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House of Representatives

CONDUCT OF ASSOCIATE JUSTICE DOUGLAS

Speech in the House of Representatives by Republican Leader Gerald R. Ford of Michigan

Mr. GERALD R. FORD. Mr. Speaker, last May 8 I joined with the gentleman from Ohio (Mr. TAFT) in introducing H.R. 11109, a bill requiring financial disclosure by members of the Federal judiciary. This was amid the allegations swirling around Mr. Justice Fortas. Before and since, other Members of this body have proposed legislation of similar intent. To the best of my knowledge, all of them lie dormant in the Committee on the Judiciary where they were referred.

On March 19 the U.S. Judicial Conference announced the adoption of new ethical standards on outside earnings and conflict of interest. They were described as somewhat watered down from the strict proposals of former Chief Justice Warren at the time of the Fortas affair. In any event, they are not binding upon the Supreme Court.

Neither are the 36-year-old Canons of Judicial Ethics of the American Bar Association, among which are these:

Canon 4. *Avoidance of Impropriety.* A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

Canon 24. *Inconsistent Obligations.* A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official function.

Canon 31. *Private Law Practice.* In many states the practice of law by one holding judicial position is forbidden . . . If forbidden to practice law, he should refrain from accepting *any* professional employment while in office.

Following the public disclosure last year of the extrajudicial activities and moonlighting employment of Justices Fortas and Douglas, which resulted in the resignation from the Supreme Bench of Mr. Justice Fortas but not of Mr. Justice Douglas, I received literally hundreds of inquiries and protests from concerned citizens and colleagues.

In response to this evident interest I quietly undertook a study of both the law of impeachment and the facts about the behavior of Mr. Justice Douglas. I assured inquirers that I would make my findings known at the appropriate time. That preliminary report is now ready.

Let me say by way of preface that I am a lawyer, admitted to the bar of the U.S. Supreme Court. I have the most profound respect for the U.S. Supreme Court. I would never advocate action against a member of that Court because of his political philosophy or the legal opinions which he contributes to the decisions of the Court. Mr. Justice Douglas has been criticized for his liberal opinions and because he granted stays of execution to the convicted spies, the Rosenbergs, who stole the atomic bomb for the Soviet Union. Probably I would disagree, were I on the bench, with most of Mr. Justice Douglas' views, such as his defense of the filthy film, "I Am Curious (Yellow)." But a judge's right to his legal views, assuming they are not improperly influenced or corrupted, is fundamental to our system of justice.

I should say also that I have no personal feeling toward Mr. Justice Douglas. His private life, to the degree that it does not bring the Supreme Court into disrepute, is his own business. One does not need to be an ardent admirer of any judge or justice, or an advocate of his life style, to acknowledge his right to be elevated to or remain on the bench.

We have heard a great deal of discussion recently about the qualifications which a person should be required to possess to be elevated to the U.S. Supreme Court. There has not been sufficient consideration given, in my judgment, to the qualifications which a person should possess to remain upon the U.S. Supreme Court.

For, contrary to a widepsread misconception, Federal judges and the Justices of the Supreme Court are not appointed for life. The Founding Fathers would have been the last to make such a mistake; the American Revolution was waged against an hereditary monarchy in which the King always had a life term and, as English history bloodily demonstrated, could only be removed from office by the headsman's ax or the assassin's dagger.

No, the Constitution does not guarantee a lifetime of power and authority to any public official. The terms of Members of the House are fixed at 2 years; of the President and Vice President at 4; of U.S. Senators at 6. Members of the Federal judiciary hold their offices only "during good behaviour."

Let me read the first section of article III of the Constitution in full:

The judicial power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices *during good Behaviour*, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

The clause dealing with the compensation of Federal judges, which incidentally we raised last year to $60,000 for Associate Justices of the Supreme Court, suggests that their "continuance in office" is indeed limited. The provision that it may not be decreased prevents the legislative or executive branches from unduly influencing the judiciary by cutting judges' pay, and suggests that even in those bygone days the income of jurists was a highly sensitive matter.

To me the Constitution is perfectly clear about the tenure, or term of office, of all Federal judges—it is "during good behaviour." It is implicit in this that when behaviour ceases to be good, the right to hold judicial office ceases also. Thus, we come quickly to the central question: What constitutes "good behaviour" or, conversely, ungood or disqualifying behaviour?

The words employed by the Framers of the Constitution were, as the proceedings of the Convention detail, chosen with exceedingly great care and precision. Note, for example, the word "behaviour." It relates to action, not merely to thoughts or opinions; further, it refers not to a single act but to a pattern or continuing sequence of action. We cannot and should not remove a Federal judge for the legal views he holds—this would be as contemptible as to exclude him from serving on the Supreme Court for his ideology or past decisions. Nor should we remove him for a minor or isolated mistake—this does not constitute behaviour in the common meaning.

What we should scrutinize in sitting Judges is their continuing pattern of action, their behaviour. The Constitution does not demand that it be "exemplary" or "perfect." But it does have to be "good."

Naturally, there must be orderly procedure for determining whether or not a Federal judge's behaviour is good. The courts, arbiters in most such questions of judgment, cannot judge themselves. So the Founding Fathers vested this ultimate power where the ultimate sovereignty of our system is most directly reflected—in the Congress, in the elected Representatives of the people and of the States.

In this seldom-used procedure, called impeachment, the legislative branch exercises both executive and judicial functions. The roles of the two bodies differ dramatically. The House serves as prosecutor and grand jury; the Senate serves as judge and trial jury.

Article I of the Constitution has this to say about the impeachment process:

The House of Representatives—shall have the sole power of Impeachment.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

Article II, dealing with the executive branch, states in section 4:

The President, Vice President, and all civil Officers of the United States, shall be removed from office on impeachment for, and conviction of, Treason, Bribery or other high crimes and misdemeanors.

This has been the most controversial of the constitutional references to the impeachment process. No concensus exists as to whether, in the case of Federal judges, impeachment must depend upon conviction of one of the two specified crimes of treason or bribery or be within the nebulous category of "other high crimes and misdemeanors." There are pages upon pages of learned argument whether the adjective "high" modifies "misdmeanors" as well as "crimes," and over what, indeed, constitutes a "high misdemeanor."

In my view, one of the specific or general offenses cited in article II is required for removal of the indirectly elected President and Vice President and all appointed civil officers of the executive branch of the Federal Government, whatever their terms of office. But in the case of members of the judicial branch, Federal judges and Justices, I believe an additional and much stricter requirement is imposed by article II, namely, "good behaviour."

Finally, and this is a most significant provision, article I of the Constitution specifies:

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

In other words, impeachment resembles a regular criminal indictment and trial but it is not the same thing. It relates solely to the accused's right to hold civil office; not to the many other rights which are his as a citizen and which protect him in a court of law. By pointedly voiding any immunity an accused might claim under the double jeopardy principle, the framers of the Constitution clearly established that impeachment is a unique political device; designed explicitly to dislodge from public office those who are patently unfit for it, but cannot otherwise be promptly removed.

The distinction between impeachment and ordinary criminal prosecution is again evident when impeachment is made the sole exception to the guarantee of article III, section 3 that trial of all crimes shall be by jury—perhaps the most fundamental of all constitutional protections.

We must continually remember that the writers of our Constitution did their work with the experience of the British Crown and Parliament freshly in mind. There is so much that resembles the British system in our Constitution that we sometimes overlook the even sharper differences—one of the sharpest is our divergent view on impeachment.

In Great Britain the House of Lords sits as the court of highest appeal in the land, and upon accusation by Commons the Lords can try, convict, and punish any impeached subject—private person or official—with any lawful penalty for his crime—including death.

Our Constitution, on the contrary, provides only the relatively mild penalties of removal from office, and disqualification for future office—the worst punishment the U.S. Senate can mete out is both removal and disqualification.

Moreover, to make sure impeachment would not be frivolously attempted or easily abused, and further to protect officeholders against political reprisal, the Constitution requires a two-thirds vote of the Senate to convict.

With this brief review of the law, of the constitutional background for impeachment, I have endeavored to correct two common misconceptions: first, that Federal judges are appointed for life and, second, that they can be removed only by being convicted, with all ordinary protections and presumptions of innocence to which an accused is entitled, of violating the law.

This is not the case. Federal judges can be and have been impeached for improper personal habits such as chronic intoxication on the bench, and one of the charges brought against President Andrew Johnson was that he delivered "intemperate, inflammatory, and scandalous harangues."

I have studied the principal impeachment actions that have been initiated over the years and frankly, there are too few cases to make very good law. About the only thing the authorities can agree upon in recent history, though it was hotly argued up to President Johnson's impeachment and the trial of Judge Swayne, is that an offense need not be indictable to be impeachable. In other words, something less than a criminal act or criminal dereliction of duty may nevertheless be sufficient grounds for impeachment and removal from public office.

What, then, is an impeachable offense?

The only honest answer is that an impeachable offense is whatever a majority of the House of Representatives considers to be at a given moment in history; conviction results from whatever offense or offenses two-thirds of the other body considers to be sufficiently serious to require removal of the accused from office. Again, the historical context and political climate are important; there are few fixed principles among the handful of precedents.

I think it is fair to come to one conclusion, however, from our history of impeachments: a higher standard is expected of Federal judges than of any other "civil officers" of the United States.

The President and Vice President, and all persons holding office at the pleasure of the President, can be thrown out of office by the voters at least every 4 years. To remove them in midterm—it has been tried only twice and never done—would indeed require crimes of the magnitude of treason and bribery. Other elective officials, such as Members of the Congress, are so vulnerable to public displeasure that their removal by the complicated impeachment route has not even been tried since 1798. But nine Federal judges, including one Associate Justice of the Supreme Court, have been impeached by this House and tried by the Senate; four were acquitted; four convicted and removed from office; and one resigned during trial and the impeachment was dismissed.

In the most recent impeachment trial conducted by the other body, that of U.S. Judge Halsted L. Ritter of the southern district of Florida who was removed in 1936, the point of judicial behavior was paramount, since the criminal charges were admittedly thin. This case was in the context of F. D. R.'s effort to pack the Supreme Court with Justices more to his liking; Judge Ritter was a transplanted conservative Colorado Republican appointed to the Federal bench in solidly Democratic Florida by President Coolidge. He was convicted by a coalition of liberal Republicans, New Deal Democrats, and Farmer-Labor and Progressive Party Senators in what might be called the northwestern strategy of that era. Nevertheless, thie arguments were persuasive:

In a joint statement, Senators Borah, La Follette, Frazier, and Shipstead said:

> We therefore did not, in passing upon the facts presented to us in the matter of the impeachment proceedings against Judge Halsted L. Ritter, seek to satisfy ourselves as to whether technically a crime or crimes had been committed, or as to whether the acts charged and proved disclosed criminal intent or corrupt motive; we sought only to ascertain from these facts whether his conduct had been such as to amount to misbehavior, misconduct—as to whether he had conducted himself in a way that was calculated to undermine public confidence in the courts and to create a sense of scandal.
>
> There are a great many things which one must readily admit would be wholly unbecoming, wholly intolerable, in the conduct of a judge, and yet these things might not amount to a crime.

Senator Elbert Thomas of Utah, citing the Jeffersonian and colonial antecedents of the impeachment process, bluntly declared:

> Tenure during good behavior . . . is in no sense a guaranty of a life job, and misbehavior in the ordinary, dictionary sense of of the term will cause it to be cut short on the vote, under special oath, of two-thirds of the Senate, if charges are first brought by the House of Representatives. . . . To assume that good behavior means anything but good behavior would be to cast a reflection upon the ability of the fathers to express themselves in understandable language.

But the best summary, in my opinion, was that of Senator William G. McAdoo of California, son-in-law of Woodrow Wilson and Secretary of the Treasury:

> I approach this subject from the standpoint of the general conduct of this judge while on the bench, as portrayed by the various counts in the impeachment and the evidence submitted in the trial. The picture thus presented is, to my mind, that of a man who is so lacking in any proper conception of professional ethics and those high standards of judicial character and conduct as to constitute misbehavior in its most serious aspects, and to render him unfit to hold a judicial office . . .
>
> Good behavior, as it is used in the Constitution, exacts of a judge the highest standards of public and private rectitude. No judge can besmirch the robes he wears by relaxing these standards, by compromising them through conduct which brings reproach upon himself personally, or upon the great office he holds. No more sacred trust is committed to the bench of the United States than to keep shining with undimmed effulgence the brightest jewel in the crown of democracy—justice.
>
> However disagreeable the duty may be to those of us who constitute this great body in determining the guilt of those who are entrusted under the Constitution with the high responsibilities of judicial office, we must be as exacting in our conception of the obligations of a judicial officer as Mr. Justice Cardozo defined them when he said, in connection with fiduciaries, that they should be held "to something stricter than the morals of the market-place. *Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.*" (Meinhard v. Solmon, 249 N.Y. 458.)

Let us now objectively examine certain aspects of the behavior of Mr. Justice Douglas, and let us ask ourselves in the words of Mr. Justice Cardozo, whether they represent "not honesty alone, but the punctilio of an honor the most sensitive."

Ralph Ginzburg is editor and publisher of a number of magazines not commonly found on the family coffee table. For sending what was held to be an obscene edition of one of them, Eros, through the U.S. mails, Mr. Ginzburg was convicted and sentenced to 5 years' imprisonment in 1963.

His conviction was appealed and, in 1966, was affirmed by the U.S. Supreme Court in a close 5-to-4 decision. Mr. Justice Douglas dissented. His dissent favored Mr. Ginzburg and the publication, Eros.

During the 1964 presidential campaign, another Ginzburg magazine, Fact, published an issue entitled "The Unconscious of a Conservative: A Special Issue on the Mind of BARRY GOLDWATER."

The thrust of the two main articles in Ginzburg's magazine was that Senator GOLDWATER, the Republican nominee for President of the United States, had a severely paranoid personality and was psychological unfit to be President. This was supported by a fraction of replies to an alleged poll which the magazine had mailed to some 12,000 psychiatrists—hardly a scientific diagnosis, but a potent political hatchet job.

Naturally, Senator GOLDWATER promptly sued Mr. Ginzburg and Fact magazine for libel. A Federal court jury in New York granted the Senator a total of $75,000 in punitive damages from Ginzburg and Fact magazine. Fact shortly was to be incorporated into another Ginzburg publication, Avant Garde. The U.S. court of appeals sustained this libel award. It held that under the New York Times against Sullivan decision a public figure could be libelled if the publication was made with actual malice; that is, if the publisher knew it was false or acted with reckless disregard of whether it was false or not.

So once again Ralph Ginzburg appealed to the Supreme Court which, in due course, upheld the lower courts' judgment in favor of Senator GOLDWATER and declined to review the case.

However, Mr. Justice Douglas again dissented on the side of Mr. Ginzberg, along with Mr. Justice Black. Although the Court's majority did not elaborate on its ruling, the dissenting minority decision was based on the theory that the constitutional guarantees of free speech and free press are absolute.

This decision was handed down January 26, 1970.

Yet, while the Ginzberg-Goldwater suit was pending in the Federal courts, clearly headed for the highest court in the land, Mr. Justice Douglas appeared as the author of an article in Avant Garde, the successor to Fact in the Ginzberg stable of magazines, and reportedly accepted payment from Ginzberg for it.

The March 1969 issue of Avant Garde, on its title page, shows Ralph Ginzburg as editor stating under oath that it incorporates the former magazine Fact.

The table of contents, lists on page 16 an article titled "Appeal of Folk Singing: A Landmark Opinion" by Justice William O. Douglas. Even his judicial title, conferred on only eight other Americans, is brazenly exploited.

Justice Douglas' contribution immediately follows one provocatively entitled "The Decline and Fall of the Female Breast." There are two other titles in the table of contents so vulgarly playing on double meaning that I will not repeat them aloud.

Ralph Ginzburg's magazine Avant Garde paid the Associate Justice of the U.S. Supreme Court the sum of $350 for his article on folk singing. The article itself is not pornographic, although it praises the lusty, lurid, and risque along with the social protest of leftwing folk singers. It is a matter of editorial judgment whether it was worth the $350. Ginzburg claims he paid Justice Douglas for writing it. I would think, however, that a byline clear across the page reading "By William O. Douglas, Associate Justice, U.S. Supreme Court" and a full page picture would be worth something to a publisher and a magazine with two

appeals pending in the U.S. courts.

However, Mr. Justice Douglas did not disqualify himself from taking part in the Goldwater against Ginzburg libel appeal. Had the decision been a close 5-to-4 split, as was the earlier one, Ginzburg might have won with Douglas' vote.

Actually, neither the quantity of the sum that changed hands nor the position taken by the Court's majority or the size of the majority makes a bit of difference in the gross impropriety involved.

Title 28, United States Code, section 455 states as follows:

Any justice or judge of the United States should 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.

Let me ask each one of you: Is this what the Constitution means by "good behaviour"? Should such a person sit on our Supreme Court?

Writing signed articles for notorious publications of a convicted pornographer is bad enough. Taking money from them is worse. Declining to disqualify one's self in this case is inexcusable.

But this is only the beginning of the insolence by which Mr. Justice Douglas has evidently decided to sully the high standards of his profession and defy the conventions and convictions of decent Americans.

(2)

Recently, there has appeared on the stands a little black book with the autograph, "William O. Douglas," scrawled on the cover in red. Its title is "Points of Rebellion" and its thesis is that violence may be justified and perhaps only revolutionary overthrow of "the establishment" can save the country.

The kindest thing I can say about this 97-page tome is that it is quick reading. Had it been written by a militant sophomore, as it easily could, it would of course have never found a prestige publisher like Random House. It is a fuzzy harangue evidently intended to give historic legitimacy to the militant hippie-yippie movement and to bear testimony that a 71-year-old Justice of the Supreme Court is one in spirit with them.

Now, it is perfectly clear to me that the first amendment protects the right of Mr. Justice Douglas and his publishers to write and print this drivel if they please.

Mr. Justice Douglas is constitutionally and otherwise entitled to believe, though it is difficult to understand how a grown man can, that "a black silence of fear possesses the Nation," and that "every conference room in Government buildings is assumed to be bugged."

One wonders how this enthusiastic traveler inside the Iron Curtain is able to warn seriously against alleged Washington hotel rooms equipped with two-way mirrors and microphones, or accuse the "powers that be" of echoing Adolf Hilter. Frankly, this is nonsense, but certainly not the only nonsense being printed nowadays.

But I wonder if it can be deemed "good behaviour" in the constitutional sense for such a distorted diatribe against the Government of the United States to be published, indeed publicly autographed and promoted, by an Associate Justice of the Supreme Court.

There are, as the book says, two ways by which the grievances of citizens can be redressed. One is lawful procedure and one is violent protest, riot, and revolution. Should a judge who sits at the pinnacle of the orderly system of justice give sympathetic encouragement, on the side, to impressionable young students and hard-core fanatics who espouse the militant method? I think not.

In other words, I concede that William O. Douglas has a right to write and publish what he pleases; but I suggest that for Associate Justice Douglas to put his name to such an inflammatory volume as "Points of Rebellion"—at a critical time in our history when peace and order is what we need—is less than judicial good behavior. It is more serious than simply "a summation of conventional liberal poppycock," as one columnist wrote.

Whatever Mr. Justice Douglas may have meant by his justification of anti-establishment activism, violent defiance of police and public authorities, and even the revolutionary restructuring of American society—does he not suppose that these confrontations and those accused of unlawfully taking part in them will not come soon before the Supreme Court? By his own book, the Court surely will have to rule on many such cases.

I ask you, will Mr. Justice Douglas then disqualify himself because of a bias previously expressed, and published for profit? Will he step aside as did a liberal jurist of the utmost personal integrity, Chief Justice Warren, whenever any remote chance of conflict of interest arose? Not if we may judge by Mr. Justice Douglas' action in the Ginzburg appeals, he will not.

When I first encountered the facts of Mr. Justice Douglas' involvement with pornographic publications and espousal of hippie-yippie style revolution, I was inclined to dismiss his fractious behavior as the first sign of senility. But I believe I underestimated the Justice.

In case there are any "square" Americans who were too stupid to get the message Mr. Justice Douglas was trying to tell us, he has now removed all possible misunderstanding.

(3)

Here is the April 1970 current edition of a magazine innocently entitled "Evergreen."

Perhaps the name has some secret erotic significance, because otherwise it may be the only clean word in this publication. I am simply unable to describe the prurient advertisements, the perverted suggestions, the downright filthy illustrations and the shocking and execrable four-letter language it employs.

(4)

Alongside of Evergreen the old Avant Garde is a family publication.

Just for a sample, here is an article by Tom Hayden of the "Chicago 5." It is titled "Repression and Rebellion." It possibly is somewhat more temperate than the published views of Mr. Justice Douglas, but no matter.

Next we come to a 7-page rotogravure section of 13 half-page photographs. It starts off with a relatively unobjectionable arty nude. But the rest of the dozen poses are hard-core pornography of the kind the U.S. Supreme Court's recent decisions now permit to be sold to your children and mine on almost every newsstand. There are nude models of both sexes in poses that are perhaps more shocking than the postcards that used to be sold only in the back alleys of Paris and Panama City, Panama.

Immediately following the most explicit of these photographs, on pages 40 and 41, we find a full-page caricature of the President of the United States, made to look like Britain's King George III and waiting, presumably, for the second American Revolution to begin on Boston Common, or is it Berkeley?

This cartoon, while not very respectful toward Mr. Nixon, is no worse than we see almost daily in a local newspaper and all alone might be legitimate political parody. But it is there to illustrate an article on the opposite page titled much like Tom Hayden's "Redress and Revolution."

This article is authored "by the venerable Supreme Court Justice," William O. Douglas. It consists of the most extreme excerpts from this book, given a somewhat more seditious title. And it states plainly in the margin:

Copyright 1970 by William O. Douglas . . . Reprinted by permission.

Now you may be able to tell me that it is permissible for someone to write such stuff, and this being a free country I agree. You may tell me that nude couples cavorting in photographs are art, and that morals are a matter of opinion, and that such stuff is lawful to publish and send through the U.S. mails at a postage rate subsidized by the taxpayers. I disagree, but maybe I am old fashioned.

But you cannot tell me that an Associate Justice of the United States is compelled to give his permission to reprint his name and his title and his writings in a pornographic magazine with a portfolio of obscene photographs on one side of it and a literary admonition to get a gun and start shooting at the first white face you see on the other. You cannot tell me that an Associate Justice of the U.S. Supreme Court could not have prevented the publication of his writings in such a place if he wanted to, especially after widespread criticism of his earlier contributions to less objectionable magazines.

No, Mr. Justice Douglas has been telling us something and this time he wanted to make it perfectly clear. His blunt message to the American people and their Representatives in the Congress of the United States is that he does not give a tinker's damn what we think of him and his behaviour on the Bench. He believes he sits there by some divine right and that he can do and say anything he pleases without being questioned and with complete immunity.

Does he really believe this? Whatever else one may say, Mr. Justice Douglas does know the Constitution, and he knows the law of impeachment. Would it not, I ask you, be much more reasonable to suppose that Mr. Justice Douglas is trying to shock and outrage us—but for his own reasons.

Suppose his critics concentrate on his outrageous opinions, expressed off the Bench, in books and magazines that share, with their more reputable cousins, the constitutional protections of free speech and free press. Suppose his impeachment is predicated on these grounds alone—will not the accusers of Mr. Justice Douglas be instantly branded, as we already are in his new book—as the modern Adolf Hitlers, the book-burners, the defoliators of the tree of liberty.

Let us not be caught in a trap. There is a prima facie case against Mr. Justice Douglas that is—in my judgment—far more grave. There is prima facie evidence that he was for nearly a decade the well-paid moonlighter for an organization whose ties to the international gambling fraternity never have been sufficiently explored.

Are these longstanding connections, personal, professional, and profitable, the skeleton in the closet which Mr. Justice Douglas would like to divert us from looking into? What would bring an Associate Justice of the Supreme Court into any sort of relationship with some of the most unsavory and notorious elements of American society? What, after some of this became public knowledge, holds him still in truculent defiance bordering upon the irrational?

For example, there is the curious and profitable relationship which Mr. Justice Douglas enjoyed, for nigh onto a decade, with Mr. Albert Parvin and a mysterious entity known as the Parvin Foundation.

Albert Parvin was born in Chicago around the turn of the century, but little is known of his life until he turns up as president and 30-percent owner of Hotel Flamingo, Inc., which operated the hotel and gambling casino in Las Vegas, Nev. It was first opened by Bugsy Siegel in 1946, a year before he was murdered.

Bugsy's contract for decorations and furnishings of the Flamingo was with Albert Parvin & Co. Between Siegel and Parvin there were three other heads, or titular heads, of the Flamingo. After the gangland rubout of Siegel in Los Angeles, Sanford Adler—who was a partner with Albert Parvin in another gambling establishment, El Rancho, took over. He subsequently fled to Mexico to escape income tax charges and the Flamingo passed into the hands of one Gus Greenbaum.

Greenbaum one day had a sudden urge to go to Cuba and was later murdered. Next Albert Parvin teamed up with William Israel Alderman—known as Ice Pick Willie—to head the Flamingo. But Alderman soon was off to the Riviera and Parvin took over.

On May 12, 1960, Parvin signed a contract with Meyer Lansky, one of the country's top gangsters, paying Lansky what was purportedly a finder's fee of $200,000 in the sale of the Flamingo. The agreement stipulated that payment would be made to Lansky in quarterly installments of $6,250 starting in 1961. If kept, final payment of the $200,000 would have been in October 1968.

Parvin and the other owners sold the Flamingo for a reported $10,500,000 to a group including Florida hotelmen Morris Lansburgh, Samuel Cohen, and Daniel Lifter. His attorney in the deal

was Edward Levinson, who has been associated with Parvin in a number of enterprises. The Nevada Gaming Commission approved the sale on June 1, 1960.

In November of 1960, Parvin set up the Albert Parvin Foundation. Accounts vary as to whether it was funded with Flamingo Hotel stock or with a first mortgage on the Flamingo taken under the terms of the sale. At any rate the foundation was incorporated in New York and Mr. Justice Douglas assisted in setting it up, according to Parvin. If the Justice did indeed draft the articles of incorporation, it was in patent violation of title 28, section 454, United States Code, which states that "any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor."

Please note that this offense is specifically stated in the Federal statute to be a high misdemeanor, making it conform to one of the constitutional grounds for impeachment. There is additional evidence that Mr. Justice Douglas later, while still on salary, gave legal advice to the Albert Parvin Foundation on dealing with an Internal Revenue investigation.

The ostensible purpose of the Parvin Foundation was declared to be educating the developing leadership in Latin America. This had not previously been a known concern of Parvin or his Las Vegas associates, but Cuba, where some of them had business connections, was then in the throes of Castro's Communist revolution.

In 1961 Mr. Justice Douglas was named a life member of the Parvin Foundation's board, elected president and voted a salary of $12,000 per year plus expenses. There is some conflict in testimony as to how long Douglas drew his pay, but he did not put a stop to it until last May—1969—in the wake of public revelations that forced the resignation of Mr. Justice Fortas.

The Parvin Foundation in 1961 undertook publication of Mr. Justice Douglas' book, "America's Challenge," with costs borne by the foundation but royalties going to the author.

In April 1962 the Parvin Foundation applied for tax-exempt status. And thereafter some very interesting things happened.

On October 22, 1962, Bobby Baker turned up in Las Vegas for a 3-day stay. His hotel bill was paid by Ed Levinson, Parvin's associate and sometime attorney. On Baker's registration card a hotel employee had noted—"is with Douglas."

Bobby was then, of course, majority secretary of the Senate and widely regarded as the right hand of the then Vice President of the United States. So it is unclear whether the note meant literally that Mr. Justice Douglas was also visiting Las Vegas at that time or whether it meant only to identify Baker as a Douglas associate.

In December 1962, I have learned, Bobby Baker met with Juan Bosch, soon to be President of the Dominican Republic, in New York City.

In January 1963 the Albert Parvin Foundation decided to drop all its Latin American projects and to concentrate on the Dominican Republic. Douglas described President-elect Bosch as an old friend.

On February 26, 1963, however, we find Bobby Baker and Ed Levinson together again—this time on the other side of the continent in Florida—buying round-trip tickets on the same plane for the Dominican Republic.

Since the Parvin Foundation was set up to develop leadership in Latin America, Trujillo had been toppled from power in a bloody uprising, and Juan Bosch was about to be inaugurated as the new, liberal President. Officially representing the United States at the ceremonies February 27 were the Vice President and Mrs. Johnson. But their Air Force plane was loaded with such celebrities as Senator and Mrs. Humphrey, two Assistant Secretaries of State, Mr. and Mrs. Valenti, and Mrs. Elizabeth Carpenter. Bobby Baker and Eddie Levinson went commercial.

Also on hand in Santo Domingo to celebrate Bosch's taking up the reins of power were Mr. Albert Parvin, President of the Parvin-Dohrmann Co., and the President of the Albert Parvin Foundation, Mr. Justice William O. Douglas of the U.S. Supreme Court.

Again there is conflicting testimony as to the reason for Mr. Justice Douglas' presence in the Dominican Republic at this juncture, along with Parvin, Levinson, and Bobby Baker. Obviously he was not there as an official representative of the United States, as he was not in the Vice President's party.

One story is that the Parvin Foundation was offering to finance an educational television project for the Dominican Republic. Another is that Mr. Justice Douglas was there to advise President Bosch on writing a new Constitution for the Dominican Republic.

There is little about the reasons behind the presence of a singularly large contingent of known gambling figures and Mafia types in Santo Domingo, however. With the change of political regimes the rich gambling concessions of the Dominican Republic were up for grabs. These were generally not owned and operated by the hotels, but were granted to concessionaires by the government—specifically by the President It was one of the country's most lucrative sources of revenue as well as private corruption. This brought such known gambling figures as Parvin and Levinson, Angelo Bruno and John Simone, Joseph Sicarelli, Eugene Pozo, Santa Trafficante Jr., Louis Levinson, Leslie Earl Kruse, and Sam Giancanno to the island in the spring of 1963.

Bobby Baker, in addition to serving as go-between for his Las Vegas friends such as Ed Levinson, was personally interested in concessions for vending machines of his Serv-U Corp., then represented by Washington Attorney Abe Fortas. Baker has described Levinson as a former partner.

Mrs. Fortas, also an attorney, was subsequently to be retained as tax counsel by the Parvin Foundation. Her fee is not exactly known but that year the foundation spent $16,058 for professional services.

There are reports that Douglas met with Bosch and other officials of the new government in February or early March of 1963, and also that he met with Bobby Baker and with Albert Parvin. In April 1963, Baker and Ed Levinson returned to the Dominican Republic and in that same month the Albert Parvin Foundation was granted its tax-exempt status by the Internal Revenue Service.

In June, I believe it was June 20, Bobby Baker and Ed Levinson traveled to New York where Baker introduced Levinson to Mr. John Gates of the Intercontinental Hotel Corp. Mr. Gates has testified that Levinson was interested in the casino concession in the Ambassador—El Embajador—Hotel in Santo Domingo. My information is that Baker and Levinson made at least one more trip to the Dominican Republic about this time but that, despite all this influence peddling, the gambling franchise was not granted to the Parvin-Levinson-Lansky interests after all.

In August, President Bosch awarded the concession to Cliff Jones, former Lieutenant Governor of Nevada who, incidentally, also was an associate of Bobby Baker.

When this happened, the further interest of the Albert Parvin Foundation in the Dominican Republic abruptly ceased. I am told that some of the educational television equipment already delivered was simply abandoned in its original crates.

On September 25, 1963, President Bosch was ousted and all deals were off. He was later to lead a comeback effort with Communist support which resulted in President Johnson's dispatch of U.S. Marines to the Dominican Republic.

Meanwhile, through the Parvin-Dohrmann Co. which he had acquired, Albert Parvin bought the Fremont Hotel in Las Vegas in 1966 from Edward Levinson and Edward Torres, for some $16 million. In 1968, Parvin-Dohrmann acquired the Aladdin Hotel and casino in the same Nevada city, and in 1969 was denied permission by Nevada to buy the Riviera Hotel and took over operation of the Stardust Hotel. This brought an investigation which led to the suspension of trading in Parvin-Dohrmann stock by the SEC, which led further to the company's employment of Nathan Voloshen. But in the interim Albert Parvin is said to have been bought out of the company and to have retired to concentrate on his foundation, from which Mr. Justice Douglas had been driven to resign by relentless publicity.

On May 12, 1969, Mr. Justice Douglas reportedly wrote a letter to Albert Parvin in which he discussed the pending action by the Internal Revenue Service to revoke the foundation's tax-exempt status as a "manufactured case" designed to pressure him off the Supreme Court. In this letter, as its contents were paraphrased by the New York Times, Mr. Justice Douglas apparently offered legal advice to Mr. Parvin as to how to avoid future difficulties with the Internal Revenue Service, and this whole episode demands further examination under oath by a committee with subpena powers.

When things got too hot on the Supreme Court for Justices accepting large sums of money from private foundations for ill-defined services, Mr. Justice Douglas finally gave up his open ties with the Albert Parvin Foundation. Although resigning as its president and giving up his $12,000-a-year salary, Mr. Justice Douglas moved immediately into closer connection with the leftish Center for the Study of Democratic Institutions.

The center is located in Santa Barbara, Calif., and is run by Dr. Robert M. Hutchins, former head of the University of Chicago.

A longtime "consultant" and member of the board of directors of the center, Mr. Justice Douglas was elevated last December to the post of chairman of the executive committee. It should be noted that the Santa Barbara Center was a beneficiary of Parvin Foundation funds during the same period that Mr. Justice Douglas was receiving $1,000 a month salary from it and Mobster Meyer Lansky was drawing down installment payments of $25,000 a year. In addition to Douglas, there are several others who serve on both the Parvin Foundation and Center for Democratic Studies boards, so the break was not a very sharp one.

The gentleman from New Hampshire (Mr. WYMAN) has investigated Mr. Justice Douglas' connections with the center and discovered that the Associate Justice has been receiving money from it, both during the time he was being paid by Parvin and even larger sums since.

The distinguished gentleman, who served as attorney general of his State and chairman of the American Bar Association's committee on jurisprudence before coming to the House, will detail his findings later. But one activity of the center requires inclusion here because it provides some explanation for Mr. Justice Douglas' curious obsession with the current wave of violent youthful rebellion.

In 1965 the Santa Barbara Center, which is tax exempt and ostensibly serves as a scholarly retreat, sponsored and financed the National Conference for New Politics which was, in effect, the birth of the New Left as a political movement. Two years later, in August 1967, the Center was the site of a very significant conference of militant student leaders. Here plans were laid for the violent campus disruptions of the past few years, and the students were exhorted by at least one member of the center's staff to sabotage American society, block defense work by universities, immobilize computerized record systems and discredit the ROTC.

This session at Mr. Justice Douglas' second moonlighting base was thus the birthplace for the very excesses which he applauds in his latest book in these words:

> Where grievances pile high and most of the elected spokesmen represent the Establishment, violence may be the only effective response.

Mr. Speaker, we are the elected

spokesmen upon whom the Associate Justice of the Supreme Court is attempting to place the blame for violent rebellion in this country. What he means by representing the establishment I do not know, except that he and his young hothead revolutionaries regard it as evil. I know very well who I represent, however, and if the patriotic and law abiding and hard-working and God-fearing people of America are the establishment, I am proud to represent such an establishment.

Perhaps it is appropriate to examine at this point who Mr. Justice Douglas represents. On the basis of the facts available to me, and presented here, Mr. Justice Douglas appears to represent Mr. Albert Parvin and his silent partners of the international gambling fraternity, Mr. Ralph Ginzburg, and his friends of the pornographic publishing trade, Dr. Robert Hutchins and his intellectual incubators for the New Left and the SDS, and others of the same ilk. Mr. Justice Douglas does not find himself in this company suddenly or accidentally or unknowingly, he has been working at it for years, profiting from it for years, and flaunting it in the faces of decent Americans for years.

There have been many questions put to me in recent days. Let me unequivocally answer the most important of them for the record now.

Mr. Speaker, is this action on my part in response to, or retaliation for, the rejection by the other body of two nominees for the Supreme Court, Judge Haynsworth and Judge Carswell. In a narrow sense, no. The judicial misbehavior which I believe Mr. Justice Douglas to be guilty of began long before anybody thought about elevating Judges Haynsworth and Carswell.

But in a larger sense, I do not think there can be two standards for membership on the Supreme Court, one for Mr. Justice Fortas, another for Mr. Justice Douglas.

What is the ethical or moral distinction, I ask those arbiters of high principle who have studied such matters, between the Parvin Foundation, Parvin-Dohrmann's troubles with the SEC, and Parvin's $12,000-a-year retainer to Associate Justice Douglas—on the one hand—and the Wolfson Family Foundation, Louis Wolfson's troubles with the SEC and Wolfson's $20,000-a-year retainer to Associate Justice Fortas? Why, the cast of characters in these two cases is virtually interchangeable.

Albert Parvin was named a coconspirator but not a defendant in the stock manipulation case that sent Louis Wolfson to prison. Albert Parvin was again under investigation in the stock manipulation action against Parvin-Dohrmann. This generation has largely forgotten that William O. Douglas first rose to national prominence as Chairman of the Securities and Exchange Commission. His former law pupil at Yale and fellow New Dealer in those days was one Abe Fortas, and they remained the closest friends on and off the Supreme Court. Mrs. Fortas was retained by the Parvin Foundation in its tax difficulties. Abe Fortas was retained by Bobby Baker until he withdrew from the case because of his close ties with the White House.

I will state that there is some difference between the two situations. There is no evidence that Louis Wolfson had notorious underworld associations in his financial enterprises. And more important, Mr. Justice Fortas had enough respect for the so-called establishment and the personal decency to resign when his behavior brought reproach upon the U.S. Supreme Court. Whatever he may have done privately, Mr. Justice Fortas did not consistently take public positions that damaged and endangered the fabric of law and government.

Another question I have been asked is whether I, and others in this House, want to set ourselves up as censors of books and magazines. This is, of course, a stock liberal needle which will continue to be inserted at every opportunity no matter how often it is plainly answered in the negative. But as the "censor" was an ancient Roman office, the supervisor of public morals, let me substitute, if I might, another Roman office, the tribune. It was the tribune who represented and spoke up for the people. This is our role in the impeachment of unfit judges and other Federal officials. We have not made ourselves censors; the Constitution makes us tribunes.

A third question I am asked is whether the step we are taking will not diminish public confidence in the Supreme Court. That is the easiest to answer. Public confidence in the U.S. Supreme Court diminishes every day that Mr. Justice Douglas remains on it.

Finally, I have been asked, and I have asked myself, whether or not I should stand here and impeach Mr. Justice Douglas on my own constitutional responsibility. I believe, on the basis of my own investigation and the facts I have set before you, that he is unfit and should be removed. I would vote to impeach him right now.

But we are dealing here with a solemn constitutional duty. Only the House has this power; only here can the people obtain redress from the misbehavior of appointed judges. I would not try to impose my judgment in such a matter upon any other Member; each one should examine his own conscience after the full facts have been spread before him.

I cannot see how, on the prima facie case I have made, it is possible to object to a prompt but thoroughgoing investigation of Mr. Justice Douglas' behavior. I believe that investigation, giving both the Associate Justice and his accusers the right to answer under oath, should be as nonparisan as possible and should interfere as little as possible with the regular legislative business of the House. For that reason I shall support, but not actively sponsor, the creation of a select committee to recommend whether probable causes does lie, as I believe it does, for the impeachment and removal of Mr. Justice Douglas.

Once more, I remind you of Mr. Justice Cardozo's guidelines for any judge:

> Not honest alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.

Why should the American people demand such a high standard of their judiciary? Because justice is the foundation of our free society. There has never been a better answer than that of Daniel Webster, who said:

> There is no happiness, there is no liberty, there is no enjoyment of life, unless a man can say when he rises in the morning, I shall be subject to the decision of no unwise judge today.

without reference to Section 223(e), careful adherence to all applicable requirements is mandatory.

(b) For all existing property appraisals the valuation requirements are as set forth in paragraphs 71409.2, 71429 (as supplemented by HUD Circular 4400.26) and 71603 of the FHA Underwriting Manual. Instructions for the related inspection of the property are in paragraph 70751. Special instructions for detection of termite damage are in paragraph 70752. All appraisers are required to review this material before undertaking any new assignments.

FHA cannot warrant existing properties against defects and should make this position clear to all concerned. However, this does not in any way relieve the appraiser of his responsibilities as set forth in the foregoing Manual references.

(c) Supervisory Insuring office staff must follow the system of spot checks of existing construction appraisals and any other management tools necessary to assure compliance.

VALUATION ANALYSIS

71409.2 Existing Dwellings—Requirements: The condition of existing building improvements is examined at the time of appraisal to determine whether repairs, alterations, or additions are necessary. If so they should be those items proposed in the Property Description or those essential to eliminate conditions threatening the continued economic soundness of the mortgage transaction. Required repairs will be limited to those necessary to preserve the property and to protect the health and safety of the occupants.

Typical conditions requiring repairs are termite damage; damaged or inoperative plumbing, heating or electrical systems; broken or missing fixtures; rotted counter tops and floors; leaking roofs; exterior paint peeled to bare wood; masonry and foundation damage; drainage problems on-site; and requirements to meet the code in code enforcement areas. It may also be necessary to require removal of dilapidated outbuildings which might endanger the safety of children.

Conditions which do not require repair include "cosmetic" work such as interior painting, polishing floors, cleaning or removal of carpets; installation of paved driveways or aprons; installation of curbs, gutters, or partial paving of street; replacement of tile floors because tiles do not match; planting of shrubbery or lawns, and the like, which are not directly related to the preservation of the property or the health and safety of the occupants.

The appraiser is required to inspect the entire structure including the attic, the crawl space or basement and all equipment. It is essential that all deficiencies not found in comparable properties be reflected in value. An estimate of the cost of the required repairs, alterations, or additions is made by the appraiser, or by the Architectural Section when requested. If conditions prevent complete inspection of the property at the time of appraisal (for example, snow covering the roof) so that the appraiser cannot determine the condition, he should require either a reinspection prior to closing or that evidence satisfactory to FHA be furnished concerning the condition of those items cited in the requirement.

If the appraiser cannot determine whether all mechanical equipment is in operating condition, he should make a commitment requirement that the mortgagee furnish evidence satisfactory to FHA that all mechanical equipment is in operating condition at the time of loan closing.

A proper appraisal requires that the appraiser consider not only the condition of the property and its equipment but also the functional adequacy of the components under conditions typically expected. Inferior quality roofing, plumbing, heating equipment, undersize hot water heaters, bottom of the line appliances are items which must be of concern to the appraiser in estimating value. Careful inspection of the property being appraised and evaluation of the condition and adequacy of all its elements is an integral part of the appraiser's function without which he cannot make a proper appraisal.

The appraiser must be especially careful in checking the house and the operation of equipment where a property shows evidence of neglect or vandalism.

HOUSE OF REPRESENTATIVES,
COMMITTEE OF BANKING AND CURRENCY,
Washington, D.C., August 1, 1970.

Hon. GEORGE ROMNEY,
Secretary, Department of Housing and Urban Development, Washington, D.C.

DEAR MR. SECRETARY: Thank you for your prompt response of July 31, 1970, to my July 28 letter to you.

You are to be commended for the immediate action you are taking in this matter. Certainly we shall be happy to meet with you or your representatives on this matter at any time.

We shall, of course, immediately analyze the new appraisal regulations for existing housing which you have promulgated. We shall also look forward to the findings of your investigation concerning the material sent to you in my letter of July 28 and your answer to the questions raised in that letter.

I am concerned, however, about the probable wrongs that have already been committed in this 235 existing housing program and would appreciate your response as to what can be done to correct the situation as far as those people who have been victimized by unscrupulous dealings involving the 235 existing housing programs.

Again, I wish to commend you and your office for your prompt action in this matter.

With best personal regards, I am

Sincerely,

WRIGHT PATMAN,
Chairman.

NATIONAL GALLERY OF ART CALENDAR OF EVENTS

HON. JAMES G. FULTON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1970

Mr. FULTON of Pennsylvania. Mr. Speaker, it is a pleasure to place in the CONGRESSIONAL RECORD the Calendar of Events for the monh of August 1970 for the National Gallery of Art. Once again the National Gallery has planned an outstanding number of events, which I heartily recommend to my colleagues and the American people:

NATIONAL GALLERY OF ART, AUGUST 1970

AMERICAN PAINTINGS AND SCULPTURE CATALOGUE

After more than thirty years of research, the National Gallery has published a summary catalogue of its collection of American paintings and sculpture.

Research on this fully illustrated catalogue of 827 paintings and five sculptures in the collection of the National Gallery was begun by James W. Lane, former curator of the Gallery's American collection, and continued under his successor, William P. Campbell, who is now Acting Chief Curator of the Gallery. Study of the collection has led to many new attributions and discoveries about the works.

The collection is strongest in eighteenth and nineteenth century portraiture. Among these are particularly fine works by Benjamin West, John Singleton Copley, Gilbert Stuart and Thomas Sully. The collection is also rich in paintings by John Trumbull, James McNeill Whistler, Mary Cassatt, John Singer Sargent and George Bellows. The American naive pictures, Mr. Campbell has noted, comprise "possibly the most important group of such paintings in a public collection."

SPECIAL SUMMER EXHIBITION

The exhibition of Impressionist and Post-Impressonist paintings and sculpture from the Nathan Cummings collection will continue through Labor Day. One large bronze by contemporary British sculptor Henry Moore is on view outside the Gallery's Constitution Ave. entrance. An Acoustiguide tour of the exhibition is available.

PRINT EXHIBITION

A selection of twenty-five turn-of-the-century French prints, mostly color lithographs, from the Rosenwald Collection of the National Gallery are on view through Labor Day.

FILMS

During August, two films will be shown for the first time at the National Gallery, *A Gallery of Children* and *Reflections in Space. In Search of Rembrandt* continues to be shown on weekdays. Refer to the weekly listings of this calendar for showings. For details on the evening showings of "Civilisation," call 737-4220.

Monday, July 27, through Sunday, August 2.

PAINTING OF THE WEEK*

Renoir. *Obalisque.*—(Chester Dale Collection) Gallery 90, Tues. through Sat. 12:00 & 2:00; Sun. 3:30 & 6:00.

TOUR

Introduction to the Collection.—Rotunda, Mon. through Sat. 11:00, 1:00 & 3:00; Sun. 2:30 & 5:00.

SUNDAY LECTURE

Modern Art: Matisse and Rouault.—Speaker: Carleen Keating, Staff Lecturer; National Gallery of Art, Auditorium 4:00.

SUNDAY FILM

A Gallery of Children, 1:00.

WEEKDAY FILMS

A Gallery of Children—2:00; *In Search of Rembrandt*—5:00.

GALLERY HOURS

Weekdays and Saturdays, 10:00 a.m. to 9:00 p.m.; Sundays, 12 noon to 10:00 p.m.

PAINTING OF THE WEEK*

Goya. *Victor Guye.*—(Gift of William Nelson Cromwell) Gallery 50, Tues. through Sat. 12:00 & 2:00; Sun. 3:30 & 6:00.

TOUR

Introduction to the Collection.—Rotunda, Mon. through Sat. 11:00, 1:00 & 3:00; Sun. 2:30 & 5:00.

SUNDAY LECTURE

Modern Art: Picasso and Braque.—Speaker: William J. Williams; Staff Lecturer, National Gallery of Art, Auditorium 4:00.

SUNDAY FILM

Reflections in Space—1:00.

WEEKDAY FILMS

Reflections in Space—2:00. *In Search of Rembrandt*—4:00.

CAFETERIA HOURS

Sundays: Dinner, 1:00 p.m. to 7:00 p.m.; Weekdays: Snack Service, 10:00 a.m. to 11:00 a.m., 2:30 to 5:00 p.m.; Luncheon, 11:00 a.m. to 2:30 p.m.; Dinner, 5:00 p.m. to 7:30 p.m.

Monday, August 10, through Sunday, August 16.

Footnote at end of article.

PAINTING OF THE WEEK *

Gerald David. *The Rest on the Flight into Egypt.*—(Andrew Mellon Collection) Gallery 39, Tues. through Sat. 12:00 & 2:00; Sun. 3:30 & 6:00.

TOUR

Introduction to the Collection.—Rotunda, Mon. through Sat. 11:00, 1:00 & 3:00; Sun. 2:30 & 5:00.

SUNDAY LECTURE

Modern Art: Kirchner and Kandinsky.—*Speaker:* Charlotte Snyder, Summer Staff Lecturer; National Gallery of Art, Auditorium 4:00.

SUNDAY FILM

A Gallery of Children—1:00.

WEEKDAY FILMS

A Gallery of Children—2:00; *In Search of Rembrandt*—4:00.

Monday, August 17, through Sunday, August 23.

PAINTING OF THE WEEK *

Delacroix. *The Arab Tax.*—(Chester Dale Fund) Gallery 83, Tues. through Sat. 12:00 & 2:00; Sun. 3:30 & 6:00.

TOUR

Introduction to the oCllection. Rotunda, Mon. through Sat. 11:00, 1:00 & 3:00, Sun. 2:30 & 5:00.

SUNDAY LECTURE

Modern Art: La Fresnaye and Leger—*Speaker:* Margaret Bouton. Curator in Charge of Education; National Gallery of Art, Auditorium 4:00.

SUNDAY FILM

Reflections in Space.—1:00.

WEEKDAY FILMS

Reflections in Space.—2:00, *In Search of Rembrandt,* 4:00.

For reproductions and slides of the collection, books, and other related publications, self-service rooms are open daily near the Constitution Avenue entrance.

PAINTING OF THE WEEK*

Francesco di Giorgio. *God the Father Surrounded by Angeles and Cheribim.*—(Samuel H. Kress Collection) Gallery 5. Tues. through Sat. 12:00 & 2:00; Sun. 3:30 & 6:00.

TOUR

Introduction to the Collection.—Rotunda, Mon. through Sat. 11:00, 1:00 & 3:00, Sun. 2:30 & 5:00.

SUNDAY LECTURE

Modern Art: Chagall and Dubuffet.—*Speaker:* Troy Thomas; Staff Lecturer, National Gallery of Art, Auditorium 4:00.

SUNDAY FILM

A Gallery of Children.—1:00.

WEEKDAY FILMS

A Gallery of Children, 2:00.—*In Search of Rembrandt,* 4:00.

Inquiries concerning the Gallery's educational services should be addressed to the Educational Office or telephoned to (202) 737-4215 ext. 272.

FOOTNOTES

*11" x 14" reproductions with texts for sale this week—15¢ each. If mailed, 25¢ each.

JAPANESE PROJECTIONS STARTLE U.S. ECONOMISTS

HON. ROMAN C. PUCINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1970

Mr. PUCINSKI. Mr. Speaker, the Chicago Sun-Times carried a column last week by the distinguished journalist, Charles Bartlett, which should be of great interest to all of us.

Mr. Bartlett pointed out that the Japanese Finance Ministry has startled economists here in the United States by publishing economy projections which foresee per capita incomes in Japan of $55,267 by the end of this century.

It is interesting to note that the Japanese study shows that America's annual per capita income is estimated at merely $14,161 by the year 2001, considerably less than all the European countries except Great Britain.

I cannot vouch for the accuracy of the Japanese projections, but I do believe that these projections warrant more than passing interest by all of us in this country.

I said the other day that when we examine the economic growth of Japan, West Germany, the Common Market countries, and other economic systems around the world, we Americans better realize that we are faced with an increased challenge from world competition.

We Americans have been fortunate in the last 200 years, in that our cities have not been ravaged by the horrors of war as have the Japanese and European cities. It should be perfectly clear to all of us that the rest of the world is now developing production techniques and methods which could make America a second-rate economic power in the next decade.

I am submitting into the RECORD today Mr. Bartlett's excellent column because I believe it should serve as a basis for a national dialog on how we Americans can improve the productivity of our industrial output and also address ourselves to the whole question of quality production.

No one in this Nation is providing the leadership today toward a recognition that we are faced with some very serious competition from most of the world, and that competition can be met. I have no doubt in the American system or the dedication of the American worker. But it does occur to me that we must try to bring about a greater degree of understanding of the challenge that lies ahead, and a greater degree of cooperation between labor, industry, and government to meet that challenge.

Mr. Bartlett has performed a notable public service by calling the Japanese study to the attention of the American people.

His column follows:

JAPANESE PROJECTIONS STARTLE U.S. ECONOMISTS

WASHINGTON.—The Japanese Finance Ministry has startled economists here by publishing economic projections which foresee per capita incomes in Japan of $16,426 by 1991 and $55,267 by the end of the century.

The Japanese anticipations for the United States are far more conservative. A per capita income of merely $14,161 is predicted for 2001, considerably less than all the European countries except Great Britain.

The modest estimate for the United States comes almost as reassurance at a time when the upward sweep of wage settlements is promising to prolong the inflation. The new teamsters contract in Chicago (which may ultimately mean, food chain economists say, a 4 per cent rise in food costs) and the ominous start of the auto negotiations warn again that the quest for the golden fleece of wage-price stability has barely begun.

The Nixon economists reflect growing confidence in their ability to avoid a recession, but they concede privately they hold slim hopes of prying the economy out of its slough by election time. They will soon begin some new anti-inflationary gestures but these are stage-dressing.

American labor leaders, seeing no solution short of controls, describe their rank-and-file as increasingly sensitive to the threat of unemployment. But they nevertheless press for big wage gains because they find it hard to pay their bills.

Dismay over the arduous pursuit of stability which lies ahead is prompting some to question whether the Full Employment Act of 1946 should not be amended to put the objective of price stability ahead of economic growth. The idea draws enthusiasm from the environmentalists, who see affluence and consumption as enemies.

"I confess I am not charmed," John Stuart Mills wrote 100 years ago, "with the ideal of life held out by those who think that the normal state of human beings is that of struggling to get on; that the trampling, crushing, elbowing, and treading on each other's heels are most desirable lot of human kind."

Mills added that this kind of life prevails particularly in the northern and middle states of America where, "The life of the whole of one sex is devoted to dollar-hunting, and of the other to breeding dollar-hunters."

INVESTIGATION OF WILLIAM O. DOUGLAS

HON. CHARLES H. GRIFFIN

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1970

Mr. GRIFFIN. Mr. Speaker, several months ago a bipartisan effort was launched by more than one-fourth of this body to investigate whether impeachment proceedings should be brought against William O. Douglas, Associate Justice of the U.S. Supreme Court.

Serious questions have been raised over Justice Douglas' behavior while on the Court and I strongly feel that the American people are entitled to a full and complete inquiry. That is why I joined in the introduction of a resolution to create a select committee of six Members of the House to investigate and determine whether Associate Justice Douglas has committed high crimes and misdemeanors as that phrase appears in the Constitution.

After the introduction of the aforementioned resolution, the Committee on the Judiciary announced that it would conduct an investigation based on an impeachment resolution that had been introduced.

Mr. Speaker, many of us have been anxiously awaiting results of the inquiry by the Judiciary Committee which is now in its fourth month. We have had no report of the committee's progress.

The Jackson, Miss., Daily News, on July 27, 1970, carried the Allen-Goldsmith syndicated column which discussed the status of the Judiciary Committee probe. As a part of my remarks, I include this column and the text of the resolu-

tion introduced by over one-fourth of the Members in the House:

CELLER PROBE OF DOUGLAS RAISES DOUBT OF SINCERITY

(By Robert S. Allen and John A. Goldsmith)

WASHINGTON, D.C.—Increasingly critical doubts are being raised as to just how sincere that special House Judiciary subcommittee is in making a thorough and forthright investigation of Justice William O. Douglas.

So far, there is little indication that very much has been done—if anything.

In the three months the probe has been underway, the backstage record is one of persistent foot dragging and dawdling.

As a consequence, with the investigators due to report to the full House in three weeks (Aug. 20), both their intent and nonchalant proceedings are being bluntly questioned by fellow legislators. There is considerable evidence to support these indignant complaints and misgivings, as follows:

The subcommittee, headed by Rep. Emanuel Celler, D-N.Y., 82, has held no hearings—private or public.

NO SUBPOENAS YET

No subpoenas have been issued, and no one has been questioned under oath. Last month three staff members of the committee spent a day in Los Angeles talking to Albert Parvin, head of the foundation by that name which paid Douglas around $100,000 ostensibly as a "director." The foundation derives much of its income from Nevada gambling interests. Pardin was not put under oath, and no subpoena was served on him for files and records. The staffmen were content to examine the documents he showed them.

The same casual procedure was followed in questioning Robert Hutchins and Harry Ashmore, who run the leftist Center for the Study of Democratic Institutions at Santa Barbara. Douglas got $6,800 from this outfit as a "director." He is not head of a newly created executive committee at $75 per diem and expenses. It is unknown how much he has received under this arrangement.

No special counsel has been employed by the subcommittee to direct the investigation. Also, no extra help has been hired. Chairman Celler has insisted on using only the regular staff of the Judiciary Committee—already overloaded with a large accumulation of important pending legislation. Nominally, six staff members were assigned to the Douglas probe, but reportedly only half that number have worked on it at any one time—despite the fact that several hundred thousand documents have been submitted by the Justice Department, Internal Revenue Service and other government agencies.

This do-nothing record explains why irate House members are saying it is virtually certain the subcommittee will have to ask for another 60-day extension to do its job. That will be the second.

When the investigation was first announced by Celler, longtime chairman of the full Judiciary Committee, in a diversionary move to prevent a probe by the full House, he solemnly promised to report in 60 days. But shortly before that deadline, he had the Judiciary Committee grant a 60-day extension.

That expires Aug. 20—when under present plans, the House won't even be in session.

With the House well caught up with its legislative calendar (thanks to no protracted "debates" over a meaningless Cooper-Church anti-Cambodia amendment, the Hatfield-McGovern end-the-war resolution and other politics-inspired proposals), bipartisan leaders have decided to take a three-week summer recess—starting around Aug. 15. Under that arrangement, the House will be shut down when the subcommittee is supposed to submit its findings—if any!

That's why it is taken as a forgone conclusion that the probers will ask for and the Judiciary Committee will approve—another 60-day extension.

And that isn't all.

House members are openly voicing the strong suspicion that the secret aim of Celler and other subcommitteemen is to stall making a report until after the Nov. 3 congressional elections. By that time, Congress may have wound up its work and quit.

That would mean nothing could be done about Douglas until the new Congress convenes in January—when, under the rules, the investigating committee would have to be reconstituted and the probe started all over again, assuming that is demanded. In view of the fact that Celler set up the special panel only when forced to do so, it's highly conjectural what he will do in the next Congress.

H. RES. 925

Whereas, the Constitution of the United States provides in Article III, Section 1, that Justices of the Supreme Court shall hold office only "during good behavior", and

Whereas, the Constitution also provides in Article II, Section 4, that Justices of the Supreme Court shall be removed from Office on Impeachment for High Crimes and Misdemeanors, and

Whereas the Constitution also provides in Article VI that Justices of the Supreme Court shall be bound by "Oath or Affirmation to support this Constitution" and the United States Code (5 U.S.C. 16) prescribes the following form of oath which was taken and sworn to by William Orville Douglas prior to his accession to incumbency on the United States Supreme Court:

"I, William Orville Douglas, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

and

Whereas, integrity and objectivity in respect to issues and causes to be presented to the United States Supreme Court for final determination make it mandatory that Members thereof refrain from public advocacy of a position on any matter that may come before the High Court lest public confidence in this constitutionally co-equal judicial body be undermined, and

Whereas, the said William Orville Douglas has, on frequent occasions in published writings, speeches, lectures and statements, declared a personal position on issues to come before the United States Supreme Court indicative of a prejudiced and non-judicial attitude incompatible with good behavior and contrary to the requirements of judicial decorum obligatory upon the Federal judiciary in general and members of the United States Supreme Court in particular, and

Whereas, by the aforementioned conduct and writings, the said William Orville Douglas has established himself before the public, including litigants whose lives, rights and future are seriously affected by decisions of the Court of which the said William Orville Douglas is a member, as a partisan advocate and not as a judge, and

Whereas, by indicating in advance of Supreme Court decisions, on the basis of declared, printed, or quoted convictions, how he would decide matters in controversy pending and to become pending before the Court of which he is a member, the said William Orville Douglas has committed the high misdemeanor of undermining the integrity of the highest constitutional Court in America, and has wilfully and deliberately undermined public confidence in the said Court as an institution, and

Whereas, contrary to his Oath of Office as well as patently in conflict with the Canons of Ethics for the Judiciary of the American Bar Association, the said William Orville Douglas nevertheless on February 19, 1970, did publish and publicly distribute throughout the United States, statements encouraging, aggravating and inciting violence, anarchy and civil unrest in the form of a book entitled "Points of Rebellion" in which the said William Orville Douglas, all the while an incumbent on the Highest Court of last resort in the United States, stated, among other things, that:

"But where grievances pile high and most of the elected spokesmen represent the Establishment, violence may be the only effective response." (pp. 88–89, "Points of Rebellion," Random House, Inc., February 19, 1970, William O. Douglas.

"The special interests that control government use its powers to favor themselves and to perpetuate regimes of oppression, exploitation, and discrimination against the many." (ibid, p. 92)

"People march and protest but they are not heard." (ibid, p. 88)

"Where there is a persistent sense of futility, there is violence; and that is where we are today." (ibid, p. 56)

"The two parties have become almost indistinguishable; and each is controlled by the Establishment. The modern day dissenters and protesters are functioning as the loyal opposition functions in England. They are the mounting voice of political opposition to the status quo, calling for revolutionary changes in our institutions. Yet the powers-that-be faintly echo Adolph Hitler." (ibid, p. 57)

"Yet American protesters need not be submissive. A speaker who resists arrest is acting as a free man." (ibid, p. 6)

"We must realize that today's Establishment is the new George III. Whether it will continue to adhere to his tactics, we do not know. If it does, the redress, honored in tradition, is also revolution." (ibid, p. 95)

and thus wilfully and deliberately fanned the fires of unrest, rebellion, and revolution in the United States, and

Whereas, in the April 1970 issue of Evergreen Magazine, the said William Orville Douglas for pay did, while incumbent on the United States Supreme Court, publish an article entitled Redress and Revolution, appearing on page 41 of said issue immediately following a malicious caricature of the President of the United States as George III, as well as photographs of nudes engaging in various acts of sexual intercourse, in which article the said William Orville Douglas again wrote for pay that:

"George III was the symbol against which our Founders made a revolution now considered bright and glorious. . . . We must realize that today's Establishment is the new George III. Whether it will continue to adhere to his tactic, we do not know. If it does, the redress, honored in tradition, is also Revolution."

and

Whereas, the said William Orville Douglas, prepared, authored, and received payment for an article which appeared in the March 1969 issue of the magazine, Avant Garde, published by Ralph Ginzburg, previously convicted of sending obscene literature through the United States Mails, (see 383 U.S. 463) at a time when the said Ralph Ginzburg was actively pursuing an appeal from his conviction upon a charge of malicious libel before the Supreme Court of the United States, yet nevertheless the said William Orville Douglas, as a sitting member of the Supreme Court of the United States, knowing full well his own financial relationship

with this litigant before the Court, sat in judgment on the Ginzburg appeal, all in clear violation and conflict with his Oath of Office, the Canons of Judicial Ethics, and Federal law (396 U.S. 1049), and

Whereas, while an incumbent on the United States Supreme Court the said William Orville Douglas for hire has served and is reported to still serve as a Director and as Chairman of the Executive Committee of the Center for the Study of Democratic Institutions in Santa Barbara, California, a politically oriented action organization which, among other things, has organized national conferences designed to seek detente with the Soviet Union and openly encouraged student radicalism, and

Whereas, the said Center for the Study of Democratic Institutions, in violation of the Logan Act, sponsored and financed a "Pacem in Terris II Convocation" at Geneva, Switzerland, May 28–31, 1967, to discuss foreign affairs and U.S. foreign policy including the "Case of Vietnam" and the "Case of Germany", to which Ho Chi Minh was publicly invited, and all while the United States was in the midst of war in which Communists directed by the same Ho Chi Minh were killing American boys fighting to give South Vietnam the independence and freedom from aggression we had promised that Nation, and from this same Center there were paid to the said William Orville Douglas fees of $500 per day for Seminars and Articles, and

Whereas, paid activity of this type by a sitting Justice of the Supreme Court of the United States is contrary to his Oath of Office to uphold the United States Constitution, violative of the Canons of Ethics of the American Bar Association and is believed to constitute misdemeanors of the most fundamental type in the context in which that term appears in the United Staes Constitution (Article II, Section 4) as well as failing to constitute "good behavior" as that term appears in the Constitution (Article III, Section 1), upon which the tenure of all Federal judges is expressly conditioned, and

Whereas, moneys paid to the said William Orville Douglas from and by the aforementioned Center are at least as follows: 1962, $900; 1963, $800; 1965, $1,000; 1966, $1,000; 1963, 1,100; 1969, $2,000; all during tenure on the United States Supreme Court, and all while a Director on a Board of Directors that meets (and met) biannually to determine the general policies of the Center, and

Whereas, the said William Orville Douglas, contrary to his sworn obligation to refrain therefrom and in violation of the Canons of Ethics, has repeatedly engaged in political activity while an incumbent of the High Court, evidenced in part by his authorization for the use of his name in a recent political fund-raising letter, has continued public advocacy of the recognition of Red China by the United States, has publicly criticized the military posture of the United States, has authored for pay several articles on subjects patently related to causes pending or to be pending before the United States Supreme Court in Playboy Magazine on such subjects as invasions of privacy and civil liberties, and most recently has expressed in Brazil public criticism of the United States foreign policy while on a visit to Brazil in 1969, plainly designed to undermine public confidence in South and Latin American countries in the motives and objectives of the foreign policy of the United States in Latin America, and

Whereas, in addition to the foregoing, and while a sitting Justice on the Supreme Court of the United States, the said William Orville Douglas has charged, been paid and received $12,000 per annum as President and Director of the Parvin Foundation from 1960 to 1969, which Foundation received substantial income from gambling interests in the Fremont Casino at Las Vegas, Nevada, as well as the Flamingo at the same location, accompanied by innumerable conflicts of interest and overlapping financial maneuvers frequently involved in litigation the ultimate appeal from which could only be to the Supreme Court of which the said William Orville Douglas was and is a member, the tenure of the said William Orville Douglas with the Parvin Foundation being reported to have existed since 1960 in the capacity of President, and resulting in the receipt by the said William Orville Douglas from the Parvin Foundation of fees aggregating at least $85,000, all while a member of the United States Supreme Court, and all while referring to Internal Revenue Service investigation of the Parvin Foundation while a Justice of the United States Supreme Court as a "manufactured case" intended to force him to leave the bench, all while he was still President and Director of the said Foundation and was earning a $12,000 annual salary in those posts, a patent conflict of interest, and

Whereas, it has been repeatedly alleged that the said William Orville Douglas in his position as President of the Parwin Foundation did in fact give the said Foundation tax advice, with particular reference to matters known by the said William Orville Douglas at the time to have been under investigation by the United States Internal Revenue Services, all contrary to the basic legal and judicial requirement that a Supreme Court Justice may not give legal advice, and particularly not for a fee, and

Whereas, the said William Orville Douglas has, from time to time over the past ten years, had dealings with, involved himself with, and may actually have received fees and travel expenses, either directly or indirectly, from known criminals, gamblers, and gangsters or their representatives and associates, for services, both within the United States and abroad, and

Whereas, the foregoing conduct on the part of the said William Orville Douglas while a Justice of the Supreme Court is incompatible with his constitutional obligation to refrain from non-judicial activity of a patently unethical nature, and

Whereas, the foregoing conduct and other activities on the part of the said William Orville Douglas while a sitting Justice on the United States Supreme Court, establishes that the said William Orville Douglas in the conduct of his solemn judicial responsibilities has become a prejudiced advocate of predetermined positions on matters in controversy or to become in controversy before the High Court to the demonstrated detriment of American jurisprudence, and

Whereas, from the foregoing, and without reference to whatever additional relevant information may be developed through investigation under oath, it appears that the said William Orville Douglas, among other things, has sat in judgment on a cause involving a party from whom the said William Orville Douglas to his knowledge received financial gain, as well as that the said William Orville Douglas for personal financial gain, while a member of the United States Supreme Court, has encouraged violence to alter the present form of government of the United States of America, and has received and accepted substantial financial compensation from various sources for various duties incompatible with his judicial position and constitutional obligation and has publicly and repeatedly, both orally and in writings, declared himself a partisan on issues pending or likely to become pending before the Court of which he is a member; Now, therefore, be it

Resolved, That—

(1) The Speaker of the House shall within fourteen days hereafter appoint a select committee of six Members of the House, equally divided between the majority and the minority parties and shall designate one member to serve as chairman, which select committee shall proceed to investigate and determine whether Associate Justice William Orville Douglas has committed high crimes and misdemeanors as that phrase appears in the Constitution, Article II, Section 4, or has, while an incumbent, failed to be of the good behavior upon which his Commission as said Justice is conditioned by the Constitution, Article II, Section 1. The select committee shall report to the House the results of its investigation, together with its recommendations on this resolution for impeachment of the said William Orville Douglas not later than ninety days following the designation of its full membership by the Speaker.

(2) For the purpose of carrying out this resolution the committee or any subcommittee thereof, is authorized to sit and act during the present Congress at such times and places within the United States whether the House is sitting, has recessed, or has adjourned, to hold such hearings, and to require by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member.

REPRESENTATIVE WILLIAMS REMARKS ON SEA POWER AT COMMISSIONING OF U.S.S. "JONAS INGRAM" (DD–938)

HON. CRAIG HOSMER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1970

Mr. HOSMER. Mr. Speaker, last Saturday afternoon at the U.S. Naval Shipyard in Philadelphia the modernized and refurbished U.S.S. *Jonas Ingram* (DD–938) was recommissioned with impressive ceremonies. The speaker for the occasion was our own respected colleague the Honorable LAWRENCE G. WILLIAMS of the Seventh District of Pennsylvania. Mr. WILLIAMS remarks were particularly perceptive and persuasive. They were of far more than local significance and I have received unanimous consent that they appear below:

ADDRESS BY HON. LAWRENCE G. WILLIAMS, U.S. NAVY MUST RETAIN SUPERIORITY

Admiral Veth, Captain Gooch, Commander Metzler, fellow Americans

It is a signal honor to have been invited to speak on this significant occasion that is the recommissioning of the Destroyer *Jonas Ingram*.

I have long been appreciative of the United States Navy, of its tradition, and of its history of vigilant, heroic defense of our Country. I have long been inspired by the outstanding character, missions and performance of both.

I have long realized the obvious fact that, for all of its great equipment and resources, the Navy is, first and last, an organization of men—special men, dedicated men, brave men, who devote their lives to their Country in the finest performance of the special spirit that belongs to their proud branch of service.

The late Admiral Jonas Ingram for whom this formidable ship was named was such a

at the American Association for the Advancement of Science meeting last December.

The facts are as follows: Dr. Tamplin proposed to present at this meeting his views on the licensing of nuclear power plants. Our position was that if he wished to present a scientific paper based on his research, the Laboratory would sponsor him and his trip. We advised him that if he wished to present his personal opinion on nuclear power he was free to do so as an individual using non-Laboratory resources. Dr. Tamplin did present a scientific paper, and the Laboratory did sponsor him. The Laboratory's action in this matter was not influenced by the alleged threat of Dr. Gofman to write to the AAAS.

UNIVERSITY OF CALIFORNIA,
Livermore, Calif., May 14, 1970.
PUBLIC AFFAIRS AND INFORMATION PROGRAM,
ATOMIC INDUSTRIAL FORUM, INC.,
New York, N.Y.

GENTLEMEN: I find repugnant in the extreme the lies and distortions in your Info News Release of Mr. Carl Goldstein, for April 24, 1970. Both the Bond discussion and the AIF release are so filled with lies, half-truths, and *deliberate* distortions that I would consider them to represent criminal irresponsibility.

The AIF, the AEC, and Dr. Bond all seem to believe that a stupid set of lies will enable them to ram ill-considered atomic programs down the throats of the American public. It is becoming so obvious to citizens and the Congress that all of you represent a despicable fraud. The more you all lie, hide the facts, and deliberately and unashamedly distotr every responsible criticism, the earlier will be the celebrated demise of your outrageous activities.

Cordially,
JOHN W. GOFMAN, M.D.,
Professor, Medical Physics.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. HALPERN), is recognized for 5 minutes.

[Mr. HALPERN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

BEN REIFEL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. MCDADE) is recognized for 5 minutes.

Mr. MCDADE. Mr. Speaker, it was with great pride that I learned that on the occasion of the Department of the Interior's 38th Honor Awards Convocation June 30, Secretary Hickel presented to Congressman BEN REIFEL a commendation in recognition of his contributions to the programs of the Department.

With the close of the 91st Congress, this body will lose in BEN REIFEL one of its most valuable and dedicated Members. Since learning of his intention to retire, I have anticipated the great degree of leadership and legislative ability which will pass with him.

After 22 years of service with the Bureau of Indian Affairs, Mr. REIFEL's energies and talents were properly channeled to the Appropriations Subcommittee for the Department of the Interior and related agencies. His belief in the American Indian, his high regard for our precious natural resources, and his personal consideration of the individual problems and needs of every area of our Nation have been reflected in his endless contribution of knowledge to and support of the committee's work. His sincere regard for his fellow man is so obvious to those of us who have served with him and who have depended on him for strength and guidance.

We all can appreciate the extensive work and expertise that goes into a piece of legislation such as an appropriation bill. We know too that each such bill is largely the product of the efforts of a few. Unquestionably, Congressman REIFEL has always been in the forefront of this activity—his contribution invaluable in this as well as other phases of the legislative process.

His ability and efforts will be missed in another area as well, however. For now with the long overdue concern and urgency for the critical needs of our environment finally being manifested, the Interior Appropriations Subcommittee will realize a broadening of its responsibilities. More than ever in the planning and work that lies ahead, the Congress and the Nation could greatly benefit from the knowledge, experience, and sensitivity of our capable colleague.

BEN will be sorely missed as a Congressman and as a friend; but the memory of his deeds, of his kind and sympathetic attitude toward his colleagues and of his devotion to duty will be his monument here. The Department of Interior's commendation to BEN REIFEL is an honor well earned and well deserved.

JAMES E. KENNEY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. CONTE) is recognized for 5 minutes.

Mr. CONTE. Mr. Speaker, this month the Federal Government is losing the services of one of its most devoted officials, a man who has labored long and hard for his Government and his country.

James E. Kenney, staff attorney with the Board of Immigration Appeals at the Department of Justice, will be retiring this month after 10 years of service. This service has not often been in the limelight, but his actions, his concern for his department and his exemplary performance of his duties certainly deserve the limelight for it is this type of public servant that day in and day out keeps this Government functioning.

In the words of his coworkers, Mr. Kenney has been the "big production man" at the Board and has written many of the major decisions for that body which is the last word on the administrative level for immigration, deportation, and expulsion.

Throughout his long career he has been an important force at the Board of Immigration Appeals and a strong advocate of enforcement of the laws of this country.

But his career, Mr. Speaker, goes beyond his service on the Board. I am proud to say that Jim Kenney is a native of my hometown, Pittsfield, Mass. He came to Washington, D.C., as a young man and joined the District Police Department.

As a detective sergeant, he was wounded in the arm in the line of duty. While still on the police force, he often served as bodyguard for visiting dignitaries. In fact, the late Al Smith, Governor of New York and presidential candidate, when he came to Washington in 1928, personally requested Jim Kenney as a bodyguard.

Despite the wounded arm he received on police duty, Jim was still able to enter the Army when World War II broke out. He served in combat in the Pacific and was discharged as a captain.

This Friday, July 10, the many personal and professional friends of Jim Kenney will gather at a reception for him here and next week Jim will officially leave the Board. I wanted the members of this body to know of his retirement because Jim has been a superior public servant. I congratulate him for all his achievements and his contributions to his country. And I wish him and his lovely wife Agnes much joy in their retirement.

THE INVESTIGATION OF JUSTICE DOUGLAS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Hampshire (Mr. WYMAN) is recognized for 15 minutes.

Mr. WYMAN. Mr. Speaker, I am concerned that the special Judiciary Subcommittee looking into the question of the impeachment of Justice William O. Douglas has not yet taken a single word of testimony under oath. Just the other day this subcommittee was granted an additional 60 days within which to file a report.

This 60 days expires the 20th of next month and it is difficult to see how the subcommittee can compile a meaningful and reliable report unless it does examine witnesses under oath and subject to penalties of perjury.

Shortly after the investigation was begun, I submitted to the subcommittee a seven-page letter outlining certain suggestions with respect to the calling of witnesses and making the point that in the exercise of the responsibility of the House of Representatives in impeachment proceedings it is unavoidable that to a certain extent, at least, such an investigation must be adversary. There is disturbing indication that to this point the investigation has not been conducted in this tenor but rather in the spirit of so-called voluntary cooperation.

At stake are some of the most important issues and fundamental responsibilities of our constitutional system. There is a serious question as to whether or not Justice Douglas has been practicing law while a member of the Supreme Court. It is a matter of public record that the Justice received a thousand dollars a month from a foundation incorporated with his legal advice and assistance over a period of many years, all while still on the Supreme Court.

The Justice has also chosen to write for pay, while on the court, articles and a book, encouraging if not advocating violence to "restructure" the present

Government of the United States, which he refers to as the "establishment."

In addition to the foregoing there have been serious charges that the Justice has written articles for pay for persons whose cases have been pending before or on appeal to the Supreme Court on which the Justice was sitting.

In these circumstances I believe that the Celler subcommittee should promptly proceed to implement the recommendations made to it for the taking of testimony pursuant to subpena and under oath in open hearing, or turn the investigating responsibility over to the select committee called for by House Resolution 922 and companion resolutions cosponsored by more than 110 Members of the House and now pending before the Rules Committee.

In this connection, the following article by James Kilpatrick appearing in tonight's Evening Star is significant; also a recent column by William Edwards from the Chicago Tribune.

The material follows:

[From the Washington (D.C.) Evening Star, July 7, 1970]

FORTAS SHOWED DOUGLAS HOW TO SPARE COURT

(By James J. Kilpatrick)

The longer one gazes upon William O. Douglas, associate justice of the U.S. Supreme Court, the better Abe Fortas looks. Fortas had the grace to resign. Douglas is adamantly staying on.

Some of the parallel circumstances doubtless will be developed by a House subcommittee now looking into the Douglas record. Meanwhile, a paperback book has just appeared, "Dossier on Douglas," by Allan C. Brownfeld, in which the case against Douglas is competently summarized.

Brownfeld's book, to give him a plug, may be ordered at $3 from the New Majority Book Club, 1835 R. St. N.W. in Washington. Unhappily, the work suffers typographically from the haste with which it was rushed into print, but Brownfeld's tone is moderate, not shrill. The author, a William and Mary law graduate, formerly was on the staff of the Senate internal security subcommittee. Here he has done a workmanlike job.

The parallels between Justice Fortas and Justice Douglas emerge with remarkable clarity from Brownfeld's report.

One of the charges against Fortas, it will be recalled, was that he engaged as a justice in extra-curricular policy matters unrelated to the law. Specifically, he was supposed to have advised Lyndon Johnson on Vietnam.

Douglas, for his part, also has involved himself in policies remote from the bench. He has publicly waged war upon the Army Corps of Engineers. He has urged recognition of Red China. In 1968, when Ernest Gruening was running for re-election as a senator from Alaska, Douglas publicly endorsed him.

Another of the charges against Fortas stemmed from his acceptance of a $15,000 fee for conducting a few seminars for American University. The university served, in effect, as a conduit for channeling tax-exempt private funds into his hands.

Precisely the same situation has obtained with Douglas in his role as chairman of the Center for the Study of Democratic Institutions in Santa Barbara. Here Douglas received fees of $500 a day for participating in seminars.

Still another charge against Fortas was that he once refused to disqualify himself in a pornography case before the high court, involving a defendant he had represented in the past. The companion charge against Douglas is that he refused to disqualify himself in January in a pornography case involving a defendant, Ralph Ginzburg, publisher of a magazine that paid Douglas for an article.

Fortas was charged with moonlighting as a justice by making lectures for high fees. Douglas, for his part, is a frequent contributor to Playboy magazine, which reportedly pays the highest fees in the magazine field.

The most serious charge against Fortas—the charge that led to his resignation—resulted from his agreement to serve as a $20,000-a-year adviser to a family foundation created by financier Louis Wolfson.

There is no substantial difference in the matter of Douglas and the Albert Parvin Foundation. Between 1961 and 1969, Douglas accepted $12,000 a year, plus expenses, for services (what services, one wonders?) as president of the outfit.

There is, however, this great difference between the two justices. Fortas felt keenly about the reputation of the court on which he sat. The controversy over his role with the Wolfson Foundation, he concluded, would adversely affect that reputation.

"In these circumstances," said Fortas, "it seems clear to me that it is not my duty to remain on the court, but rather to resign in the hope that this will enable the court to proceed with its vital work free from extraneous stress."

It is the saddest part of the record of Justice Douglas, perhaps, that he cannot see the need for providing still one more parallel with the record of the departed Justice Fortas.

[From the Chicago (Ill.) Tribune]

WORD FOR DOUGLAS CASE—DELAY

(By Willard Edwards)

WASHINGTON, July 3.—The votes are available, in the opinion of Capitol Hill headcounters, to impeach Supreme Court Justice William O. Douglas. For that very reason, legislative veterans agree, the possibility of a vote before election day, Nov. 3, has almost vanished.

An impeachment resolution, entrusted last April to a special five-man House judiciary subcommittee, is quietly being smothered thru delaying tactics which mock the initial promise of action within 60 days.

The deadline for a report has now been postponed until late August, at a time when the House will be anxious to adjourn for the fall campaigning. The pressures will be heavy to put off a record vote until Congress returns next January.

Such pressures will come mainly from pro-Douglas liberals who have informed leaders that they cannot take the political risk of voting in support of Douglas.

They have pleaded for escape from a record vote. Their cries are being heeded.

Chairman Emanuel Celler [D., N. Y.] and Rep. William M. McCulloch [R., Ohio] head the special subcommittee, which is loaded, 4 to 1, for clearing Douglas of charges of misbehavior. They promised "neither witch-hunt nor white-wash" when given the impeachment resolution.

The subcommittee's only product thus far has been a 53-page staff study, stamped "Confidential." It is so secret that it has not been leaked to the press. Even the Republican minority leader, Gerald R. Ford [Mich.], who first raised the impeachment issue, had great difficulty in securing a copy.

The reason for this extraordinary secrecy became apparent when the document's contents were studied. It appears to be largely the handiwork of Douglas' attorney, former Federal Judge Simon Rifkind, and includes a slashing attack on the "McCarthyite" tactics of those who have impugned Douglas' integrity thru "guilt by association" with unsavory characters.

Rifkind, however, does not scorn to argue "innocence by association," noting that his client enjoyed the confidence of great men like the late Adlai E. Stevenson and John F. Kennedy.

Rifkind supplied a detailed defense to the charges against Douglas, which include practicing law for private benefit while on the bench; writing for erotic magazines; espousing revolution; and profitable connections with a foundation funded from Las Vegas gambling casinos.

He reportedly has been aided by a "board of strategy" consisting of two former Supreme Court justices [Arthur Goldberg, now seeking to be governor of New York, and Abe Fortas, who resigned under fire] and a former defense secretary [Clark Clifford].

In asking and obtaining the 60-day postponement on June 24, the staff noted that a huge mass of documents from government agencies must be examined before "final assessment of the validity of the charges." Such a "final assessment," critics note, is not the subcommittee's assignment. That verdict is reserved to the Senate, which sits as a trial court if the House finds probable cause for such a proceeding in the public interest.

For those interested in a scholarly, unbiased and fascinating paperback summary of this controversial case, "Dossier on Douglas," by Allan C. Brownfeld [New Majority Book Club, 1835 K St., N.W., Washington, D.C.], costing $3, is recommended. The private and public lives of William O. Douglas provide the ingredients for a remarkable tale.

TAKE PRIDE IN AMERICA

The SPEAKER pro tempore (Mr. ASHLEY). Under a previous order of the House the gentleman from Ohio (Mr. MILLER) is recognized for 5 minutes.

Mr. MILLER of Ohio. Mr. Speaker, today we should take note of America's great accomplishments and in so doing renew our faith and confidence in ourselves as individuals and as a nation. The United States is the world's largest milk producer. In 1968 the United States produced 117,234 million pounds of milk compared to 68,343 million produced by France, the second-ranked nation.

CURRENT TREND IN STEEL IMPORTS HITS HARD AT SPECIALTY TUBING MANUFACTURERS IN THE UNITED STATES

The SPEAKER pro tempore. Under a previous order of the House the gentleman from Pennsylvania (Mr. CLARK) is recognized for 10 minutes.

Mr. CLARK. Mr. Speaker, at the recent midyear general meeting of the Welded Steel Tube Institute in Cleveland, Ohio, member companies expressed grave concern that unless the current trend in steel imports is reversed, domestic production of specialty steel products could be in jeopardy. Many of these stainless, tool and alloy steels and specialty tubing products are critical to national defense.

According to these leading suppliers of carbon and stainless steel tubing, the voluntary import quota plan in effect since early 1969 has created serious problems for specialty steel firms in this country. Although foreign producers have remained within tonnage quotas, they have steadily increased their imports of higher priced steel products such as specialty tubing.

WSTI members cited examples of increases in imports of specialty steel products in 1969, the first year of vol-

WASHINGTON POST DATE 4 Aug 70 PAGE A6

Douglas Whitewash Charged

By Carroll Kilpatrick
Washington Post Staff Writer

House critics of Supreme Court Justice William O. Douglas charged yesterday that the Judiciary subcommittee investigating his conduct was guilty of a "whitewash."

The critics, who have asked that the House investigate charges against Douglas in an impeachment move, served notice that they were dissatisfied with the diligence and pace of the subcommittee investigation under Chairman Emanuel Celler (D-N.Y.) and would press for a swifter and sterner inquiry.

Rep. Joe D. Waggonner Jr. (D-La.) expressed "amazement and protest" in a letter to Celler and in a news conference. Waggonner said the subcommittee has "run roughshod" over those who want a "full and fair inquiry into the conduct and behavior" of Douglas.

Celler would not comment on the charges, but the subcommittee in an interim report asked for an additional 60 days to conduct its investigation. It has had one 60-day extension, which expires Aug. 24.

The committee said that while it had done a "vast amount" of work "it is clear that much remains to be done before the special subcommittee will be in a position to render a final assessment on the validity of the charges that have been made."

House Minority Leader Gerald R. Ford (R-Mich.) and Rep. Louis C. Wyman (R-N.H.), both leading critics of Douglas, joined in calling for a faster and fuller investigation.

Wyman said the subcommittee's work "has all the earmarks of a contrived whitewash." Waggoner said its work was a "travesty on proper investigative procedures."

Ford called on the committee to conduct its inquiry in public, examine witnesses under oath and make public all pertinent documents.

Waggonner announced that he had employed Benton L. Becker, a Washington attorney and former assistant U.S. attorney here, as special counsel to investigate the Douglas case.

Becker is a former director for the Center of Law Research Information, International Association of Chiefs of Police, and a former trial lawyer in the Justice Department's criminal division.

In his letter to Celler, Waggonner said the subcommittee's investigators "haven't scratched the surface . . . It is readily apparent to me that many stones remain unturned, and will remain unturned under the methods now being pursued. And I have every reason to believe there is a great deal of relevant information under those stones."

Last April, in a move to head off an effort to establish a special committee to investigate charges against Douglas, the Judiciary Committee voted to investigate charges against the justice.

Now the critics fear that the session of Congress will run out before the investigation is completed.

Early this year, Ford sponsored a resolution with 110 members calling for a special investigating committee to study the evidence and determine whether impeachment proceedings should be instituted against Douglas. Ford charged that Douglas received pay from the Parvin Foundation, which in turn received income from Las Vegas gambling casinos.

When asked how much longer the House subcommittee should be given to conduct its inquiry, Ford said yesterday that "no decision has been given on that." But he said he did not believe the committee has "done the kind of investigating a competent staff should do."

Waggonner asked that the subcommittee cross-examine under oath 14 witnesses, including Albert Parvin of Los Angeles and Robert G. (Bobby) Baker. He said he was not charging them with wrong-doing, but he said they had information relevant to the charges against Douglas.

Waggonner said the subcommittee report contained "absolutely no word . . . about the hundreds of thousands of dollars, many of them hot from the gambling tables of Las Vegas, which passed back and forth between the Parvin Co. and the Parvin Foundation, some 85,000 of them winding up in the pocket of an associate justice of the Supreme Court."

DOUGLAS INQUIRY HELD OBSTRUCTED

Celler Says 3 U.S. Agencies Have Withheld Information

By WARREN WEAVER
Special To The New York Times

WASHINGTON, Aug. 5 — The chairman of a special House subcommittee considering the impeachment of Associate Justice William O. Douglas of the Supreme Court contended today that its preliminary inquiry was being obstructed by the refusal of Federal agencies to supply necessary information.

Representative Emanuel Celler, the Brooklyn Democrat who also heads the Judiciary Committee, said in a statement that the State Department, the Justice Department and the Central Intelligence Agency had not furnished him material requested six weeks ago.

"These delays and obstructions have hampered the special subcommittee in this investigation and hindered the completion of its task," Mr. Celler said. "In the light of the lack of cooperation from the executive branch, criticism of the special subcommittee is not justified."

A Justice Department spokesman said that Attorney General John N. Mitchell had sent Mr. Celler a letter that constituted "our report" three weeks ago, advising him that he could inspect other records at the department if he wished.

At the State Department, an official said the information requested by the House subcommittee was being "put together" and should be ready by the end of the week. The official said it had taken time because some material had to be gathered from "several embassies abroad."

A C.I.A. spokesman said the agency would have no comment.

The subcommittee was given the assignment of studying charges made against Justice Douglas as an alternative to creating a special committee, as 110 Democrats and Republicans had urged.

The House minority leader, Representative Gerald R. Ford of Michigan, who has led the campaign against Justice Douglas, has accused him of advocating "hippie-Yippie style revolution," writing for allegedly pornographic magazines, links to left-wing organizations and possible connections with gamblers.

On Monday, two House members pressing for the impeachment of Justice Douglas accused the Celler subcommittee of stalling. Representative Joe D. Waggonner Jr., Democrat of Louisiana, called the inquiry "a travesty"; Representative Louis C. Wyman, Republican of New Hampshire, said it was a "contrived whitewash."

The subcommittee, which was created last April 21, was given 60 days to complete its assignment and then a 60-day extension, so its time will expire on Aug. 19. Mr. Celler said earlier this week that he had not yet decided whether to ask for another extension.

In his statement today, Mr. Celler outlined a three-phase procedure that appeared capable of postponing any definite action until after Congress begins its campaign recess on Oct. 15.

The first phase involves the collection of information; the second the holding of hearings and a recommendation to the full committee as to whether an impeachable offense has been committed, with procedural recommendations; and the third phase involves a completion of the investigation by the full committee and a report to the House.

WASHINGTON POST DATE 6 Aug 70 PAGE A8

Douglas Files Account Of Finances

United Press International

Supreme Court Justice William O. Douglas has voluntarily filed a financial statement showing he made $20,568.10 for outside writing and lecturing during the first six months of 1970, court records showed yesterday.

Douglas, whose activities are under investigation by the House Judiciary Committee, was the seventh member of the court to file a statement on his finances although the Supreme Court justices are not required to do so.

All the justices except Hugo Black and Byron White have voluntairly filed financial statements, which are newly required of the 440 federal judges below the Supreme Court level.

WASHINGTON POST DATE 11 Aug 74 PAGE 12

Brief Backs Accusers Of Douglas

By Thomas J. Foley
Los Angeles Times

House Minority Leader Gerald R. Ford (R-Mich.) made public yesterday a legal memorandum supporting his argument that Supreme Court Justice William O. Douglas can be impeached on the narrow grounds of misbehavior.

The memorandum, citing precedents from previous impeachment cases, concluded that the constitutional provision that officers of the government shall be removed from office when found guilty of "treason, bribery or other high crimes and misdemeanors" does not bar removal of judges for the lesser offense.

The document was prepared for Ford, who first brought charges against Douglas last April, by the Detroit law firm of Dykema, Gossett, Spencer, Goodnow & Trigg.

Chairman Emanuel Celler (D-N.Y.) of the House Judiciary subcommittee investigating Ford's charges had asked the Republican leader to support his contention that Douglas could be impeached on the grounds of misbehavior.

Ford's argument rested on Section One of the Constitution's third article which states that "judges both of the Supreme and inferior courts, shall hold their offices during good behavior."

Impeachment efforts center on what sponsors said was Douglas' association for nearly 10 years with Albert Parvin, Los Angeles hotel equipment supplier. Until a year ago, Douglas was the $12,000-a-year president of the Albert Parvin Foundation. The foundation was set up partially with funds from the sale by Parvin of a Las Vegas gambling casino, a sale for which gambler Meyer Lansky received a $200,000 finder's fee.

Another charge against Douglas is that he sold a magazine article to publisher Ralph Ginzburg while Ginzburg had a libel suit pending in federal court.

The memorandum analyzed every case in which the House impeached a federal judge, whether the Senate found him guilty or innocent, and concluded there is little constitutional basis for the argument that an impeachable offense must be a criminal offense.

Douglas impeachment file

NEW YORK TIMES DATE 24 Aug 70 PAGE 19

Impeach-Douglas Plea Raises Constitutional Question

By FRED P. GRAHAM
Special to The New York Times

WASHINGTON, Aug. 23—A dispute almost as old as the Constitution is moving to the forefront of the controversy over the call to impeach Justice William O. Douglas because of his off-the-bench activities.

The question: May a Supreme Court Justice be removed from office by impeachment only if he is guilty of criminal acts, or does Congress have discretion to remove a Justice if it considers his conduct so unseemly that it undermines the integrity of the entire Federal Judiciary?

Those who say that Justice Douglas may be removed only for criminal conduct contend that the independence of the Federal judiciary from political caprice is at stake. His critics argue that the founding fathers intended to hold Federal judges to a far higher standard than a lack of criminality, and they contend that Justice Douglas fails the test of "good behavior" set by the Constitution.

This Constitutional conundrum has begun to loom large in the Douglas case, as it has begun to appear that a House Judiciary subcommittee's investigation into Justice Douglas's behavior will not turn up damaging evidence of extrajudicial malfeasance.

Extension Expiring

Time runs out tomorrow on the 60-day extension granted by the full Judiciary Committee for its investigation of the charges leveled against Justice Douglas in a resolution signed last spring by 110 members of the House of Representatives.

The resolution asked for an investigation of a variety of complaints against the Justice, with possible impeachment proceedings to follow.

The House is in recess for Labor Day, and subcommittee officials will say only that the panel will make a report when Congress returns on Sept. 9. But the spokesmen concede that investigators are still in the field, so there may be a request for another extension.

This may generate an effort by Justice Douglas's critics to take the investigation away from the Judiciary Committee and its chairman, Emanuel Celler, Brooklyn Democrat, who is not a party to the impeachment effort. His subcommittee's investigation has been called a whitewash by Justice Douglas's critics, who have demanded open hearings on their charges.

Three of the charges against Justice Douglas seem to require little investigation. They are that he acted improperly in writing a book, "Points of Rebellion"; that reprinted excerpts from the book were sandwiched between photos of nude men and women in the magazine Evergreen Review, and that he voted in favor of Ralph Ginzburg, the publisher, in a suit brought by Senator Barry Goldwater, Republican of Arizona, a year after a magazine published by Ginzburg published an article written by Justice Douglas.

Other allegations were that he had accepted $12,000 a year as president of a foundation with financial ties to Las Vegas gambling and that he had questionable dealings with a former Senate aide, Robert G. Baker, and with Las Vegas gambling figures.

Much of the investigations seems to have centered on these charges, and the apparent failure by the investigators to come up with evidence of serious improprieties by Justice Douglas has heightened the controversy over whether he is subject to impeachment for conduct short of criminal acts.

The uncertainty about this point arises from a potential inconsistency that exists between two provisions of the Constitution.

The impeachment section, Article II, Section 4, says that all Federal officials are subject to removal for "treason, bribery or other high crimes and misdemeanors."

A majority vote in the House of Representatives is necessary to impeach an official, and after a trial before the Senate, a two-thirds vote there is necessary for conviction.

But the judicial provision, Article III, Section 1, states that judges "shall hold their offices during good behavior."

One of Justice Douglas's foremost critics, the House Republican leader, Gerald R. Ford of Michigan, has been circulating a legal study in recent days that Mr. Ford says proves that these two sections were intended to be read together, and that they mean that an "impeachment offense is whatever a majority of the House of Representatives considers [it] to be at a given moment in history."

The legal document was prepared by Bethel B. Kelley and Daniel G. Byllie, who are associated with a Detroit corporate law firm that includes among its senior partners William T. Gossett, a recent president of the American Bar Association.

They conclude that "it is the conscience of Congress" that determines whether a judge's conduct justifies impeachment. "If a judge's misbehavior is so grave as to cast substantial doubt upon his integrity," they say, "he must be removed from office regardless of all other considerations."

Yesterday, a reply was circulated among the members of the Judiciary Committee in the form of a letter to Mr. Celler from Simon H. Rifkind, who is representing Justice Douglas.

He argued that the framers of the Constitution had rejected such vague grounds for impeachment as "maladministration" after James Madison warned that "so vague a term will be equivalent to a tenure during the pleasure of the Senate."

If a judge should be required "to win a popularity contest" to hold his seat, Mr. Rifkind charged, this would violate the Constitution's provisions concerning separation of powers, independence of the judiciary, freedom of speech and freedom from ex post facto punishments.

THE NEW YORK TIMES, MONDAY, AUGUST 24, 1970

Impeach-Douglas Plea Raises Constitutional Question

By FRED P. GRAHAM
Special to The New York Times

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The question: May a Supreme Court Justice be removed from office by impeachment only if he is guilty of criminal acts, or does Congress have discretion to remove a Justice if it considers his conduct so unseemly that it undermines the integrity of the entire Federal Judiciary?

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it has been established that McDonnell-Douglas will annually review and amend its goals to incorporate the changing employment situation.]

(2) Not only does the plan fail to state the extent of minority underutilization projected to remain after one year (as noted in preceding point 1), *the plan fails to indicate what further progress the Company proposes to make in subsequent years towards correcting such patterns of minority underutilization. The plan fails to set goals, or present commitments or guidelines for the setting of goals, beyond February, 1971.* This is a particularly significant omission in view of the fact that overall increases in employment, due to the multi-billion dollar F–15 contract, apparently are not projected to occur until 1975 and subsequent years. Furthermore, this omission makes it extremely difficult to appraise the adequacy of the Company's affirmative action training programs. The plan does not relate such programs (most of which are also open to white employees) to the levels of minority utilization, by job category or classification which the training programs are supposed to achieve.

[A . . . concern is that in the agreement, the company's hiring and upgrading goals were difficult to appraise, and they did not include current and projected racial employment totals for each job classification. This has been amended, with such data having been submitted to the Defense Department and made an addendum to the agreement.]

(3) *Appraisal of the adequacy of the plan's hiring and upgrading goals is made difficult by the plan's failure to give position descriptions and salaries for the various job classifications for which goals are set.* OFCC regulations state that a table of job classifications is part of the affirmative action program the contractor is required to keep on file (41 CFR 60–1.40(a),(c)). The absence of this information seriously hampers appraisal of the significance of specific minority hires or upgrading projected, and also makes it difficult to determine how many minority employees might be eligible for upgrading into positions for which openings are projected.

[The . . . concern of the Commission is that the agreement does not include position descriptions and salaries to various job classification. This data is routinely obtained during the course of the compliance review and is provided to the investigator at that time.]

(4) *While the plan projects continuation of layoffs, which—as the plan acknowledges—in the past have had a major impact on newly-trained and newly-hired minority personnel, the plan makes no specific commitment to seek modification of union security agreements or otherwise to lessen the impact of layoffs on minority employees.* The plan does union-management meetings to discuss obstacles to equal employment opportunity * * * but expresses no commitments on the issue of layoffs. Particularly in the absence of overall racial goals or projections for each job classification, this omission seriously undermines the plan as a commitment on the part of the Company to increase levels of minority utilization.

[. . . , although the plan projects layoffs, it has no commitment to modify union security agreements or otherwise relieve the impact on minority employees. Modification of the union security agreement was not included because the investigation identified no "affected class" and because employee layoff is based on continued length of service.]

(5) *Appraisal of the adequacy of the plan's hiring and upgrading goals is made difficult by the plan's failure to provide a complete statement of projected openings by job classification.* A distinction is made, in the plan's projection of job openings, between "new openings" and "openings by attrition" (i.e., by normal quits, retirements, deaths, etc.). * * * *the case of the manufacturing division, and of most other units of the Company, the plan gives the distribution of openings by job classification only for "new openings." The plan therefore does not enable one to determine in what job classifications the majority of openings will arise.* The reason for this omission is unclear, inasmuch as breakdown by job classification of all openings, including openings by attrition, is provided for at least one division—the engineering division * * *.

TRAINING PROGRAMS

(6) *In the entry-level training for which it provides, the plan fails to provide specific commitments, in terms of numbers of trainees, length of training or the period over which the Company will continue the programs.* Such specific commitments concerning entry-level training, at least as to the numbers of trainees and the duration of training, are an indispensable element in the commitment of the Company to a program and timetable for correcting patterns of minority underutilization. Indeed, while several new entry-level programs are called for in the plan, the Company is not specifically committed under the plan to *any* overall increase in the amount of entry-level training achieved. It may be noted that (in contrast with some other affirmative action steps described in the same section of the plan) the plan does *not* call for an increase in the level of Company participation in the National Alliance of Businessmen program for training of the "hard core" unemployed, nor in the Company's "highly successful" * * * Summer Training Employment Program.

(7) The plan's largest upgrading program is one which, each year for five years, will train * * * personnel in the bottom three categories of employment (laborer, service worker, operative), with the aim of enabling the trainee to "qualify for placement" in the next higher category * * *. The Program apparently contemplates upgrading all of the * * * employees * * * who are currently in these three categories. *In the case of employees in the service worker category, accounting for over 28% of the Company's black employees (but only 3% of the Company's white employees), the commitment of this program is to "upgrade" the employee to the level of unskilled laborer—after a year of training, for which the employee may have to wait three or four years.* The commitment of this program to minority employees at the lower levels of employment is inadequate, as to both the extent of upgrading targeted and the length of time many employees may have to wait before the training opportunity is available.

(8) The plan provides several other upgrading programs. The plan states that each year * * * employees will be selected for a two-year program designed to qualify the trainee to become an assistant foreman. In addition, (other) * * * employees each year will be trained to qualify for salaried administrative positions. In the case of these two programs, * * * the plan (i) contains no express commitment actually to promote (or to give priority in promotion to) trainees successfully completing training and (ii) opens the training programs to white employees. (The plan does recite that the Company recognized a particular obligation to train "disadvantaged and minority employees" * * *.) In addition, as noted in point 2 above, the plan does not set minority hiring and upgrading goals beyond February, 1971. *Accordingly, the plan leaves the Company free unilaterally to determine the extent to which the "assistant foreman" and "administrative position" upgrading programs in fact will be used to promote minority employees to these positions.*

HOUSING

The plan acknowledges that the fact that minority group residential areas are 12 to 15 miles distant from the Company's principal facilities "has been, and continues to be, an obstructive factor in recruitment," and presents "a serious transportation problem".

(9) The plan states that the Company will increase past efforts to "work closely with real estate agencies, subdivision developers and financial institutions, and individual homeowners where necessary, to help our minority employees find suitable housing." However, the plan fails to provide a specific program which would achieve this result. This lack is particularly significant in view of the fact that these real estate and financial interests—with which the Company is to "work closely"—have in the past furthered, or at least failed to correct, segregated housing patterns in St. Louis County. *The plan should make provision for active monitoring by the Company to assure that apartment owners, real estate brokers and others with whom the Company deals, take affimative steps to open the housing market to minority versons. Te plan also should commit the Company to such steps as affirmatively inventorying the housing needs and preferences of current or potential employees, providing legal advice or—where necessary—continuing legal representation for minority employees in connection with housing problems, renting or purchasing housing for employees, and encouraging the developemnt of low and moderate income housing in the area of its plants.*

(10) * * *

REVIEW OF JOB REQUIREMENTS

(11) The Company is to review all position descriptions and manning qualifications to insure they involve no inadvertent discrimination * * *. *This review * * * should be expedited greatly, particularly for the jobs into which blacks are most likely to be moving.*

RECRUITMENT

(12) *While the plan provides that all minority recruitments sources are to be used by the Company, the plan omits to state that job description and manning requirement information—especially important in recruiting employees for skilled positions—is to be furnished to recruitment sources.*

(13) Efforts to contact prospective minority employees are described generally, without quantification. For example, no indication is given of the extent to which recruitment at schools or colleges of high minority enrollment will be carried out. Nor are there clear commitments (apart from McDonnell Aircraft Astronautics) *** to recruit heavily outside the St. Louis area. *The plan should be sufficiently specific about recruitment efforts at least to permit a determination whether such recruitment efforts are to be increased significantly over prior years.*

SENSITIVITY TRAINING

(14) The plan does provide for continuation of general training sessions which have been provided in the past for supervisory personnel, including a "sensitivity" training component * * *. However, in view of the importance of this matter, *it is a serious omission that the plan does not make clear how this sensitivity training is to be strengthened, in terms either of its duration, or improvements in program content.*

CONCLUSION

It is appreciated that the McDonnell Douglas affirmative action plan was negotiated under pressure of time. It would be a serious mistake, however, to set the standard for affirmative action programs on the basis of what a contractor and compliance officials can put together in a week or two of intensive activity.

Judged in terms of what reasonably could

be expected of the management of the McDonnell Douglas Corporation, its affirmative action plan is extremely disappointing. Most of the criticisms outlined above consist in the failure of the plan (i) to set forth certain current or projected racial employment information or goals; (ii) to plan and describe training programs on a quantified basis; or (iii) to incorporate all relevant affirmative action techniques which are available—especially those which have been used successfully by other employers. All these deficiencies can be remedied simply by applying the needed time and skills of Company management to the development and formulation of this plan.

By the same token, it is essential that the Department of Defense, and the Office of Federal Contract Compliance, assure that affirmative action plans are sufficiently specific and informative to permit the contractor's obligations under the plan to be effectively monitored and enforced. The completeness and clarity with which contractors are required to commit themselves to compliance with Executive Order 11246, would be no less than in other aspects of contract performance. Measured by this standard, also, the plan is inordinately vague, leaving far too much to future determination or to Company discretion.

There is no justification for the Department of Defense permitting serious, and remediable, deficiencies such as those described above, in the affirmative action plans of McDonnell Douglas or of other defense contractors.

[In the other areas about which the Commission is concerned—training, housing and transportation, recruitment services and sensitivity training—the company's commitment is adequate and meets the standards for compliance.

[In addition, indications are that the company is operating in "good faith" to execute its affirmative action agreement to achieve equal employment opportunity.]

JUDGE J. DANIEL FINK

(Mr. RYAN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. RYAN. Mr. Speaker, on July 17, Judge J. Daniel Fink, who sat on the civil court of the city of New York passed away. A distinguished member of the bar and of the bench, Judge Fink served as a judge for 13 years—first as a municipal court judge, and then as a judge on the civil court when the two were merged.

Judge Fink was an asset to his community and to his city. His philanthropic activities were well-known. He served as an overseer of the Jewish Theological Seminary and as a trustee of Congregation Shaare Zedek. The former head of the council of organizations of the American Jewish Congress and the United Jevrish Appeal of Greater New York, he had served, also, as vice president of the Young Men's Philanthropic League.

The city of New York, my congressional district—of which Judge Fink was a resident, and his community will miss him. As a lawyer, as a jurist, and as a person, he contributed much.

To his widow, Mrs. Barbara Fink, to his daughter, Mrs. Marilyn Gerber, his sister, Mrs. Beatrice Brenner, and to the rest of his family, I want to extend the condolences of myself and of Mrs. Ryan.

Following is the obituary which appeared in the July 19 edition of the New York Times, and which records the loss of Judge J. Daniel Fink:

[From the New York Times, July 19, 1970]

DANIEL FINK DIES; CIVIL COURT JUDGE

Judge J. Daniel Fink of the City Civil Court died Friday in Beekman-Downtown Hospital, after a long illness. He was 65 years old and lived at 390 West End Avenue.

Judge Fink was born in New York and graduated from Fordham Law School. He first practiced law with the firm of Olcott, Olcott & Glass and later independently.

In 1956 he was elected on the Democratic ticket from the Fifth Manhattan District to the Municipal Court, which was later merged in the Civil Court. He was re-elected in 1966.

Before becoming a judge he had served on a bill-drafting commission of the Legislature.

He was an overseer of the Jewish Theological Seminary and a trustee of Congregation Shaare Zedek. He had formerly headed the council of organizations of the American Jewish Congress and the United Jewish Appeal of Greater New York, and had served as vice president of the Young Men's Philanthropic League.

In 1960 he received a brotherhood award of the National Business and Professional Council, Inc.

Surviving are his widow, Mrs. Barbara Fink, for many years Democratic co-leader of Manhattan's Fifth Assembly District North; a daughter, Mrs. Marilyn Gerber, and a sister, Mrs. Beatrice Brenner.

A funeral service will be held today at 2 P.M. at the Riverside, Amsterdam Avenue and 76th Street.

IMPEACHMENT OF ASSOCIATE JUSTICE WILLIAM O. DOUGLAS

(Mr. GERALD R. FORD asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous material.)

Mr. GERALD R. FORD. Mr. Speaker, in the CONGRESSIONAL RECORD of August 10, pages H8038 to H8043 inclusive, and in the CONGRESSIONAL RECORD of August 21, pages E7882 to E7886 inclusive, I have inserted for the information of all Members certain legal memorandums concerning the impeachment process as it relates to the Federal Judiciary. I am inserting herewith another exchange of arguments in this important debate between Mr. Bethel Kelley of the Detroit law firm in Dykema, Gosset, Spencer, Goodnow, and Trigg, independently prepared at my request, and Judge Simon H. Rifkind, attorney for Associate Justice William O. Douglas:

LAW OFFICES DYKEMA, GOSSETT,
SPENCER, GOODNOW, & TRIGG,
Detroit, Mich., September 1, 1970.

Re the impeachment process.
Hon. GERALD F. FORD, JR.,
The Capitol,
Washington, D.C.

DEAR CONGRESSMAN FORD: You have asked us to review and respond to the August 18, 1970, letter from Judge Rifkind to Representative Celler regarding the "Kelley memorandum". The Rifkind letter concludes that the position advanced in the Kelley memorandum is historically and legally untenable and that it "is so radically subversive of cherished American principles . . . that it must not be allowed to prevail." (Page 2 of the Rifkind letter).

In order to properly answer Judge Rifkind's charge, we must reiterate and reemphasize the position of the Kelley memorandum. Our conclusion was that a violation of the Judicial Tenure provision of the Constitution, which does not necessarily constitute criminal behavior, is remediable by removal from office under the Impeachment clause. We defined "impeachable judicial misbehavior" as conduct on the part of a judge which is so grave as to cast substantial doubt upon his judicial integrity and the integrity of the entire federal judiciary. Any other interpretation of the Kelley memorandum must necessarily involve a misreading of that document and a misunderstanding of the conclusion we reached.

Judge Rifkind attempts to avoid the conclusion of the Kelley memorandum by claiming that it was "addressed to the irrelevant question whether impeachment is to be confined to *indictable*" offenses. He asserts that he is merely proposing that impeachment will lie only for "criminal conduct". The distinction is illusory. "Criminal conduct", by definition, is a violation of the criminal law; a violation of the criminal law, by definition, is an indictable offense.

Judge Rifkind attempts to weaken the impact of the Kelley memorandum by attacking the efficacy of its scholarship. He criticizes the memorandum for its failure to make reference to the records of the Constitutional Convention or to the *Federalist Papers*. In the first place, the Kelley memorandum, on page 12, does refer to that portion of the debate in the Constitutional Convention upon which Judge Rifkind rests his position. Secondly, the authorities contained in the Kelley memorandum themselves refer to the original sources in their interpretation of the Constitution. Thirdly, references to the Constitutional debates and the *Federalist Papers* shed little light on the subject. Nowhere in those two authorities is the precise question involved in the present debate discussed. The only discussion in the debates concerned the substitution of the term "high crimes and misdemeanors" for the term "maladministration"; there was no debate as to the meaning of the former term. In No. 79 of the *Federalist Papers*, Hamilton discussed the independence of the judiciary. Nowhere in that paper did he indicate that the judges would not be removable for misbehavior. He merely commented that mental or physical inability would not be impeachable because of the difficulty of ascertaining whether a judge was mentally or physically incompetent. Rifkind points to the fact that Hamilton states that impeachment is the only method of removal of federal judges. This language is not contrary to the Kelley memorandum; rather it supports the basic position that violation of the Judicial Tenure provision must be impeachable to give meaning to that provision.

Judge Rifkind also attacks the scholarship of the Kelley memorandum by claiming that it quoted the Seventh Article of Impeachment against Judge Ritter out of context by not including references to the specific acts of wrongdoing. The language was definitely not taken out of context: the entire import of the Seventh Article was its allegation that the continued course of conduct was such gross misbehavior at to warrant impeachment. A careful review of the Senatorial Opinions filed in that case conclusively establishes that conviction was indeed based on that premise. It is indeed strange for Judge Rifkind to charge the Kelley memorandum with misquotations when Judge Rifkind's original memorandum contained the assertion that Senator Elihu Root, in the Archbald case, supported his position when, in fact, the same Senator Root sponsored the resolution to print, as Senate Document No. 378, the Brown article which takes the same position as the Kelley Memorandum.

Judge Rifkind attempts to show that the Congressional precedents do not support the Kelley memorandum by claiming that every judge who was convicted of impeachment was charged with "high crimes and mis-

demeanors." This argument places form over substance. It is true that every charge was formally labelled a "high crime and misdemeanor;" however, the debates clearly show that Congress did not subscribe to the definition of that term given by the Rifkind Memorandum. Indeed, it is the position of the Kelley memorandum that the definition of that term includes violations of the Judicial Tenure provision.

Judge Rifkind's most serious charge is that the position of the Kelley memorandum "tramples key provisions" of the Constitution, namely the First Amendment,[1] the *ex post facto* clause, the separation of powers and the independence of the judiciary. Nothing in the Kelley memorandum would sustain such an assertion. As to the First Amendment, the Kelley memorandum did not argue that protected speech could be the subject of impeachment proceedings. In fact, the Kelley memorandum recognized that the Chase case correctly established the precedent that impeachment would not lie for the expression of a judge's philosophy as found in his decisions. As to the *ex post facto*, clause, Judge Rifkind has never really expressed how the position advanced by the Kelley memorandum would violate that clause. To the contrary, when a Federal Judge accepts his office, he knows that the term of his office is for good behavior. He knows that a violation of that good behavior is a violation of his oath of office. Removal based upon such a violation could not be considered the *ex post facto* application of impeachment powers.

Judge Rifkind's concern that the position of the Kelley memorandum would violate the separation of powers and the independence of the judiciary is unfounded. The Constitution, by giving Congress power to remove federal judges, already violates those concepts in their technical meaning. Indeed, the impeachment power is designed as a check upon the power of the judiciary. Too restrictive of an interpretation of the impeachment power would upset the delicate balance of power established by the Constitution. Furthermore, the framers of the Constitution never intended that the judiciary should be absolutely independent.

In conclusion, nothing in the original Rifkind memorandum nor the Rifkind letter of August 19, 1970, alters the conclusions reached in the Kelley memorandum. Indeed, we are even more convinced of the validity of the position of the Kelley memorandum and that the correct interpretation of the Constitution is that expressed in that document.

Sincerely,

BETHEL B. KELLEY.

[1] The concern expressed in the Rifkind memorandum for freedom of speech for the judiciary is strangely at odds with the restraint that would be imposed on those members of Congress who have been critical of the judiciary. In the Rifkind letter to the Chairman of the Judiciary Committee of May 18, 1970, it is stated: "In short, those who have attacked this great man of American law ought carefully to examine Canon 9 of the ABA's Code of Professional Responsibility which warns that "a lawyer shall not knowingly make false accusations against a judge" Rifkind would deny to members of Congress critical of the judiciary not only First Amendment protection for their expressions, but also the protection afforded by Article I, section 6 of the Constitution which provides that as to members of Congress "for any Speech or Debate in either House, they shall not be questioned in any other Place."

PAUL, WEISS, GOLDBERG, RIFKIND, WHARTON & GARRISON,
Washington, D.C., August 18, 1970

Hon. EMANUEL CELLER,
Chairman, Judiciary Committee,
House of Representatives,
Washington, D.C.

MY DEAR MR. CHAIRMAN: In his address to the House of Representatives on April 15, 1970, Mr. Gerald Ford announced his view that an "impeachable offense is whatever a majority of the House of Representatives considers [it] to be at a given moment in history."

Under date of August 5, 1970, Mr. Ford addressed a letter to you to advise you that he had obtained the opinion of Mr. Bethuel E. Kelley, a Michigan lawyer, to support his view. "The Kelley memorandum" was at Mr. Ford's request published in the Congressional Record on August 10.

Mr. Ford's definition of an "impeachable offense" means that judges serve at the pleasure of Congress. This is so utterly destructive of the principles of an independent judiciary and the separation of powers, that I could not believe that convincing historical support could be found for so radical a proposition.

Now that I have read the Kelley memorandum I am more than ever convinced that Mr. Ford's view is historically and legally as untenable as it is mischievous.

The Kelley memorandum should, however, be welcomed as a contribution to an exceedingly important debate. Mr. Ford's preoccupation with the radical definition of "impeachable offense" makes it clear that the real objective of those who have launched an attack on Justice Douglas is to establish that Federal judges can be impeached whenever a temporary legislative majority finds them wanting in "good behavior" as at that moment defined.

I had thought this proposition was laid to rest in 1787 when the Founding Fathers expressly rejected it, and that it could hardly be resurrected after the unsuccessful effort by the Jeffersonians in 1805 to remove all Federalist Justices on just such a theory. But the notion persists, and is so radically subversive of cherished American principles—separation of powers, the independence of the judiciary, freedom of speech, and the impermissibility of *ex post facto* determinations—that it must not be allowed to prevail.

* * * * *

On May 18, I furnished the Subcommittee with an extensive and fully documented legal memorandum on the grounds provided in the Constitution for impeaching Federal judges. I there noted that the Constitution itself confines impeachment to "Treason, Bribery, or other high Crimes and Misdemeanors," that at the Constitutional Convention the Founding Fathers— led by James Madison—expressly rejected a proposal to make judges impeachable for "misconduct" or "maladministration," and that Madison explained that the proposal was rejected because "so vague a term will be equivalent to a tenure during the pleasure of the Senate."

My memorandum noted that Thomas Jefferson, in his Manual of Parliamentary Practice, had conspicuously omitted the "good behavior" clause in enumerating the constitutional provisions bearing on impeachment. And I referred to Alexander Hamilton's candid explanation in the *Federalist Papers* that the authors of the Constitution deliberately confined impeachment to serious crimes even at the price of allowing unfit judges to remain on the bench—in order to protect the independence of the judiciary.[1]

I observed that Congressman Livermore of New Hampshire had stated in the very first Congress—without dissent from Members who had helped draft and ratify the Constitution—that Federal judges serving "during good behavior" could only be removed "on conviction of some crime." I referred the Subcommittee to the historic argument of Senator Stone in 1802 that only clearly defined crimes, and not less serious lapses from good behavior, could be the basis for impeachment of judges. He stated, and was not disputed, that "the words of the Constitution" would not justify impeachment of a judge who misconducted himself but did not commit "Treason, Bribery, or other high Crimes and Misdemeanors." I pointed out that such early constitutional authorities as Justice Wilson, one of the important draftsmen of the Constitution, and Justice Story agreed with this view. And I noted that these materials, particularly the Stone speech, had led Assistant Attorney General Rehnquist on April 9, 1970, to testify before a Senate Subcommittee that impeachment was not a remedy available for enforcing *noncriminal* lapses from good behavior.

I then reviewed each of the judicial impeachments in our history, noting that in *every* instance the Articles of Impeachment adopted by the House had charged "high crimes and misdemeanors," that in *every* such case there was in fact alleged a violation of previously defined law, and that the House had adhered to this standard even when it allowed itself to be a party to the shameful attempted purge of Justice Chase.

Finally, I reminded the Subcommittee that to impeach for alleged noncriminal lapses from good behavior would raise the most serious problems with respect to separation of powers, *ex post facto* determination, and freedom of speech. No canon of construction permits a reading of the impeachment clause which would violate these even more fundamental provisions of the same document. I advanced the opinion that an independent judiciary will not long survive such an interpretation.

* * * * *

Nothing in the Kelley memorandum detracts from the arguments submitted by me on May 18. It does, however, call to mind the following points:

1. There appears to have been a problem of communication between Mr. Ford and his attorney, for the Kelley memorandum is largely addressed to the irrelevant question whether impeachment is to be confined to *indictable* "high crimes and misdemeanors." We do not suggest that the criminal conduct which would constitutionally permit impeachment must be such as to require "indictment." Indeed, the constitutional reference to "misdemeanor" suggests otherwise, for in the federal system not all "misdemeanors" require indictment. The proper question is not whether an *indictable* crime

[1] Contrary to Mr. Ford's present view that Article III's "good behavior" clause adds an additional ground for impeaching Federal judges, Hamilton wrote in 1788, in an essay which helped to secure ratification of the Constitution, that the impeachment provision in Article II is "the only one which we find in our own Constitution with respect to our own judges." And he explained that "An attempt to fix the boundary between the regions of ability and inability, would much oftener give scope to personal and party attachments and enmities than advance the interests of justice or the public good."

must be shown, but whether a judge may be impeached for conduct which had not previously been defined as *unlawful*, and which is not of a sufficiently grave nature to warrant the appellation *"high* crimes and misdemeanors."

2. It is exceedingly strange that in a memorandum purporting to examine "the basic source material" for an interpretation of the Constitution there is no reference to the records of the Constitutional Convention, to the *Federalist Papers* which are widely regarded as the next most authoritative interpretative aid, or to statements by men who played a role in the drafting and ratification of the Constitution itself.

My May 18 memorandum was guilty of no such omissions. Citing chapter and verse, it demonstrated that the debates at the Constitutional Convention, Hamilton's essays in the *Federalist Papers*, and statements by such contemporaries as Jefferson, Congressman Livermore, Senator Stone and Justice Wilson decisively refute the notion that Federal judges may be removed from office when a temporary legislative majority concludes that they have not met the majority's then definition of "good behavior."

These essential source materials leave no room for the curious argument that the "good behavior" clause of Article III was intended to define additional grounds for impeaching Federal judges, grounds concedely not applicable to nonjudicial officers. At the Constitutional Convention, efforts to add an impeachment provision to enforce the "good behavior" clause failed, and both Hamilton and Jefferson excluded Article III from any applicability to the impeachment process.

3. Even with respect to the single source which the Kelley memorandum does examine—past impeachment proceedings[2]—the results are extraordinarily shaky. The author is forced to concede that the attack on Justice Chase was fought on the ground that impeachment was available only for violations of clearly defined laws, not to enforce the "good behavior" clause, and that the strict constructionists prevailed. Likewise, he is forced to concede that during the Peck impeachment, James Buchanan stated that the Chase case had settled the proposition that a judge could only be impeached for violating a clearly defined rule of law.

The Kelley memorandum is then compelled to fall back upon the claim that in the 20th century standards have loosened and that in several cases, particularly those involving Judges Archbald and Ritter, judges were impeached and convicted on charges which amounted only to *noncriminal* lapses from good behavior.

The Archbald and Ritter cases prove no such proposition. In both cases, as in every other impeachment voted by the House in our Nation's history, the Articles of Impeachment charged the commission of "high crimes and misdemeanors," and allege specific criminal conduct. Although one of Judge Archbald's prosecutors later wrote a law review article attempting to expand the impeachment power, there contending that Archbald had been impeached despite the absence of criminal conduct, during the proceeding he and others saw the case in a quite different way. The House Managers, for example, resisted a motion to dismiss in the Senate by insisting that "the said articles do severally set forth impeachable offenses, high crimes, and misdemeanors as defined in the Constitution. . . ."

And Senators Elihu Root and Henry Cabot Lodge explained that they had voted to convict Archbald on several counts of securing money and other favors from litigants in his court because each such instance was a "high crime and misdemeanor." They explained they had voted to acquit on those counts which were not shown to be "high crimes and misdemeanor."

Judge Ritter was charged with six specific counts of criminal conduct, including "corruptly and unlawfully" receiving kickbacks, the "high misdemeanor" of practicing law while on the bench, willful evasion of federal income tax, and conspiracy in champertous foreclosure proceedings. Indeed, Ritter admitted the underlying facts and defended himself on the ground that he lacked the requisite criminal intent. The House impeached him on each of these charges and on a seventh blanket charge which did not add less serious, noncriminal charges—bad behavior—but expressly incorporated the more specific charges of crime. A majority, short of the necessary two-thirds, voted to convict Judge Ritter on each of the specific charges, while two thirds agreed that he had committed at least one criminal offense and voted to convict on the blanket charge incorporating the specific allegations of criminal conduct. In the face of these facts, the Kelley memorandum asserts that Judge Ritter was impeached and convicted for *noncriminal* conduct. It cites statements by several Senators who were anxious to expand their power to remove judges,[3] and purports to set out the text of the blanket charge, Article 7. I find it necessary to call to your attention the fact that the author of the Kelley memorandum has omitted a substantial portion of the language of Article 7—the portion referring to the specific criminal conduct with which Judge Ritter was charged. The omitted language charged Ritter with commission of "high crimes and misdemeanors in office," and expressly incorporated "his conduct as detailed in Articles I, II, III, and IV hereof, and by his income-tax evasions as set forth in Article V and VI hereof." In short, Article 7 did not relate to noncriminal misconduct but served as a summary of the alleged criminal offenses. The full text of the Articles of Impeachment in the *Ritter* case is appended to this letter.

Equally serious omissions occur in the Kelley memorandum's discussion of the impeachments of Judge Swayne in 1905 and Judge Louderback in 1933, both of whom were acquitted by the Senate. Both in the House and in the Senate, the primary defense by Swayne and Louderback was that even if true, the facts alleged did not constitute "an impeachable high crime and misdemeanor as defined in the Constitution of the United States." That the managers of the impeachment proceedings unsuccessfully argued to the contrary is hardly persuasive evidence that they were right. In sum, it appears that the memorandum is largely predicated on the arguments of advocates who lost their cases.

4. The Kelley memorandum does the best it can with the proceedings which have led to impeachment of Federal judges. But it curiously omits the many proceedings in which the House has declined to impeach where misconduct was shown but did not amount to the omission of a grave criminal offense.

In 1914, for example, the Judiciary Committee found that Judge Emory Speer had, among other things "exercised exceedingly poor taste and was guilty of indiscretions unbecoming a high judicial official," had "by his conduct, made his very high and honorable position one to excite the fear and suspicion, rather than to command the respect and confidence of litigants," and had committed other injudicious acts. But it concluded that these and other kinds of misconduct fall "short of impeachable offenses."

Similarly, in 1929 the House Judiciary Committee declined to recommend the impeachment of Judge Grover Moscowitz notwithstanding that the evidence showed that the judge had entered into a business arrangement with a former law partner and had appointed members of a law firm of his former partner to various receiverships, throwing "the court open to criticism and misunderstanding by the uninformed." Absent a violation of law by the judge, impeachment was not available.[4]

In that same year, District Judge Alston G. Dayton was charged with various acts of misbehavior including favoritism toward his son, misuse of services of employees paid by the government, use of his office to further friends' political activities, conflicts of interest in receivership cases, and an anti-labor bias in cases before him. The Judiciary Committee, after an investigation, refused to recommend impeachment although it found that "This evidence shows many matters of individual bad taste on the part of Judge Dayton, some not of that high standard of judicial ethics which should crown the Federal judiciary."

CONCLUSION

The above criticisms of the Kelley memorandum are not intended as personal attacks upon its author. Having explored the materials myself, I know how difficult it is to ascertain just what has led the House or Senate to act in any particular impeachment proceeding. But there are accepted tools for interpreting the Constitution, and it is the Constitution we are interpreting.

We begin with the language of the Constitution itself. Article II, the impeachment provision, speaks only of "Treason, Bribery, and other high Crimes and Misdemeanors." The language suggests that not even all "crimes" are impeachable, for otherwise there would be no need to specify "Treason, Bribery, or high Crimes. . . ." And if some crimes are not impeachable, how can less serious conduct be so regarded?

We examine other internal evidence in the Constitution, such as the provision for trial by jury "of all *crimes*, except in cases of impeachment."

We look to events at the Constitutional Convention, and there the antecedent of Mr. Ford's "good behavior" proposition was rejected on the ground that it would exact too high a price in terms of the independence of the judiciary. We look to the *Federalist Papers* and to the words of men who had been involved in the drafting and ratification of the Constitution. Again, these sources decisively refute the notion that the Founding Fathers contemplated the impeachment of federal judges for conduct not amounting to a violation of clearly defined criminal laws. When the language of the Constitution, the Convention debates, and the words of contemporaries converge on a single conclusion, there is no room for us now to redecide the question decided nearly two centuries ago.

When we turn to past impeachment proceedings, we have—at minimum—an obligation to be fair. Those who argued that impeachment was available only to punish grave criminal offenses prevailed in the Chase case, and prevailed again during the attempt to

[2] A weak source indeed, for of course no Congress, still less any particular set of House Managers or defense counsel, has been licensed to amend the language of the Constitution.

[3] Even Senator Pittman, whose statement the Kelley memorandum relies on, asserted in writing that by Ritter's own admissions he was guilty of the *crimes* of false swearing on his tax return and practicing law while on the bench. He noted that his vote to convict on the blanket charge applied only to certain of the specific counts.

[4] See, also, the 1930 proceeding involving Judge Harry B. Anderson, where no grounds for impeachment were found to exist although the investigation disclosed several matters which the Committee did not approve or sanction.

impeach President Andrew Johnson.[5] As former Justice Curtis summarized Johnson's successful defense, it rested on the proposition "that when the Constitution speaks of 'treason, bribery, and other high crimes and misdemeanors,' it refers to, and includes only, high criminal offenses against the United States, made so by some law of the United States existing when the acts complained of were done, and I say that this is plainly to be inferred from each and every provision of the Constitution on the subject of impeachment." 1 *Trial of Andrew Johnson,* p. 409.

The arguments of counsel in particular proceedings obviously have to be taken with a grain of salt, as do later writings by the participants. But one does not arrive at truth by resorting to the mutilated text of an article of impeachment—excluding from the quotation key words which are damaging to one's own case. Nor does one arrive at truth by summarizing the defenses available in particular cases—omitting to include a key defense damaging to the proposition one advocates.

Finally, this delicate question of constitutional interpretation cannot be answered in isolation without considering the other constitutional provisions which must be read in harmony with the impeachment clause. Any reading of the impeachment clause which would permit Congress to impeach a judge for conduct not previously defined as a ground for impeachment would clearly violate the *ex post facto* clause of Article I, Section 9. To interpret the impeachment clause to permit impeachment for speeches and writings violates the First Amendment, as counsel for Justice Chase successfully argued in 1805. And to condition judicial tenure upon the ability of a judge to win a popularity contest in the legislature is profoundly subversive of the principle of separation of powers inherent in the very structure of the Constitution itself.

The Kelley memorandum asserts that there is no appeal from Congress' ultimate judgment. If that is so, it underscores the high moral responsibility of Congress in exercising its awesome power under the impeachment clause so as not to infringe other sections of the Constitution.

Violations of the First Amendment, of the *ex post facto* clause, and of separation of powers, and infringement upon the independence of the judiciary, may not trouble those who proffer the Kelley memorandum. But they trouble me greatly, and I cannot sit idly by while these key provisions of our Constitution are trampled. I can understand the temptation of one branch of government to increase its own power, to subject another branch to its dominion. But in understanding this primeval drive, I am not obligated to succumb to it or to stand aside while it subverts the constitutional system which has proven its value over nearly two centuries. In my judgment, this concerted campaign to use the impeachment clause to enforce a temporary legislative majority's notions of what constitutes good behavior is a truly radical attempt to amend our Constitution. This is not the sanctioned method of change. I have great faith that when alerted to what is at stake, Constitutional scholars, the bar, the American people and their elected representatives will reject this radical proposal.

To this end, to alert the public to the nature of what Mr. Ford has proposed, I request that this letter and my May 18 legal memorandum be given the same public exposure which the Kelley memorandum has received. Since neither the May 18 legal memorandum nor this letter touch upon the factual allegations in the impeachment inquiry, there is no reason to accord them confidential treatment, and we do not claim confidential treatment for them.

Yours sincerely,

SIMON H. RIFKIND.

[5] It should be noted that neither side during that great controversy advanced the notion—crucial to Mr. Ford's position—that impeachment of the President was to be governed by standards different from those applicable to judges. And the *Chase* precedent was successfully argued as governing Johnson's Senate trial.

LEAVE OF ABSENCE

By unanimous request, leave of absence was granted to:

Mr. ADAMS, for September 15 through 18, on account of official business.

Mr. BLATNIK (at the request of Mr. ALBERT), for today, on account of official business.

Mr. HAGAN (at the request of Mr. ALBERT), for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. EDMONDSON, for 30 minutes, on September 15, and to revise and extend his remarks and include extraneous matter.

Mr. RANDALL, for 10 minutes, today, and to revise and extend his remarks and include extraneous matter.

(The following Members (at the request of Mr. RUTH) to revise and extend their remarks and include therein extraneous matter:)

Mr. POFF, for 10 minutes, today.

Mr. MILLER of Ohio, for 5 minutes, today.

Mr. AYRES, for 15 minutes, today.

Mr. HALPERN, for 5 minutes, today,

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. DENNEY to extend his remarks following consideration of H.R. 3259, today.

Mr. FULTON of Pennsylvania prior to passage of Senate Concurrent Resolution 49.

Mr. RYAN to revise and extend his remarks on the bill H.R. 18410.

Mr. RANDALL and to include extraneous matter.

(The following Members (at the request of Mr. RUTH) and to include extraneous matter:)

Mr. SCHERLE in 10 instances.
Mr. RHODES.
Mr. BERRY.
Mr. WIGGINS.
Mr. HALL.
Mr. ROUSSELOT.
Mr. RIEGLE.
Mr. JOHNSON of Pennsylvania.
Mr. STEIGER of Wisconsin.
Mr. BROOMFIELD.
Mr. CRAMER in five instances.
Mr. HAMMERSCHMIDT.
Mr. NELSEN.
Mr. MCDADE.
Mr. FINDLEY.
Mr. HOSMER in two instances.
Mr. WYMAN in two instances.
Mr. HORTON.
Mr. SHRIVER.
Mr. CONTE.
Mr. HOGAN.
Mr. DERWINSKI in four instances.
Mr. CAMP.
Mr. SCHMITZ.
Mr. WHALEN.

(The following Members (at the request of Mr. CORMAN) and to include extraneous matter:)

Mr. HAMILTON in 10 instances.
Mr. PODELL in three instances.
Mr. FRASER.
Mr. NATCHER.
Mr. REUSS in six instances.
Mr. LONG of Maryland.
Mr. ANDERSON of California in two instances.
Mr. RODINO.
Mr. BROWN of California.
Mr. MATSUNAGA.
Mr. RYAN in five instances.
Mr. EVINS of Tennessee in two instances.
Mr. DADDARIO in five instances.
Mr. DINGELL in two instances.
Mr. MOORHEAD in four instances.
Mr. MARSH.
Mr. RARICK in six instances.
Mr. ROE.
Mr. POAGE.
Mr. PICKLE in two instances.
Mr. DELANEY.
Mr. PRYOR of Arkansas.
Mr. JONES of Tennessee.
Mr. VANIK in two instances.
Mr. OLSEN in two instances.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 5. An act to promote the public welfare; to the Committee on Government Operations.

S. 437. An act to amend chapter 83 of title 5, United States Code, relating to survivor annuities under the civil service retirement program, and for other purposes; to the Committee on Post Office and Civil Service.

S. 3822. An act to provide insurance for member accounts in State and federally chartered credit unions and for other purposes; to the Committee on Banking and Currency.

ENROLLED BILLS SIGNED

Mr. FRIEDEL, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 16539. An act to amend the National Aeronautics and Space Act of 1958 to provide that the Secretary of Transportation shall be a member of the National Aeronautics and Space Council; and

H.R. 16968. An act to increase the contribution by the Federal Government to the cost of health benefits insurance, and for other purposes.

ADJOURNMENT

Mr. CORMAN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 18 minutes p.m.) the

House adjourned until tomorrow, Tuesday, September 15, 1970 at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2366. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report of third country transfers of U.S. origin defense articles to which the United States has given its approval under the provisions of section 3(a)(2) of the Foreign Military Sales Act and transfers under the provisions of section 505(a) of the Foreign Assistance Act, for the period of January 1 through June 30, 1970; to the Committee on Foreign Affairs.

2367. A letter from the President of the United States, transmitting proposed supplemental appropriations and other provisions for the fiscal year 1971 (H. Doc. 91–392); to the Committee on Appropriations.

2368. A letter from the President of the United States, relative to the passage of H.R. 18306, increasing U.S. participation in the International Monetary Fund, the World Bank, the Inter-American Development Bank, and the Asian Development Bank (H. Doc. 91–383); to the Committee on Banking and Currency.

2369. A letter from the Secretary of Health, Education, and Welfare, transmitting the second annual report of the National Advisory Committee on Handicapped Children, pursuant to title VI of Public Law 89–10, as amended; to the Committee on Education and Labor.

2370. A letter from the Secretary of the Interior, transmitting the annual report of the Office of Coal Research for 1969; to the Committee on Interior and Insular Affairs.

2371. A letter from the Nevada State Director, Bureau of Land Management, U.S. Department of the Interior, transmitting a notice of continuation of the segregation of certain public lands classified for transfer out of public ownership, pursuant to 43 U.S.C. 1411–1418; to the Committee on Interior and Insular Affairs.

2372. A letter from the Chairman, U.S. Civil Service Commission, transmitting a draft of proposed legislation to permit immediate retirement of certain Federal employees; to the Committee on Post Office and Civil Service.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. MILLER of California: Committee on Science and Astronautics. For the benefit of all mankind (Rept. No. 91–1446). Referred to the Committee of the Whole House on the State of the Union.

Mr. STEED: Committee of conference. Conference report on H.R. 16900 (Rept. No. 91–1447). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ADDABBO:

H.R. 19152. A bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to require the installation in school buses of restraining devices for the protection of children; to the Committee on Interstate and Foreign Commerce.

H.R. 19153. A bill to amend title 38 of the United States Code to provide an aid and attendance allowance to any parent entitled to dependency and indemnity compensation who is helpless or blind or a patient in a nursing home; to the Committee on Veterans' Affairs.

By Mr. BIESTER:

H.R. 19154. A bill to amend title 38 of the United States Code to provide improved medical care to veterans; to provide hospital and medical care to certain dependents and survivors of veterans; to improve recruitment and retention of career personnel in the Department of Medicine and Surgery; and for other purposes; to the Committee on Veterans' Affairs.

By Mr. DON H. CLAUSEN:

H.R. 19155. A bill to amend the Fish and Wildlife Act of 1956 to provide a criminal penalty for shooting at certain birds, fish, and other animals from an aircraft; to the Committee on Merchant Marine and Fisheries.

By Mr. COLLIER:

H.R. 19156. A bill to amend title 10 of the United States Code to provide that members of the Armed Forces be assigned to duty stations near their homes after serving in combat zones; to the Committee on Armed Services.

H.R. 19157. A bill to amend section 5 of the Department of Transportation Act to authorize the National Transportation Safety Board to employ 2,500 investigators to carry out its powers and duties under that act; to the Committee on Interstate and Foreign Commerce.

By Mr. CORMAN (for himself, Mr. CELLER, Mr. CLAY, Mr. CONYERS, Mr. EDWARDS of California, Mr. FRASER, Mr. GREEN of Pennsylvania, Mr. HARRINGTON, Mr. HATHAWAY, Mr. HAWKINS, Mr. HOWARD, Mr. KOCH, Mr. LOWENSTEIN, Mr. MADDEN, Mr. MEEDS, Mr. MIKVA, Mr. O'HARA, Mr. PERKINS, Mr. REID of New York, Mr. REUSS, Mr. ROYBAL, Mr. STOKES, Mr. THOMPSON of New Jersey, Mr. TUNNEY, and Mr. VAN DEERLIN):

H.R. 19158. A bill to create a health security program; to the Committee on Ways and Means.

By Mr. CORMAN (for himself, Mr. ANNUNZIO, Mr. BINGHAM, Mr. BROWN of California, Mrs. CHISHOLM, Mr. COHELAN, Mr. ECKHARDT, and Mr. RYAN):

H.R. 19159. A bill to create a health security program; to the Committee on Ways and Means.

By Mr. DINGELL (for himself, Mr. ROGERS of Florida, Mr. BIAGGI, and Mr. POLLOCK):

H.R. 19160. A bill to amend the National Environmental Policy Act of 1969 to require a longer period of notice before a Federal agency commences any action significantly affecting the environment, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. FISHER:

H.R. 19161. A bill to amend the Internal Revenue Code of 1954 to clarify the status of certain oil well service equipment under subchapter D of chapter 36 of such Code (relating to tax on the use of certain vehicles); to the Committee on Ways and Means.

By Mr. GUBSER:

H.R. 19162. A bill to amend the Federal Aviation Act of 1958 so as to require additional precautionary measures aboard certain aircraft in the interest of the safety of the traveling public; to the Committee on Interstate and Foreign Commerce.

By Mr. ICHORD (for himself and Mr. ASHBROOK):

H.R. 19163. A bill to amend the Emergency Detention Act of 1950 (title II of the Internal Security Act of 1950); to the Committee on Internal Security.

By Mr. MESKILL:

H.R. 19164. A bill to authorize the National Science Foundation to conduct research and educational programs to prepare the country for conversion from defense to civilian, socially oriented research and development activities, and for other purposes; to the Committee on Science and Astronautics.

By Mr. NELSEN (for himself, Mr. O'KONSKI, Mr. HOGAN, and Mr. THOMSON of Wisconsin):

H.R. 19165. A bill to amend the act of February 27, 1925, regulating the sale of dairy products in the District of Columbia, to revise the local inspection requirements under that act, and for other purposes; to the Committee on the District of Columbia.

By Mr. PATMAN:

H.R. 19166. A bill to amend the Export-Import Bank Act of 1945, as amended, to allow for greater expansion of the export trade of the United States, to exclude Bank receipts and disbursements from the Budget of the U.S. Government, and for other purposes; to the Committee on Banking and Currency.

By Mr. ROGERS of Florida:

H.R. 19167. A bill to prohibit the movement in interstate or foreign commerce of horses which are "sored", and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. ROGERS of Florida (for himself, Mr. DINGELL, and Mr. BIAGGI):

H.R. 19168. A bill to amend the National Environmental Policy Act of 1969 to require a longer period of notice before a Federal agency commences any action significantly affecting the environment, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. SNYDER (by request):

H.R. 19169. A bill to amend the Fair Labor Standards Act of 1938, to exempt certain retail or service establishments; to the Committee on Education and Labor.

By Mr. SNYDER (by request):

H.R. 19170. A bill to amend the Fair Labor Standards Act of 1938, to exempt certain high wage earners; to the Committee on Education and Labor.

By Mr. WEICKER:

H.R. 19171. A bill to authorize the National Science Foundation to conduct research and educational programs to prepare the country for conversion from defense to civilian, socially oriented research and development activities, and for other purposes; to the Committee on Science and Astronautics.

By Mr. BARRETT:

H.R. 19172. A bill to provide Federal financial assistance to help cities and communities to develop and carry out intensive local programs to eliminate the causes of lead-based paint poisoning and local programs to detect and treat incidents of such poisoning, to establish a Federal demonstration and research program to study the extent of the lead-based paint removal, and to prohibit future use of lead-based paint in Federal or federally assisted construction or rehabilitation; to the Committee on Banking and Currency.

By Mr. BRADEMAS:

H.R. 19173. A bill to amend title 18 of the United States Code to provide for better control of interstate traffic in explosives; to the Committee on the Judiciary.

H.R. 19174. A bill to regulate the importation, manufacture, distribution, storage, and possession of explosives, blasting agents, and detonators, and for other purposes; to the Committee on the Judiciary.

By Mr. FULTON of Pennsylvania:

H.R. 19175. A bill to amend the Public Health Service Act and other laws to provide increased research into, and prevention of, drug abuse and drug dependence; to provide for treatment and rehabilitation of drug abusers and drug dependent persons; and to strengthen existing law enforcement authority in the field of drug abuse; to the

NEW YORK TIMES DATE 10 OCT 68 PAGE 15

Douglas's Foes Shelve Impeachment Plan Now

WASHINGTON, Oct. 15 (UPI)—Supreme Court Justice William O. Douglas, who will be 72 years old tomorrow, has survived another round in the attempt by conservative-minded Congressmen to impeach him.

His opponents, who began the latest attack on him last spring, have fallen silent in recent weeks. Privately, they concede the fight is over for this year but say they hope to try again when the new Congress meets in January.

"We have been preoccupied with other matters," said one of the Justice's foes. "This is on the back burner for now, and the 91st Congress probably never will come to grips with it. But that doesn't mean it's dead."

Representative Louis Wyman, Republican of New Hampshire, a leader of the Douglas opposition, said he would revive the issue in the next Congress, asking for appointment of a special six-man panel by the House Rules Committee to study whether impeachment charges should be brought.

THE EVENING STAR DATE 1 Dec 74 PAGE C

Bid to Impeach Douglas Fails

By LYLE DENNISTON
Star Staff Writer

A special House Judiciary subcommittee, splitting along party lines, has rejected a move to impeach Supreme Court Justice William O. Douglas.

Voting three Democrats to one Republican and with one GOP member refusing to take a position, the subcommittee yesterday concluded it had no evidence that would justify impeachment and removal of Douglas from the court.

However, Douglas is still not cleared, since the full House Judiciary Committee must act on the subcommittee report, and several House members have promised to revive the challenge in January.

The full committee is expected to meet late next week, or early the week after, to consider the issue. Rep. Emanuel Celler, D-N.Y., chairman of both the parent panel and the subcommittee, apparently wants to dispose of the challenge finally this month.

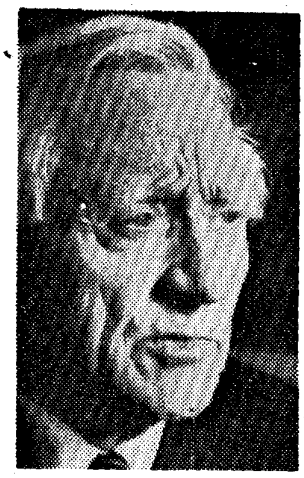
Douglas' critics charged that he used his position for private gain, had questionable ties to gamblers, wrote for "dirty" publications, and took part in some Supreme Court cases in which he had a personal interest.

Wyman Reaction

One of his main critics in the House — Rep. Louis Wyman, R-N.H. — said he would move "on the first day of the next Congress" to promote a special investigation of the justice, outside the Judiciary Committee.

Commenting on the Celler subcommittee's seven-month investigation of charges against Douglas, Wyman said:

"I do not consider it a credible investigation. No witnesses were questioned under oath, and no testimony was received from the justice under oath."



JUSTICE DOUGLAS

Another critic, Rep. Joe Waggonner, D-La., has already said he would move next year to take the case away from Celler's commmittee.

Public Hearings Sought

Even before then, however, Celler may have difficulty in his own committee getting an agreement to wind up the investigation now.

Rep. Andrew Jacobs, D-Ind., author of the resolution which sent the charges against Douglas to the Judiciary Committee, told reporters yesterday that he is unhappy because that committee held no public hearings.

Jacobs, a member of the parent Judiciary Committee, said he would try to get agreement on hearings when the panel meets.

At yesterday's closed-door meeting of the subcommittee, Celler and two other Democrats — Reps. Jack Brooks of Texas and Byron Rogers of Colorado — voted to approve a report which concludes that there is no basis for impeaching Douglas.

Rep. Edward Hutchinson, R-Mich., voted against the report, and announced that he would file a dissenting report.

Hutchinson said he disapproved of the subcommittee's failure to take testimony under oath.

"Under our system," he added, "when you gather a great deal of documentary evidence — and the staff has done an excellent job of that — you examine that evidence with some people under oath."

Hutchinson indicated he was not persuaded that there was evidence to justify impeaching Douglas, and that this could only be determined by going further than the subcommittee or its staff had.

Rep. William M. McCulloch, R-Ohio, abstained. Later, he told reporters that there was "just not enough evidence to come to a final, fast, hard conclusion on whether an impeachable offense has been committed."

In taking its final action on the misconduct charges against Douglas, the subcommittee did not reach a conclusion on how much misbehavior is required to justify impeachment.

Its report takes note of the controversy over whether impeachment may be based on simple lack of good behavior, or on conduct that would support an actual criminal charge.

The Constitution contains clauses which say that impeachment may be imposed for "high crimes and misdemeanors" and that judges are appointed to serve so long as they have "good behavior."

The report, which was adopted much as the subcommittee staff had written it, but with some revisions, was not made public yesterday. Celler said it would be printed and made public when the full committee meets — probably, a subcommittee source said, late next week.

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HOUSE UNIT GIVES DATA ON DOUGLAS

'Mountain of Evidence' Cited in Defense of Justice

By MARJORIE HUNTER
Special to The New York Times

WASHINGTON, Dec. 15—A House subcommittee released today what it termed "a mountain of evidence" on which it based its conclusions that there were no grounds for impeachment of Associate Justice William O. Douglas.

The 924-page document seeks to refute, point by point, charges that Justice Douglas espoused "Hippie-Yippie style revolution," knowingly wrote for pornographic magazines, practiced law while on the bench and had possibly shady dealings with gamblers and underworld figures.

The findings, endorsed by the subcommittee's Democratic majority, drew a vigorous dissent from one Republican member, Edward Hutchinson of Michigan.

While not demanding impeachment, Mr. Hutchinson criticized the subcommittee for not seeking to determine whether some of the Justice's activities "seem so improper as to merit Congressional censure or other official criticism of the House."

Disclosures Listed

Among the disclosures in the document were the following:

¶Justice Douglas, as president of a tax-exempt charitable foundation, once approved a loan of its funds at a loss for the personal use of the founda- businessman with gambling connections in Las Vegas.

¶Justice Douglas sought several years ago to borrow money from Mr.Parvin to purchase lots adjoining the Douglas house in Goose Prairie, Wash. Mr. Parvin said that he would be happy to make the loan but that it might be embarrassing to the Justice. The loan was not made.

¶Justice Douglas and his wife accepted expensive gifts, including a portable bar and a set of sterling flatware, from Mr. Parvin and also purchased $3,350.23 worth of furniture, apparently at cost, through Albert Parvin & Company.

These disclosures, for the most part, are documented in letters and other material included in the report. Among the letters are friendly "Dear Bill" and "Deal Al" exchanges between Justice Douglas and Mr. Parvin over more than nine years.

The subcommittee report makes no effort to pass on whether or not Justice Douglas was prudent in his associations with Mr. Parvin.

Instead, the report reviews each of the major chargesmade by the House Republican leader, Gerald R. Rord of Michigan, and other critics who have called for the impeachment of Justice Douglas.

Mr. Ford described the report today as a "whitewash" and said he would join in a move for a special investigation of Justice Douglas when Congress reconvenes next month.

In a speech last April, Mr. Ford hinted that he believed a trip made by Justice Douglas and Mr. Parvin to the Dominican Republic in early 1963 might have been connected with an effort by organized gamblers to get a foothold in that country.

Project Described

The subcommittee report, rebutting the Ford charge, states that Justice Douglas, as the $12,000-a-year chairman of the Parvin Foundation, had gone to the Dominican Republican to help establish a television reading project.

The report further indicates that two men associated with the Justice in the Dominican project had connections with the Central Intelligence Agency. However, the connections were left unclear, since the C.I.A. refused to produce requested information, according to the report.

Other charges rebutted in the report include the following:

¶That Justice Douglas practiced law from the bench. The report states that instead of giving legal advice to Mr. Parvin or others, the Justice insisted that qualified lawyers be retained.

¶That the Justice wrote for pornographic magazines. The report documents evidence that excerpts from a Douglas book appeared in Evergreen Review without his prior knowledge.

¶That his book, "Points of Rebellion," espouses revolutionary tactics against the establishment. The report states that quotations from the book were taken out of context.

The report also defends Justice Douglas against charges that he had refused to disqualify himself from cases involving personal interest and that he had accompanied Robert G. Baker, a one-time Senate aide later convicted of theft, fraud and tax evasion, to Las Vegas.

After examining some 500,000 documents and questioning numerous persons — although not under oath—the subcommittee staff recommended, and the Democratic majority agreed, that there were no grounds for impeachment.

In releasing the report today, the chairman, Emanuel Celler of Brooklyn, stated that he was sure "all fair-minded people, after studying the material in the final report, will agree their is no basis for impeachment of Associate Justice Douglas."

The report now goes to the full Judiciary Committee, of which Mr. Celler is also chairman, for probable approval next week.

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Douglas' Off-Bench Income Exceeds Court Salary

THE WASHINGTON POST
Wednesday, Dec. 16, 1970
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By John P. MacKenzie
Washington Post Staff Writer

Justice William O. Douglas has earned more money off the bench during the past decade than he was paid as a member of the Supreme Court, a special House subcommittee reported yesterday.

In a 924-page report that concluded there was no basis for impeaching the 72-year-old justice, the subcommittee disclosed that between 1960 and 1969 Douglas topped his court salary of $389,749 with earnings of $377,260 from writings and lectures and $96,680 as salaried president of the controversial Parvin Foundaton.

The House document itself became an immediate subject of controversy as Minority Leader Gerald P. Ford (R-Mich.) promptly labeled it a "whitewash" of his charges that Douglas—an associate justice since 1939— had demeaned the bench and should be removed.

Judiciary Committee Chairman Emanuel Cellar (D-N.Y.) said the Douglas investigation had produced a "mountain of evidence" that would lay the charges to rest. Ford insisted that the report's contents, rather than its conclusions, "condemn his conduct and cry out for a more searching inquiry."

It appeared that the full committee would not meet, much less tackle the Douglas matter, before the close of the 91st Congress and the automatic death of the resolution authoirizing the investigation. Rep. Louis C. Wyman (R-N.H.) vowed to reopen the case in the next Congress with a new bid for an investigation not controlled by Celler, and Ford said he would "support" the move.

Douglas, who has known the nature of the subcommittee report for several days, planned to make a brief statement at the Supreme Court today. A court spokesman said he would not answer questions.

The report, signed only by the three Democratic members of the subcommittee, made these conclusions and disclosures:

• Douglas committed "no wrong" in submitting an article on folk singing to a publication owned by Ralph Ginzburg, central figure in several obscenity cases handled by the high court, and had "no duty" to disqualify himself when Ginzburg petitioned unsuccessfully to overturn a huge libel verdict won by Sen. Barry Goldwater (R-Ariz.).

• The justice has been careful, rather than insensitive, about "problems of disqualification" from certain cases.

• Charges that Douglas preached subversion in his book, "Points of Rebellion," are based on "distorted" readings and Douglas bore no responsibiilty for publication of one of its chapters in the Evergreen Review or for its placement between a cartoon of President Nixon and a collection of photographs of nude women.

• Douglas has had no personal connection with underworld figures, and financier Albert Parvin, the alleged link to such persons, has been cleared of criminal charges after a massive Internal Revenue Service investigation known as "Operation Complex" that involved 41 agents working 30,617 man-hours in eight states and the District of Columbia.

• Nothing Douglas did as head of the Parvin Foundation, which worked for international understanding amounted to the illegal "practice of law." The foundation had its own lawyers, one of whom was Carolyn Agger, wife of former Justice Abe Fortas.

• There was no connection between a 1963 visit by Douglas to the Dominican Republic and visits there by underworld personalities or former Senate Majority Secretary Bobby Baker about the same time. "Lack of cooperation" by the Central Intelligence Agency left dangling and intriguing inquiry into whether a Parvin Foundation employee named Sacha Volman was a CIA agent involved in the overthrow of Dominican President Juan Bosch, a long-time friend of Douglas.

Joining Celler in the subcommittee findings were Reps. Byron G. Rogers (D-Colo.) and Jack Brooks (D-Texas). Rep. William M. McCullogh (Ohio) abstained and Rep. Edward Hutchinson (R-Mich.) filed a two-page dissent.

Hutchinson said the subcommittee had failed to gather all the necessary evidence and could not consider its work complete withqut testimony and cross-examination of Douglas and other principals. He also objected to the majority's apparent conclusion that an impeachable offense must amount to a criminal act.

Hutchinson said the investigators also should have cleared up the question of why Douglas intervened with the Immigration and Naturalization Service (INS) on behalf of Mustafa Salih Abdulrahman, a Kurdish teacher from Iraq who was fighting deportation to his home country. Douglas wrote the INS that he did not know Abdulrahman but could support the claim that he and other Kurds faced persecution in Iraq.

"Someone must have asked Justice Douglas to intercede," said Hutchinson, demanding to know who it was. Yesterday Shafiq Qazzaz, a 36-year-old doctoral candidate at American University, told The Washington Post that he had written Douglas last February asking his help on the basis of brief meetings at international gatherings.

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