see any parallel between this case and the Fortas case? I do not know what the position of the Senator from Missouri was on the Fortas case as I was not a Member of the Senate at that time.

Mr. SYMINGTON. Mr. President, I would say to the able Senator from Kansas that at no time did I take the floor to defend the action disclosed which resulted in the resignation of an able lawyer, Justice Fortas.

Mr. DOLE. My point is, does the Senator feel there is a difference between the Fortas case and the Haynsworth case?

Mr. SYMINGTON. Mr. President, I have great respect for my distinguished colleague from Kansas, but would prefer not to compare any problems that had to do with Justice Fortas with those now being considered with respect to Judge Haynsworth. There does not seem to be be any reason to comparison between those two gentlemen.

Mr. DOLE. That is a fair statement and I say so because there are some who see some great parallel between the Haynsworth nomination and the Fortas nomination. The Senator from Missouri has stated it fairly and clearly and we will discuss any comparison when we consider today, tomorrow, and probably next week, the confirmation of Judge Haynsworth. I was in the category of the Senator from Missouri, in the undecided column for some time. I thoroughly read the record with great care and tried to apply it to the legal questions involved and the ethical questions involved, including canon 26 and canon 29.

There was also another canon I looked at as a lawyer, Canon No. 1 on professional ethics, which says that a member of the court is, of course, in a peculiar situation in that he cannot defend himself. In this case it is sometimes incumbent upon a member of the bar, when there is no showing of improper conduct or fraud or impropriety, to defend a member of the court, whoever he may be, wherever he may come from, whatever his party may be.

I hope that in the debate of the next few days we can lay this matter to rest.

Of course, I hope the nomination of Judge Haynsworth may be confirmed.

I thank the Senator for yielding.

Mr. SYMINGTON. I thank the Senator from Kansas. Be assured that I have full respect for his position.

ORDER OF BUSINESS

Mr. MUSKIE. Mr. President, I ask unanimous consent that the period for transacting morning business may be extended for 5 minutes so that I may make a statement.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

STRATEGIC ARMS LIMITATION TALKS

Mr. MUSKIE. Mr. President, the U.S. delegation has now left for Helsinki for the first round in the strategic arms limitation talks with the Soviet Union. The negotiations which are about to open are of overriding importance to the peoples of all countries. We all wish our representatives every success in their efforts to halt the nuclear arms race.

The newspaper stories which came out of the administration's background press conference following last Monday's National Security Council meeting indicate that the President has decided to defer substantive proposals until the second round of discussions, hopefully to be scheduled to open in January at the earliest. Accordingly, the discussions in Helsinki are described as "exploratory" and "preliminary" even though it is reported that our representatives car discuss substantive issues during this phase.

Deferral for at least 2 months of substantive proposals may have the most far-reaching consequences. The director of research and development at the Pentagon, Mr. John Foster, has previously stated that our testing program for multiple independently targeted reentry vehicles, the so-called MIRV's, will be completed by May or June 1970. Accordingly, the decision to defer until January at best a proposal to freeze the testing of these new weapons is equivalent to a decision to complete 2 more months of the projected additional tests.

Once these weapons have been tested to the point at which deployment could be undertaken with assurance of success, we will have entered a new and extraordinarily more dangerous and difficult period in the arms race between the two great powers. A freeze on deployment would obviously require onsite inspection to monitor—a provision which we are highly unlikely to be able to negotiate. Once deployment is possible any agreement coming out of the SALT talks based on an agreed number of launchers on both sides will be of radically reduced value, since each missile may hold an

I am not asking for government censorship or any other kind of censorship. I am asking whether a form of censorship already exists when the news that forty million Americans receive each night is determined by a handful of men responsible only to their corporate employers and filtered through a handful of commentators who admit to their own set of biases.

The questions I am raising here tonight should have been raised by others long ago. They should have been raised by those Americans who have traditionally considered the preservation of freedom of speech and freedom of the press their special provinces of responsibility and concern. They should have been raised by those Americans who share the view of the late Justice Learned Hand that "right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authoritative selection."

Advocates for the networks have claimed a first amendment right to the same unlimited freedoms held by the great newspapers of America.

The situations are not identical. Where the New York *Times* reaches 800,000 people, NBC reaches twenty times that number with its evening news. Nor can the tremendous impact of seeing television film and hearing commentary be compared with reading the printed page.

A decade ago, before the network news acquired such dominance over public opinion, Walter Lippman spoke to the issue: "There is an essential and radical difference," he stated, "between television and printing . . . the three or four competing television stations control virtually all that can be received over the air by ordinary television sets. But, besides the mass circulation dailies, there are the weeklies, the monthlies, the out-of-town newspapers, and books. If a man does not like his newspaper, he can read another from out of town, or wait for a weekly news magazine. It is not ideal. But it is infinitely better than the situation in television. There, if a man does not like what the networks offer him, all he can do is turn them off, and listen to a phonograph."

"Networks," he stated, "which are few in number, have a virtual monopoly of a whole medium of communication." The newspapers of mass circulation have no monopoly of the medium of print.

"A virtual monopoly of a whole medium of communication" is not something a democratic people should blithely ignore.

And we are not going to cut off our television sets and listen to the phonograph because the air waves do not belong to the networks; they belong to the people.

As Justice Byron White wrote in his landmark opinion six months ago, "It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount."

It is argued that this power presents no danger in the hands of those who have used it responsibly.

But as to whether or not the networks have abused the power they enjoy, let us call as our first witnesses, former Vice President Humphrey and the City of Chicago.

According to Theodore H. White, television's intercutting of the film from the streets of Chicago with the "current proceedings on the floor of the convention created the most striking and *false* political picture of 1968—the nomination of a man for the American Presidency by the brutality and violence of merciless police."

If we are to believe a recent report of the House Commerce Committee, then television's presentation of the violence in the streets worked an injustice on the reputation of the Chicago police.

According to the Committee findings, one network in particular presented "a one-sided picture which in large measure exonerates the demonstrators and protestors." Film of provocations of police that was available never saw the light of day, while the film of the police response which the protestors provoked was shown to millions.

Another network showed virtually the same scene of violence—from three separate angles—without making clear it was the same scene.

While the full report is reticent in drawing conclusions, it is not a document to inspire confidence in the fairness of the network news.

Our knowledge of the impact of network news on the national mind is far from complete. But some early returns are available. Again, we have enough information to raise serious questions about its effect on a democratic society.

Several years ago, Fred Friendly, one of the pioneers of network news, wrote that its missing ingredients were "conviction, controversy and a point of view." The networks have compensated with a vengeance.

And in the networks' endless pursuit of controversy, we should ask what is the end value . . . to enlighten or to profit? What is the end result . . . to inform or to confuse? How does the on-going exploration for more action, more excitement, more drama, serve our national search for internal peace and stability?

Gresham's law seems to be operating in the network news.

Bad news drives out good news. The irrational is more controversial than the rational. Concurrence can no longer compete with dissent. One minute of Eldridge Cleaver is worth ten minutes of Roy Wilkins. The labor crisis settled at the negotiating table is nothing compared to the confrontation that results in a strike—or, better yet, violence along the picket line. Normality has become the nemesis of the evening news.

The upshot of all this controversy is that a narrow and distorted picture of America often emerges from the televised news. A single dramatic piece of the mosaic becomes, in the minds of millions, the whole picture. The American who relies upon television for his news might conclude that the majority of American students are embittered radicals, that the majority of black Americans feel no regard for their country; that violence and lawlessness are the rule, rather than the exception, on the American campus. None of these conclusions is true.

Television may have destroyed the old stereotypes—but has it not created new ones in their place?

What has this passionate pursuit of "controversy" done to the politics of progress through logical compromise, essential to the functioning of a democratic society?

The members of Congress or the Senate who follow their principles and philosophy quietly in a spirit of compromise are unknown to many Americans—while the loudest and most extreme dissenters on every issue are known to every man in the street.

How many marches and demonstrations would we have if the marchers did not know that the ever-faithful TV cameras would be there to record their antics for the next news show.

We have heard demands that Senators and Congressmen and Judges make known all their financial connections—so that the public will know who and what influences their decisions or votes. Strong arguments can be made for that view. But when a single commentator or producer, night after night, determines for millions of people how much of each side of a great issue they are going to see and hear; should he not first disclose his personal views on the issue as well?

In this search for excitement and controversy, has more than equal time gone to that minority of Americans who specialize in attacking the United States, its institutions and its citizens?

Tonight, I have raised questions. I have made no attempt to suggest answers. These answers must come from the media men. They are challenged to turn their critical powers on themselves. They are challenged to direct their energy, talent and conviction toward improving the quality and objectivity of news presentation. They are challenged to structure their own civic ethics to relate their great freedom with their great responsibility.

And the people of America are challenged too . . . challenged to press for responsible news presentations. The people can let the networks know that they want their news straight and objective. The people can register their complaints on bias through mail to the networks and phone calls to local stations. This is one case where the people must defend themselves . . . where the citizen—not government—must be the reformer . . . where the consumer can be the most effective crusader.

By way of conclusion, let me say that every elected leader in the United States depends on these men of the media. Whether what I have said to you tonight will be heard and seen at all by the nation is not *my* decision; it is not *your* decision; it is *their* decision.

In tomorrow's edition of the Des Moines *Register* you will be able to read a news story detailing what I said tonight; editorial comment will be reserved for the editorial page, where it belongs. Should not the same wall of separation exist between news and comment on the nation's networks.

We would never trust such power over public opinion in the hands of an elected government—it is time we questioned it in the hands of a small and un-elected elite. The great networks have dominated America's airwaves for decades; the people are entitled to a full accounting of their stewardship.

NOMINATION OF JUDGE CLEMENT F. HAYNSWORTH, JR., TO BE AN ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT

Mr. PEARSON. Mr. President, I shall vote for the confirmation of the nomination of Judge Clement F. Haynsworth, Jr., as an Associate Justice of the U.S. Supreme Court.

I do so with some concern.

Mr. President, the specific criticisms of this nomination are of two types. The charges of prejudice relate to the first essential of justice. The allegations of judicial improprieties and in fact the violation of the statutes and the code of judicial ethics relate to honesty and the first qualification of one who is to be a judge.

I make no attempt in this statement to analyze the decisions of Judge Haynsworth to prove that he is free of prejudice. No purpose is served by abstracting cases or merely counting the number of decisions rendered in favor or against a particular interest. There is a presumption that he fairly applied fact to law, which the record of the hearings does not disprove.

The circumstances of some of Judge Haynsworth's personal finances and outside business interests as they relate to his official duties have been described and admitted as "mistakes," "indiscretions," or "misjudgments."

Each, according to his own measurement or evaluation of ethical standards, may reach his own conviction. But, Mr. President, in the end one must confront the basic question, Is the nominee an honest man? Although I know him only from the cold pages of the record of the

hearings, the expressions of the committee report, and the evaluations of those who do know him, I cannot judge him to be dishonest. I accept his acts as unintentional indiscretions. Having done so, I cannot vote against him on this count.

Perhaps, Mr. President, the most difficult consideration for the Senator to resolve is the effect this confirmation will have upon the prestige of the Court. The charges and allegations that this nomination is a political payoff or that it is the implementation of some political strategy, the heat of this debate, the apparent closeness of the vote, which is an expression of confidence, may ultimately serve to reduce the effectiveness and the utility of Judge Haynsworth's service upon the Highest Court of the land.

Yet perhaps few nominations or issues in our free and open and troubled society, so filled with protest, so consumed with anger, will escape the erosive effect of controversy. Long ago, in my first days of public service, it became apparent that those who are activists, those who seek to achieve, those who do things, are to be the focus of controversy. The need is not to escape controversy but to learn to control it with understanding. In a political system, political motives and philosophy are inevitably at work.

Some are affronted by this nomination, Mr. President, because the judge is said to be a "conservative." But within each public institution I would hope that there would be a balance of philosophy and a divergence of views which would sharpen debate and clearly define ideas.

Mr. President, I read and studied this record with the hope that I could support the President. That same hope existed when I served in the Senate during the administrations of President Kennedy and President Johnson. Further, I sought a decision which would be representative of the will of the people of Kansas. The instruments that are available for determining public opinion—correspondence, conferences, editorial opinion—were all referred to, but in addition, my office made a special effort to do many personal interviews to find the will of my constituency. It was overwhelmingly in favor of the confirmation of the nomination of Judge Haynsworth.

Mr. President, for my part a difficult decision has been made. I urge the confirmation of Judge Haynsworth's nomination.

THE PHILIPPINES: AN EXAMPLE TO NEW NATIONS

Mr. MANSFIELD. Mr. President, an election has just been held in the Republic of the Philippines. The Philippines has operated under a single democratic constitution for almost 35 years. It has consistently held all scheduled elections. It has had and has the freest press in the world. The opposition is lusty and open, and nowhere in the world is the party in power, and its president, so ardently and publicly criticized.

Despite the intensity of the election campaigns, the defeated party has after each election accepted the mandate of the voters and confined its protest to the courts.

Mr. President, the reelection of President Ferdinand Marcos is an event of great significance in the history of the Republic of the Philippines. For the first time, the Filipino people have given their confidence to the same leadership in two successive Presidential selections. I would like on this occasion to congratulate both President Marcos and Vice President Lopez on their election.

I want, too, to express again my admiration for the people of the Philippines for their vitality in sustaining their institutions of free government. To be sure, there are imperfections in that system; imperfections are not uncommon in the institutions of all free governments including our own. The fact remains that, for a quarter of a century, the constitutional system of the Philippines has guaranteed the traditional democratic freedoms of the individual and has assured the holding of elections at regular intervals. It has given continuity to this oldest functioning democracy in Southeast Asia.

In my judgment, the election this year may also mark the beginning of a new era in United States-Philippine relations. In my judgment, it will not be an easy period and the most careful and considerate attention to its problems will be required on both sides. In my judgment, the next 4 years may well mark the period in which the book is finally closed on the old dependent colonial relationship which began almost 70 years ago.

It seems to me that change should be anticipated by all concerned because the impetus for change has been given by both the Guam declaration of President Nixon and the emergence of a new dynamism in Philippine nationalism. Nevertheless, there ought to be every expectation that the transition can be made successfully. Successful change, however, will require an extra measure of understanding, restraint, respect, and tolerance on the part of both nations.

In my public report to the Foreign Relations Committee and my confidential report to the President, after my return from a visit to the Philippines last August, I tried to deal with these questions, without, of course, in any manner intruding into the Philippine elections which were matters of concern only to the Filipino people.

I ask unanimous consent that an excerpt from my public report be printed at this point in the RECORD.

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

IV. THE NEW DOCTRINE AND SOUTHEAST ASIAN COUNTRIES

A. THE PHILIPPINES

Since the establishment of the Republic of the Philippines in 1946, the interaction of policy between that nation and the United States has been deeply influenced by a "special relationship," a phrase which is subject to two interpretations. On the one hand, it connotes the emotional interplay between the two countries which stretches back over more than half a century. This "special relationship" began, in fact, with a degree of hostility in the conflict over the annexation of the Philippines by the United States. Gradually, however, the relationship developed mutual trust, and it was finally welded by the shared dangers, horrors, and triumphs of World War II, and the U.S. pledge of independence to the Philippines, into a strong and sympathetic mutual attachment.

"Special relationship" also refers to a carryover of concessions in trade and commerce and the preferential treatment of U.S. nationals in the Philippines from the preindependence period. In the same vein, the term also describes the vested military privileges which are enjoyed by the Armed Forces of the United States in the Philippines. These privileges were assumed during the period of U.S. rule of the Philippines, and they have been extended, with some modifications, under the lease arrangements by which the United States continues to occupy a great military base complex in the Philippines.

It is perhaps not generally realized that there are about 30,000 U.S. military personnel in the Islands, and over 25,000 dependents. Over 100,000 Filipinos and U.S. civilian employees work on our military bases in the Philippines, the U.S. Department of Defense being the second largest employer in the Philippines, coming only after the Philippine Government itself. The Clark Field lease, which covers over 132,000 acres, and the Subic Bay installation are among the largest U.S. military holdings anywhere in the world. Last year, U.S. Government spending in the Philippines amounted to about $270 million, over half of which was for outlays in connection with the military bases.

With regard to special economic rights, U.S. investors are the only foreigners in the Philippines presently permitted to own a controlling share of companies engaged in the exploitation of natural resources and in the operation of public utilities. In addition, the Laurel-Langley agreement of 1955 which amended the trade agreement of 1946 provides preferential tariff treatment on trade between the two nations and, of special benefit to Philippine commerce, guaranteed access within a quota to U.S. markets for sugar and cordage as well as duty-free quotas on certain other products.

The close integration of the Philippine economy with that of the United States now shows signs of diversification. Japanese and Europeans, for example, have come to assume an increasingly important role in Philippine trade. In fact, Japan has now become the chief supplier of Philippine imports. There are also some initial explorations being made with regard to the possibilities of trade with Communist nations, although Philippine relations with these countries are still far more circumscribed than our own.

Last year, the Philippine gross national product rose 6.3 percent and the country, employing the new miracle strains, became self-sufficient in rice for the first time in memory. At the same time, however, the Philippines had a $300 million deficit in international trade incurred in considerable measure because of the import of capital goods for the developing economy. The deficit figure underscores the compensatory significance of both U.S. base expenditures and trade preferences in the present economy of the Philippines.

The carryover of economic privileges has come under press attack in the Philippines in connection with preliminary scrutiny of the Laurel-Langley agreement which is due to expire in 1974. President Nixon's new doctrine would seem to call for a readiness on the part of this Nation to make adjustments in this agreement. There will be difficulties in this connection, to be sure, but there ought not to be insurmountable difficulties. As I tried to specify in my report to the President, the shock of change can be minimized if there is restraint and understanding on both sides.

The administration's new doctrine would also seem to imply a forthcoming attitude with regard to the military base issues. As

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

think I am incapable of reading the English language. In view of such an article how can the news media take exception to some of the recent remarks of Vice President AGNEW? I believe the rejection of the Haynsworth nomination demonstrates the seriousness of the problem.

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

THE JUDGE COME TO JUDGMENT

Across Lafayette Square from the White House, in the stolidly modern headquarters of the AFL-CIO, President George Meany lit up a fat cigar, gazed contentedly at a fresh tally sheet and proclaimed: "I'm convinced now. We've got this one made." Next door to the White House, in the Executive Office Building, Richard Nixon's chief political operative, Harry Dent, confided to a friend over the telephone, "For the first time now, I feel we might pull this thing off." Thus last week, the top lobbyists both against and for the confirmation of Clement F. Haynsworth Jr. as a Justice of the Supreme Court professed optimism as they prepared to rest their case and await the verdict of the U.S. Senate.

Both sides brandished Senatorial head counts. Meany's lieutenants claimed 53 votes against confirmation, two more than necessary to defeat the mild-mannered South Carolina judge whose nomination to the High Court stirred up a bitter controversy over the judicial ethics of some of his stock transactions. Administration strategists totted up 47 senators definitely for Haynsworth and expected to be able to wrench loose at least three more from the ranks of the undecided; that would set up a tie to be broken in the Administration's favor by Vice President Spiro Agnew. Within the Senate itself, the prevalent hunch was that when the roll is called, probably this week, the noes would have it and the President would be faced with his first major rebuff from Congress. But no one was ready to predict more than the slimmest of majorities either way.

Bias: The pressure, consequently, was fierce. Labor unions, which contended that some of Haynsworth's decisions betrayed an antilabor bias, passed the word to Democratic senators and even some Republicans that the rich union campaign coffers might snap shut at the blink of an "aye." Dent, GOP National Chairman Rogers Morton and Texas Sen. John Tower, head of the Senate Republican Campaign Committee, canvassed GOP county chairmen and private contributors throughout the country, prompting them to loose a relentless barrage of pro-Haynsworth telegrams and phone calls upon Republican senators.

The Administration artillery managed to score some hits. Kansas Sen. James Pearson, who had let it be known he was inclined against Haynsworth, suddenly discovered GOP leaders back home talking up a serious primary challenge against him in 1972 if he flunked the Haynsworth "loyalty test." All the judges on the Kansas Supreme Court informed him of their support for Haynsworth. "I even got a letter from Alf Landon," Pearson told NEWSWEEK's chief Congressional correspondent Samuel Shaffer in wonderment, and last week he announced he would vote for confirmation, albeit "with some concern," because he had found his state "overwhelmingly in favor" of the appointment.

Freshman Ralph Smith of Illinois, who faces a tough election next year, was also wobbling noticeably after having initially stood up firmly against the judge. And Connecticut's Tom Dodd, whose disposition to antagonize the Justice Department is not exactly stiffened by his past troubles over the misuse of campaign funds, somehow contrived to make solemn commitments to both sides. However, other senators angrily shook off the lobbyists' powerful grasp. "They've got the wrong sow by the ear," huffed Ohio's William Saxbe. "I don't fetch and carry when some fat cat calls up and tells me what to do."

Not all of the lobbying was so ungentle. In the midst of pondering his decision, Kentucky's John Sherman Cooper, one of the key senators still undeclared on Haynsworth, placed a filial phone call to his 91-year-old mother. "Now you be sure to vote right, John," the lively Mrs. Cooper admonished.

"What do you mean by 'right,' Mother?" he asked.

"Why, I mean you should vote against him. It's a bad nomination."

Many senators, even some on Haynsworth's side, took umbrage at what they considered maladroit handling of the case in the White House itself. Chief target of their wrath was deputy Presidential counsel Clark Mollenhoff, the intense ex-newsman who has taken on the task of rebutting the charges against Haynsworth. Along with Kentucky Sen. Marlow Cook, a strong Haynsworth supporter, Mollenhoff appeared on a Washington television interview last week and lashed out so vituperatively against some of the interviewers that the transcript of the show reads, at one point, "Mass confusion—not transcribable." Cook, upset by Mollenhoff's behavior, canceled a dinner engagement, went straight home and telephoned a White House aide. "The Administration has the power to hire," he said tartly. "I assume it also has the power to fire. I urge you to fire your deputy special counsel."

THE STRANGE CASE OF HAYNSWORTH'S HOUSE

(By Frank Mankiewicz and Tom Braden)

WASHINGTON.—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.

The property passed from the late Charles Daniel, a close friend and associate of Haynsworth to Furman University. The university held the property for 11 days before selling it to Haynsworth, who then gave it back to the university. Both Haynsworth and Daniel took charitable deductions from their income taxes; the university got a contribution, and everyone was better off except—to be sure—the Internal Revenue Service.

Tax lawyers say that if the Daniel-Furman-Haynsworth series of transfers was properly and carefully documented, and if it can be demonstrated that it was not done by prior arrangement, it was perfectly legal. Here is how it worked:

Daniel, who served a brief term by appointment as U.S. senator from South Carolina and who accompanied Haynsworth to Washington when the judge was up for confirmation to the Court of Appeals in 1957, owned a home in Greenville which he valued at $115,000.

The property was held in the name of Mrs. Daniel, and it was donated in her name to Furman in 1958 and 1959, the Daniels claiming one-half the value as a charitable deduction in each year.

The deed of gift to Furman was recorded on May 1, 1960, and Haynsworth bought the property 11 days later, on May 12, trading his own house—which he valued at $50,000—to the university and adding $65,000 in cash to make up the sales price of $115,000.

In 1964, the year Daniel died, Haynsworth began to donate the property back to Furman. At that time he was a member of the advisory council to the university and the director of the Furman Charitable Trust, a foundation which has donated substantially to the university.

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.

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.

So Daniel wound up paying no tax on the transfer of his property and in addition was able to take a tax deduction of $115,000; Judge Haynsworth has a house in which he and his wife may live for their lifetime—and to offset the purchase price he, too, has had a shelter for income for five years; the university has some cash and will one day have the property.

The legality of all this depends on the arms' length nature of the transactions. Haynsworth was at no time in a position to deal at arms' length with Furman, some of whose gifts he helped to manage and whose president he regularly advised.

As to Daniel, of course, the situation may well be different, although Daniel—an "Eisenhower-Democrat" like Haynsworth—was a sponsor of Haynsworth for appointment to the Circuit Court. And the 11-day gap between Daniel's gift of the house and Haynsworth's purchase does raise a question as to whether or not it was all coincidence.

All that is certain is that in this matter, as in Carolina Vend-A-Matic and the companies whose stock he held while he ruled on their cases, Haynsworth managed his affairs in such a way as to give his supporters a record about which the best they can say is that it was all legal.

HAYNSWORTH HOME GIFT

In 1958, Senator and Mrs. Charles Daniel started construction of a large new home in Greenville, South Carolina. 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 two 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 Haynsworth 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 five-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, five 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.

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

Mr. ALLOTT. I am happy to yield to the Senator from Kansas.

Mr. DOLE. I simply wanted to say to the Senator from Colorado that I think perhaps this was a part of the effort to create the appearance of impropriety, which was successfully done. I do hope that by the Senate action today, we have not destroyed Judge Haynsworth's future.

That is the only comment I have.

Mr. HATFIELD. Mr. President, during the past 3 months I have listened to the debate regarding the nomination of Judge Haynsworth, participated in colloquy and discussion, and wrestled with the decision that confronts me.

I believe the President has responded appropriately to the challenge of creating a more vital balance in the philosophy of the Nation's Highest Court. When President Nixon nominated Warren Burger, a "strict constructionist" or judicial conservative, for Chief Justice, I endorsed him warmly and gave him my full support.

As the chief executive of the State for Oregon for 8 years, I made nearly 100 judicial appointments. In each case, I sought to weigh their legal expertise, their philosophy, and, of particular importance, their personal character as I made these decisions. I have employed these same criteria as I have given long and serious thought to the nomination of Judge Haynsworth.

I have not been overwhelmed by the consistently clear logic or irrefutable evidence on either side of this case presented to the Senate. Valid questions and objections have been raised, and a thorough-going defense of Judge Haynsworth has been offered.

As I have considered the total picture, it has now become my strong conviction that the debate within this body, the deep division throughout the country, and the doubt, discord and polarization created by this issue have destroyed the possibility of effective service by Judge Haynsworth on the Supreme Court.

In the same manner, it became apparent that Justice Fortas no longer could function constructively after serious ethical questions had been raised, focusing public concern on the integrity of the Court.

This nomination will not reestablish the trust and respect that is needed so gravely today for our Nation's Highest Court. For the sake of the Court, I opposed it.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

There being no objection, the Senate resumed the consideration of legislative business.

LIABILITY OF NATIONAL BANKS FOR CERTAIN TAXES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 523, H.R. 7491. I do this so that the bill may be the pending business.

The PRESIDING OFFICER (Mr. DOLE in the chair). The bill will be stated by title for the information of the Senate.

The ASSISTANT LEGISLATIVE CLERK. A bill (H.R. 7491) to clarify the liability of national banks for certain taxes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Banking and Currency with an amendment to strike out all after the enacting clause and insert:

TAXATION OF NATIONAL BANKS

SECTION 1. (a) Section 5219 of the Revised Statutes (12 U.S.C. 548) is amended by adding at the end thereof the following:

"5. (a) In addition to the other methods of taxation authorized by the foregoing provisions of this section and subject to the limitations and restrictions specifically set forth in such provisions, a State or political subdivision thereof may impose any tax which is imposed generally on a nondiscriminatory basis throughout the jurisdiction of such State or political subdivision (other than a tax on intangible personal property) on a national bank having its principal office within such State in the same manner and to same extent as such tax is imposed on a bank organized and existing under the laws of such State.

"(b) Except as otherwise herein provided the legislature of each State may impose, and may authorize any political subdivision thereof to impose, the following taxes on a national bank not having its principal office located within the jurisdiction of such State, if such taxes are imposed generally throughout such jurisdiction on a nondiscriminatory basis:

"(1) Sales taxes and use taxes complementary thereto upon purchases, sales, and use within such jurisdiction.

"(2) Taxes on real property or on the occupancy of real property located within such jurisdiction.

"(3) Taxes (including documentary stamp taxes) on the execution, delivery, or recordation of documents within such jurisdiction.

"(4) Taxes on tangible personal property (not including cash or currency) located within such jurisdiction.

"(5) License, registration, transfer, excise, or other fees or taxes imposed on the ownership, use, or transfer of tangible personal property located within such jurisdiction.

"(c) No sale tax or use tax complementary thereto shall be imposed pursuant to this paragraph 5 upon purchases, sales, and use within the taxing jurisdiction of tangible personal property which is the subject matter of a written contract of purchase entered into by a national bank prior to September 1, 1969.

"(d) As used in this paragraph 5, the term 'State' means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam."

(b) Effective on January 1, 1972, section 5219 of the Revised Statutes, as amended by subsection (a), is amended to read as follows:

"SEC. 5219. (a) Notwithstanding any other law, a State or political subdivision thereof may impose any tax which is imposed generally on a nondiscriminatory basis throughout the jurisdiction of such State or political subdivision on a national bank having its principal office within such State in the same manner and to the same extent as such tax