CONGRESSMAN
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HOUSE REPUBLICAN LEADER

NEWS RELEASE

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Remarks by Rep. Gerald R. Ford (R-Mich.), Republican Leader, prepared for delivery on the Floor of the U. S. House of Representatives on April 15, 1970

Mr. Speaker:

Last May 8 (1969) 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

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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 United States Supreme Court. I have the most profound respect for the United States 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 <u>legal</u> 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 United States Supreme Court. There has not been sufficient consideration given, in my judgment, to the qualifications which a person should possess to <u>remain</u> upon the United States Supreme Court.

For, contrary to a widespread misconception, Federal judges and the justices of the Supreme Court are <u>not</u> 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 axe 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 two years; of the President and Vice President at four; of United States Senators at six.

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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, un-good 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.

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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 One 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 "misdemeanors" 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 One 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

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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."

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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 four 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 1790. But nine Fereral 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 behaviour was paramount, since the criminal charges were admittedly thin. This case was in the context of FDR'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 Drmocratic 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.

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Nevertheless, their arguments were persuasive:

In a joint statement, Sens. 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, bluntedly declared:

"Tenure during good behavior...is in no sense a guaranty of a life job, and misbehavior in the ordinary, dictionary sense 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 [illegible] 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

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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 five years' imprisonment in 1963.

His conviction was appealed and, in 1966, was affirmed by the United States Supreme Court in a close 5-4 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 psychologically 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, Sen. Goldwater promptly sued Mr. Ginzburg and "FACT" Magazine for libel. A Federal court jury in New York granted the Senator $1 in compensatory damages and 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 v. 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 Sen. Goldwater and declined to review the case. However, Mr. Justice Douglas again dissented on the side of Mr. Ginzburg, 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 Ginzburg's appeal was pending before his court, the highest court in the land, Mr. Justice Douglas wrote an article for "AVANT GARDE", the successor to "FACT" in the Ginzburg stable of magazines, and accepted payment from Ginzburg 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 United States 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 by-line clear across the page reading "By William O. Douglas, Associate Justice, United States Supreme Court" and a full page picture would be worth <u>something</u> 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 versus Ginzburg libel appeal. Had the decision been a close

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5-4 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 for 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.

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 Bench 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."

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One wonders how this enthusiastic traveller 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 Hitler. 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 behaviour. 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 behaviour as the first sign of senility. But I believe I underestimated the justice.

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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.

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.

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 five. 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 seven 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 United States 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.

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 towards 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 his 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.

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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 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 doesn't 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 prima facie evidence 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% owner of Hotel Flamingo, Inc., which operated the hotel and gambling casino in Las Vegas, Nevada. 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 & Company. Between Siegle and Parvin there were three other heads, or titular heads, of the Flamingo. After the gangland rub-out 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 $6250 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 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 three-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 has 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 Sen. 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 United States 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 doubt 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 Corporation, 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 $16,050. 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 travelled to New York where Baker introduced Levinson to Mr. John Gates of the Inter-continental 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's.

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 Freemont 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 per-

mission 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 subpoena 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" which is run by Dr. Robert M. Hutchins, former head of the University of Chicago, in Santa Barbara, California.

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 $1000 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 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 R.O.T.C.

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 hardworking and Godfearing 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 S.D.S., 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.

Is this action on my part in response to, or retaliation for, the rejec-

tion by the other body of two nominees for the Supreme Court, Judge Haynsworth and Judge Carswell. In a narrow sense, no. The judicial misbehaviour 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, even the cast of characters in these two cases is interchangeable.

Albert Parvin was named a co-conspirator but not a defendant in the stock manipulation case that sent Louis Wolfson to prison. Albert Parvin is 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 the New Deal's 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 so-called Establishment and the personal decency to resign when his behaviour brought reproach upon the United States 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 now often it is plainly answered in the negative. But as "censor" is an ancient Roman office, the supervisor of public morals, let me

(more)

substitute 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 United States 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 misbehaviour of appointed judges. I would not impose my judgment in such a matter upon any other Member; each should examine his own conscience after the full facts have been spread before him.

I can't 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' behaviour. I believe that investigation, giving both the Associate Justice and his accusers the right to answer under oath, should be as non-partisan 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 cause 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 guideline for any judge:

"Not honesty 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."

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