CHURCH), the Senator from Missouri (Mr. EAGLETON), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from North Carolina (Mr. JORDAN), the Senator from Rhode Island (Mr. PASTORE), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from North Dakota (Mr. BURDICK) would each vote "yea."

Mr. HANSEN. I announce that the Senator from Vermont (Mr. AIKEN), the Senator from Tennessee (Mr. BAKER), the Senator from New Hampshire (Mr. COTTON), the Senator from New York (Mr. GOODELL), the Senator from Florida (Mr. GURNEY), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. MURPHY), the Senator from Ohio (Mr. SAXBE), the Senator from Illinois (Mr. SMITH), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Maine (Mrs. SMITH) is absent on official business.

I further announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Utah (Mr. BENNETT), the Senators from Delaware (Mr. BOGGS and Mr. WILLIAMS), the Senator from Massachusetts (Mr. BROOKE), the Senators from Nebraska (Mr. CURTIS and Mr. HRUSKA), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. JORDAN), the Senators from Pennsylvania (Mr. SCOTT and Mr. SCHWEIKER), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I announce that, if present and voting, the Senator from Vermont (Mr. AIKEN), the Senator from Colorado (Mr. ALLOTT), the Senator from Utah (Mr. BENNETT), the Senator from Delaware (Mr. BOGGS), the Senator from Massachusetts (Mr. BROOKE), the Senators from Nebraska (Mr. CURTIS and Mr. HRUSKA), the Senator from New York (Mr. GOODELL), the Senator from Florida (Mr. GURNEY), the Senator from Oregon (Mr. HATFIELD), the Senator from Idaho (Mr. JORDAN), the Senator from South Dakota (Mr. MUNDT), the Senator from California (Mr. MURPHY), the Senator from Pennsylvania (Mr. SCOTT), the Senator from Maine (Mrs. SMITH), the Senator from Illinois (Mr. SMITH), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The yeas and nays resulted—yeas 48, nays 1, as follows:

[No. 263 Leg.]

YEAS—48

Allen	Fannin	McGovern
Anderson	Fong	McIntyre
Bayh	Fulbright	Miller
Bellmon	Gravel	Nelson
Bible	Hansen	Packwood
Byrd, Va.	Harris	Pearson
Byrd, W. Va.	Hart	Percy
Case	Holland	Prouty
Cook	Inouye	Randolph
Cooper	Javits	Spong
Cranston	Long	Stennis
Dole	Magnuson	Talmadge
Dominick	Mansfield	Thurmond
Eastland	Mathias	Williams, N.J.
Ellender	McClellan	Young, N. Dak.
Ervin	McGee	Young, Ohio

NAYS—1

Proxmire

NOT VOTING—51

Aiken	Brooke	Curtis
Allott	Burdick	Dodd
Baker	Cannon	Eagleton
Bennett	Church	Goldwater
Boggs	Cotton	Goodell
Gore	McCarthy	Saxbe
Griffin	Metcalf	Schweiker
Gurney	Mondale	Scott
Hartke	Montoya	Smith, Maine
Hatfield	Moss	Smith, Ill.
Hollings	Mundt	Sparkman
Hruska	Murphy	Stevens
Hughes	Muskie	Symington
Jackson	Pastore	Tower
Jordan, N.C.	Pell	Tydings
Jordan, Idaho	Ribicoff	Williams, Del.
Kennedy	Russell	Yarborough

Mr. MANSFIELD. Mr. President, I ask for the regular order.

The PRESIDING OFFICER (Mr. FANNIN). On this vote there are 48 yeas and 1 nay. A quorum did not vote. The vote is invalid. The Chair directs the clerk to call the roll to ascertain the presence of a quorum.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 264 Leg.]

Anderson	Fannin	Nelson
Byrd, W. Va.	Hansen	Proxmire
Cook	Hart	Young, N. Dak.
Dominick	Holland	
Ellender	Mansfield	

The PRESIDING OFFICER (Mr. FANNIN). A quorum is not present.

ADJOURNMENT UNTIL 10 A.M., MONDAY, AUGUST 24, 1970

Mr. MANSFIELD. Mr. President, under the rules, the Senate has no choice but to adjourn at this time.

Therefore, I move, under the previous order, that the Senate stand in adjournment until 10 a.m. on Monday next.

The motion was agreed to; and (at 5 o'clock and 4 minutes p.m.), the Senate adjourned until Monday, August 24, 1970, at 10 a.m.

EXTENSIONS OF REMARKS

WEST VIRGINIA UNIVERSITY CELEBRATES CONSTRUCTIVE DECADE—FACILITY ONE OF FINEST IN NATION—PROVIDES OUTSTANDING SERVICE BOTH AS HOSPITAL AND AS TEACHING COMPLEX

HON. JENNINGS RANDOLPH

OF WEST VIRGINIA

IN THE SENATE OF THE UNITED STATES

Friday, August 21, 1970

Mr. RANDOLPH. Mr. President, on August 10, West Virginia University and the State of West Virginia observed the end of the first decade of outstanding medical service by the West Virginia University Hospital.

We are experiencing critical shortages of medical personnel and availability of hospital beds in many areas of our Nation. It is the university teaching hospitals throughout our country which are providing expanded medical services and helping to relieve some of the burden for increased demands for adequate medical care.

West Virginia University Hospital has filled a much needed void in the Mountain State and has provided our citizens superb medical care.

Much of the credit for the establishment of this fine facility, including the Basic Science Building, is given to former Gov. Okey L. Patteson, whose efforts and devotion to the project helped to make it a reality.

We, in West Virginia, are fortunate to have highly capable physicians at West Virginia University, who are held in high esteem by their colleagues throughout the medical profession.

I congratulate West Virginia University Hospital for its first decade of public service and wish it continued success in the coming years as it continues to provide truly exceptional medical care.

Mr. President, I request unanimous consent to have the news release from West Virginia University printed in the RECORD at this point.

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

WEST VIRGINIA UNIVERSITY NEWS

MORGANTOWN, W. Va., August 10 1960.—On that day, the brand new and long-awaited West Virginia University Hospital admitted its first patient.

Accompanying the patient was her referring physician, Dr. Jacob C. Huffman of Buckhannon, then president of the State Mental Association which had actively helped in the early planning of the facility.

Flash bulbs popped, smiles abounded and the welcoming ceremony was warm and informal as WVU and the Mountain State celebrated the completion of the teaching and treatment hospital.

Adjoining the Basic Sciences Building (completed and occupied in 1957), the University's teaching hospital made the complex a true medical center built at a total cost of $26.2 million.

Thus began a new era that within the next decade would blend in a single setting: educational opportunities in the health sciences never before available to West Virginians in their own state; research into health problems; and extensive diagnostic and treatment services for patients.

In the first eight years, one of every 25 West Virginians had been treated at University Hospital.

In one sample survey taken of all patients admitted between midnight April 30 and midnight May 14, 1968, 83.9 per cent of the patients came from 41 of West Virginia's 55 counties. The remaining 16.1 per cent came from nine counties in Pennsylvania, Maryland and Ohio.

University Hospital is a referral center. Except for emergencies, all patients are referred to the facility by family physicians or community agencies. Payment of hospital bills must come from the individual patient or his responsible relative unless arrangements for payment are made through a third party.

University Hospital Director Eugene L. Staples, who was appointed in January, 1960,

one month before the University formally accepted the completed building, has long called the family physician "the key figure in admission process."

Because these physicians, mostly West Virginians, have shown their confidence by referring their patients with special medical problems or needs, the hospital has made steady growth.

By December of the first year, the hospital's services included medicine, general surgery, neurosurgery and the other surgical specialties, obstetrics and gynecology, pediatrics, and physical therapy and rehabilitation.

A department of psychiatry joined by the following November.

Another veteran of University Hospital's embryonic days is Audrey E. Windemuth, director of Nursing Service.

Responsible for more than 450 people in the nursing department, Miss Windemuth works with doctors, administrators and professional people in allied health fields to see that University Hospital patients get the best care possible. And she and her staff cooperate with the WVU School of Nursing to provide the clinical experiences nursing students must have.

Established in February, 1961, was Friends of University Hopital, an auxiliary organization whose members still give thousands of hours of volunteer services to patients and all their Gift Shop profits toward improvements for the hospital.

In February, 1962, the first open heart surgery was performed at the hospital. And in July of that year, the hospital received notice of its full accreditation by the Joint Commission on Accreditation of Hospitals. By the following November, 1,000 babies had been born there.

Director Staples could look back and point out with justifiable pride that, in its first 11 months, the University Hospital reached a level of operation that took then-new university hospitals in Washington, Florida and Kentucky two years to attain.

Today the 2,156-room University Hospital has 1,150 employees to meet the various needs of its ever increasing numbers of patients. Services by 30 members of the present staff date back to or before opening day, while many other staff members boast records of service to University Hospital almost as long.

A sampling of comparison figures contained in the hospital's latest annual report gauges its growth:

Admissions—(1960–61) 2,293, (1969–70) 12,036; Birth—(1960–61) 231, (1969–70) 895; Days of Care—(1960–61) 29,401, (1969–70) 135,552; Beds in Service, including newborn (1960–61) 170, (1969–70) 458; Outpatient Visits—(1960–61) 5,705, (1969–70) 80,-831; Emergency Room Visits—(1960–61) 3,041, (1969–70) 25,611; Operating Room—(1960–61) 947, (1969–70) 5,407; Physical Therapy Treatments—(1969–71) 8,033, (1969–70) 22,674; X-ray—Diagnostic—(1960–61) 6,901, (1969–70) 59,065; X-ray Therapy Procedures—(1960–61) 1,460, (1969–70) 7,319; Laboratory Procedures—(1960–61) 38,026, (1969–70) 633,860.

During University Hospital's first decade, 153 men and women have completed internships there, 151 have completed residencies in 16 medical and dental specialties, 20 have become X-ray technicians, and West Virginia University has granted 156 degrees in medical technology, 234 degrees in nursing, 327 degrees in dentistry, 76 degrees in dental hygiene, 289 degrees in pharmacy, and 440 degrees in medicine.

First priority as University Hospital enters its second decade is construction of a four-story addition, already approved and funded. The addition will enlarge emergency room and radiology facilities and make possible a specially designed 16-bed intensive care unit to replace 10 beds in an ill-adapted area currently used for this critical service.

PROBLEMS OF INTERNATIONAL TRADE

HON. JOHN C. CULVER

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Friday, August 14, 1970

Mr. CULVER. Mr. Speaker, the problems of international trade have attracted particular national attention in the past several months. Many are worried that large influxes of cheap imports will seriously damage important industries. Others are equally as worried that American protectionism will spark a trade war which will injure many other industries with markets abroad and which will contribute to the inflationary spiral.

In response to this national concern, the Ways and Means Committee recently reported out a bill which would reverse the recent trend toward freer trade and which would establish mandatory import quotas for textiles and shoes. President Nixon has threatened to veto this bill, if it is passed by the Congress. In this context it is important for the country to candidly examine all sides of this issue to see where the interests of the United States really lie.

On the one hand, the injury done to certain industries by increased imports should be fully recognized. It is painful for a worker to find a new job when his previous employer is forced to shut down or change his operations. It is equally as painful for the employer to close his doors or to change his methods of doing business.

In these situations life patterns are disrupted and workers with special, nontransferable skills are deprived of a means to earn a living for themselves and their families. Investments are destroyed. Buildings and machinery stand idle while unemployment lines grow.

On the other hand, Iowa and the Nation as a whole have a tremendous stake in keeping open the channels of free international trade. In the agricultural field alone, the United States earned $6.65 billion through exports in 1969–70. Iowa's share of this total amounted to well over $400 million. Soybean and soybean products accounted for $160 million with feed grains and meat products making up a substantial part of the remainder. American protectionism could provoke retaliation and seriously affect this market. For example, it has been estimated that should protectionism induce a reduction in foreign demand of as little as 5 to 8 percent, it would result in a drop of soybean prices of 25 to 50 cents a bushel.

The 2.7 million Americans depend upon exports for their livelihood, because they are involved in producing goods for sale overseas. Additional jobs are created in the transportation field and in the export of services.

In the final analysis, however, every American would be affected by a trade war, because a reduction of imports would mean a reduction in the supply of many items for which there is a large domestic demand. The result will be higher prices, and fewer product choices. Those families with lower incomes have the most to lose. Some may even find themselves unable to afford certain articles or be forced to settle for those of lesser quality.

Another factor should be kept in mind. An import quota directly benefits only those companies in the specific industry, while it penalizes every American consumer by maintaining prices at an artificially high level.

Many experts in the field have also noted that quotas tend to favor the creation of "vested interest" groups, which have a direct interest in excluding other manufacturers from obtaining a share of the American quota. In this way quotas promote the establishment of monopolistic practices which severely limit competition and tend to maintain high prices.

Under existing law the Government has a number of ways in which to alleviate the damage caused to sectors of the American economy by cheap imports. The Trade Expansion Act of 1962 provides for investigations by the Tariff Commission and for Federal assistance when serious injury has been sustained by individual workers, by specific firms or by an industry as a whole. Workers can receive training, counseling, and additional cash allowances. Firms become eligible for technical and financial assistance, and when the injury is industry-wide, tariffs can be increased above existing levels.

This approach is designed to deal with the specific damage caused in our economy and is intended to retain the benefits of lower priced, imported products. If the present programs do not operate effectively, they should be improved and liberalized.

In fulfilling its responsibilities to promote the national welfare, the Federal Government should pay particular attention to those sectors of the economy which are damaged by large quantities of imported products. The Government should not, however, become so impressed with the arguments of special interest groups that it takes steps injurious to all Americans in the long run by closing to us our own important foreign markets.

EGYPT'S BREACH OF MIDDLE EAST CEASE-FIRE AGREEMENT

HON. RICHARD S. SCHWEIKER

OF PENNSYLVANIA

IN THE SENATE OF THE UNITED STATES

Friday, August 21, 1970

Mr. SCHWEIKER. Mr. President, I wish to address myself to the latest developments in the so-called standstill cease-fire which went into effect in the Middle East August 7.

I was one of those who hailed the achievement of a cease-fire in the Middle East, because a true cease-fire period would provide an excellent climate for peace negotiations between Israel and its Arab neighbors. Furthermore, I felt that the mere fact that a cease-fire had been accepted by Egypt, Jordan, Lebanon, and Israel was in itself a hopeful sign.

Now, however, Israel has shown that Egypt violated the cease-fire by moving several surface-to-air missile batteries to within 16 miles of the Suez Canal, after the cease-fire period began. The cease-fire agreement called for no improvement of military positions by either Egypt or Israel within 31 miles of the canal.

Mr. President, I am deeply concerned with this news, first, because it is a serious breach of the cease-fire agreement, and second, because it now puts Egyptian-Soviet missiles in a position to hit Israeli planes flying over the Israeli-held side of the Suez Canal. Until the cease-fire period began, Israel air missions were able to deter the emplacement of Soviet-Egyptian missiles so close to the canal. This has caused a marked deterioration in Israel's strategic position.

Yet our State Department, which does not deny that the movement of missiles took place or that this constitutes a breach of the cease-fire, is strangely silent.

I am afraid, Mr. President, that once again we have permitted Egypt and the Soviet Union to escalate their forces against Israel without lifting a finger or even raising our voice. We have counseled Israel to be moderate but we have done little or nothing to discourage Egypt or the Soviet Union from being immoderate.

We are all hopeful that peace can come to the Middle East. We all hope that the cease-fire can succeed toward that end. But at the same time we cannot be blind to the deadly game the Soviet Union and Egypt have been playing at the expense of Israel's security posture. Once again, if we do nothing or say nothing, they will have scored and the Middle East crisis will become that much harder to solve.

Mr. President, I call upon our State Department to make it clear that we will not tolerate such breaches of the cease-fire, and I hope, as well, that Israel's new worsened strategic position can be duly noted by those in charge of our military aid policies in the executive branch.

IMPEACHMENT OF ASSOCIATE JUSTICE WILLIAM O. DOUGLAS

HON. GERALD R. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, August 14, 1970

Mr. GERALD R. FORD. Mr. Speaker, on August 5, I forwarded to the distinguished chairman of the Committee on the Judiciary and of its special subcommittee, Mr. CELLER, investigating the impeachment of Associate Justice William O. Douglas, a comprehensive legal memorandum on the impeachment process as it relates to the Federal Judiciary. This study was independently prepared at my request by the Detroit, Mich., law firm of Dykema, Gossett, Spencer, Goodnow and Trigg. The full text of this legal memorandum, together with related correspondence, appears in the CONGRESSIONAL RECORD of August 10 at pages 28091 to 28096 inclusive.

Under previous permission, I am hereby placing in the RECORD an important addendum to the basic memorandum consisting of a letter from Dykema, Gossett, Spencer, Goodnow and Trigg, dated August 12, 1970, commenting particularly upon the legal memorandum prepared by the attorney for the accused, submitted to the special subcommittee on May 18, 1970. The text of the commentary and the memorandum to which it refers follow:

DYKEMA, GOSSETT, SPENCER, GOODNOW & TRIGG,
Detroit, Mich., August 12, 1970.

HON. GERALD R. FORD,
House Minority Leader,
The U.S. Capitol,
Washington, D.C.

DEAR CONGRESSMAN FORD: Several months ago, you requested that we prepare a memorandum concerning the Congressional Impeachment Power as it relates to the Federal Judiciary. You asked that our analysis be objective, non-partisan and unbiased and that our conclusions be without regard to any pending controversy involving the Federal Judiciary. I and my associate D. G. Wyllie researched the problem thoroughly and on June 23, 1970, we delivered that memorandum to you (the "Kelley Memorandum"). We reviewed each of the reported proceedings where federal judges were impeached, we discussed each proceeding and we concluded on the basis of precedents and authorities that conduct of a Federal Judge properly subject to impeachment need not be "indictable" or "criminal" and might even consist of conduct which would be "blameless if committed by a private citizen".

Since delivering the Kelley Memorandum to you, we have received a document entitled "Memorandum on Impeachment of Federal Judges" prepared by Simon H. Rifkind as counsel for Mr. Justice Douglas (the "Rifkind Memorandum") and submitted to the Celler Subcommittee on May 18. The Rifkind Memorandum purports to establish the proposition that "There is nothing in the Constitution or in the uniform practice under the Constitution to suggest that Federal Judges may be impeached for anything short of *criminal* conduct." (Rifkind Memorandum, p. 1. Emphasis in original.)

On August 7 you requested that we review the Rifkind Memorandum and advise you if that Memorandum in any way affects the opinions and conclusions expressed in the Kelley Memorandum. After a careful review, we conclude that there is nothing in the Rifkind Memorandum that in any way alters the opinions and conclusions expressed in the Kelley Memorandum. In fact, the references and sources of material in the Rifkind Memorandum led us to authorities not included in the Kelley Memorandum that confirm beyond any reasonable doubt the correctness of the conclusions reached in the Kelley Memorandum and the absolute invalidity of the proposition argued in the Rifkind Memorandum. We shall discuss those authorities in this letter.

The Rifkind Memorandum is to a considerable degree grounded on historical inaccuracies. For example, Rifkind claims that past impeachment proceedings, notably that of Justice Chase, conclusively established that impeachment would lie only for "criminal conduct" or "criminal offenses". As we discussed at page 9 of the Kelley Memorandum, the Chase Impeachment merely established that impeachment was not to be a purely partisan weapon.

Rifkind makes reference to impeachment proceedings against President Andrew Johnson. As the Kelley Memorandum clearly shows, different standards are to be applied in the case of the Federal Judiciary. The tenure of office of the President is not based upon "good behavior" as in the case of Federal Judges and thus is in no wise an analogy as the decided cases involving the Federal Judiciary clearly demonstrate.

When Rifkind attempts to support the proposition that impeachment of the Federal Judiciary will lie only for *"criminal* conduct" he refers us to source material (and for authority not included in the Kelley Memorandum) which indisputably establishes that the Rifkind position is completely and utterly without foundation. Rifkind deals with the *Archbald* case at pages 8 and 9 of the Rifkind Memorandum which in its entirety reads as follows:

"B. *Robert W. Archbald* (Circuit Judge—Commerce Court 1912): Archbald, a former district judge and later circuit judge assigned to the Commerce Court (which had jurisdiction over ICC orders), was formally charged with inducing railroads with cases pending before him to sell or lease to him certain coal properties; with accepting $500 from a coal operator for seeking to persuade another railroad with a matter before him to lease certain coal properties to the operator; with generally speculating in coal properties while a member of the Commerce Court and with selling his services to compromise matters pending before the ICC for his own personal profit. With "respect to his prior service as a district judge, he was charged with 'accepting' loans from lawyers and litigants who had cases pending before him. Archbald, who admitted the factual basis for the charges but denied any criminal intent, was convicted on five counts. Senator Elihu Root, joined by Senator Henry Cabot Lodge, explained that he had voted to convict Archbald—

" 'Because I find that he used the power and influence of his office as judge of the Court of Commerce to secure favors of money value for himself and his friends from railroad companies, some of which were litigants in his court and all of which were under the regulation of the Interstate Commerce Commission, subject to the review of the Court of Commerce.

" 'I consider this course of conduct, and each instance of it, to be high crime and misdemeanor.

" 'I have voted 'not guilty' upon the other articles, because while most of them involve improper conduct, I do not consider that the acts proved are high crimes and misdemeanors . . .' ". (End of Rifkind quote.)

It is noted that the Rifkind Memorandum, relying solely upon Senator Root for its inferences, indicates no source for the Root statement and the Root quotation was clearly taken out of context. I repeat that Rifkind, as his *sole* authority, relies upon remarks of the illustrious Senator Elihu Root. Carefully read the quoted language does not in fact support Rifkind's proposition. Other action by Senator Root establishes the very contrary; that Senator Root considered the Archbald case as "forever removing from the domain of controversy the proposition that judges are only impeachable for the commission of crimes or misdemeanors against the laws of general application", and as establishing the proposition that a Federal Judge may be impeached for acts "that would have been blameless if committed by a private citizen". It was none other than Senator Root who on January 13, 1914 successfully moved that a Harvard Law Review Article be printed as a public document (Senate Document No. 358) terming it "very instructive" and "of very great value when taken in connection with the proceedings in the Archbald case" (Cong. Rec. 1914, p. 1561). The action of Senator Root, and the part of the article dealing with the issue with which we are concerned here was adopted as the highest precedental authority by the House of Representatives.

The article that was printed as Senate Document No. 358 was written by Mr. Wrisley Brown, Special Assistant to the Attorney General, who conducted the original investigation which resulted in the impeachment of

Judge Robert W. Archbald and was designated by resolution of the managers on the part of the House of Representatives to assist in the trial of the case before the Senate. The article is entitled "The Impeachment of the Federal Judiciary", 26. Har. L. Rev. 689 (1913). In this article Brown discusses in detail all of the six impeachment proceedings against federal judges which had occurred prior to 1913, the date of the article. Brown states at page 704: "The impeachments that have failed of conviction are of little value as precedents because of their close intermixture of fact and law, which makes it practically impossible to determine whether the evidence was considered insufficient to support the allegations of the articles or whether the acts alleged were adjudged insufficient in law to constitute impeachable offenses." Prior to 1913, the date of publication of Brown's article, there had been six impeachments of Federal Judges; three being acquitted (Chase impeached in 1804, Peck impeached in 1830, and Swayne impeached in 1904) and three convicted (Pickering impeached in 1804, Humphreys impeached in 1862 and Archbald impeached in 1912). Of the three impeachments resulting in convictions, Judge Pickering and Judge Humphreys did not defend. The only impeachment up to 1913 resulting in conviction (and during which proceedings the entire subject matter was concerned with whether or not impeachment would lie for non-criminal offenses) was that of Judge Archbald which was concluded in 1913. The Archbald case has been termed a "landmark" decision on the subject of whether impeachment will lie against a Federal Judge for noncriminal offenses and has been so recognized by the House of Representatives in its own Precedents (Cannon's Precedents, Section 457). We quote in its entirety that part of Cannon's Precedents dealing with Senator Root's motion and the extract from Senate Document No. 358 relating to the precise issue concerning which there is such distinct variance between the Kelley and Rifkind Memoranda. We quote the entire extract as it appears in Cannon's Precedents:

"457. Summary of deductions drawn from judgments of the Senate in impeachment trials.

"The Archbald case removed from the domain of controversy the proposition that judges are only impeachable for the commission of crimes or misdemeanors against the laws of general application.

"On January 13, 1914, *on motion of Mr. Elihu Root, of New York* (Emphasis added.) a monograph by Wrisley Brown, of counsel on behalf of the managers in the impeachment trial of Judge Robert W. Archbald, was printed as a public document. The following is an excerpt:

" 'The impeachments that have failed of conviction are of little value as precedents because of their close intermixture of fact and law, which makes it practically impossible to determine whether the evidence was considered insufficient to support the allegation of the articles, or whether the acts alleged were adjudged insufficient in law to constitute impeachable offenses. The action of the House of Representatives in adopting articles of impeachment in these cases has little legal significance, and the deductions which have been drawn from them are too conjectural to carry much persuasive force. Neither of the successful impeachments prior to the case of Judge Archbald was defended, and they are not entitled to great weight as authorities. In the case of Judge Pickering, the first three articles charged violations of statutory law, although such violations were not indictable. Article four charged open and notorious drunkeness and public blasphemy, which would probably have been punishable as misdemeanors at common law. In the case of Judge Humphreys, articles three and four charged treason against the United States. The offense charged in articles one and two probably amounted to treason, inasmuch as the ordinance of secession of South Carolina had been passed prior to the alleged secessionary speeches of the respondent, and the offenses charged in articles five to seven, inclusive, savored strongly of treason. *But, it will be observed, none of the articles exhibited against Judge Archbald charged an indictable offense, or even a violation of positive law. Indeed, most of the specific acts proved in evidence were not intrinsically wrong, and would have been blameless if committed by a private citizen. The case rested on the alleged attempt of the respondent to commercialize his potentiality as a judge, but the facts would not have been sufficient to support a prosecution for bribery. Therefore, the judgment of the Senate in this case has forever removed from the domain of controversy the proposition that the judges are only impeachable for the commission of crimes or misdemeanors against the laws of general application. The case is instructive, and it will go down in the annals* of the Congress as a great landmark of the law.' " (Emphasis added.) (End of Cannon quote.)

I leave to you and any other fairminded and discriminating reader the judgment as to whether or not the Archbald case did not forever remove "from the domain of controversy the proposition that judges are only impeachable for the commission of crimes or misdemeanors against the laws of general application," and did not establish that federal judges may be impeached for acts "not intrinsically wrong" and which "would have been blameless if committed by a private citizen". If this be so, what is there in *Archbald* to support the Rifkind thesis that federal judges may not be impeached for any conduct "short of *criminal* conduct"?

Following Archbald there were three impeachments, English (1926), Louderback (1933) and Ritter (1936). English resigned and Louderback was acquitted and as Brown stated these "are of little value as precedents". Ritter is quite another matter—for Ritter was convicted. If there could be the slightest doubt as to the precedent established in *Archbald* that impeachment will lie for non-criminal conduct by federal judges, that doubt was put to rest in the Ritter case. The Ritter conviction expressly recognized that the judicial tenure provision of the Constitution affords grounds of impeachment for other than criminal offenses. Specifically in the Ritter case, the first six Articles of Impeachment alleged offenses that on their face appeared to be of a criminal nature. On each of these Ritter was acquitted. The seventh Article of Impeachment against Judge Ritter was phrased in *general terms of misconduct only* and it was *only* upon the seventh Article of Impeachment that Judge Ritter was found guilty. As set forth in the Kelley Memorandum (pages 20–22) the various written opinions of the Senators filed in that case confirm the conclusion that conduct on the part of a Federal Judge need not constitute a *criminal* offense to be impeachable and in fact, as established in *Archbald*, conduct is impeachable that is non-criminal and even such conduct as "would have been blameless if committed by a private citizen" is impeachable.

The Impeachment Precedents and the conclusions to be derived therefrom as reflected in Cannon establish, as stated by Cannon, "that the Archbald case removed from the domain of controversy the proposition that judges are only impeachable for the commission of crimes or misdemeanors against the laws of general application" and the Ritter case, the only subsequent case involving successful impeachment of a Federal Judge, supports this principle absolutely.

The Rifkind Memorandum airily dismisses the principles established by the Archbald and Ritter cases, the solemn recognition given by the House of Representatives to the principles in Cannon's Precedents and the virtually unanimous view of historians and other authorities supporting the principles established in *Archbald* as announced in Cannon by stating:

"Some academics have been misled by the heated statements of disgruntled supporters of impeached judges to conclude that they have been impeached for less than criminal offenses. Professor Corwin, for example, relies upon the *Archbald* and *Ritter* cases for the proposition that in this century the meaning of 'high crimes and misdemeanors' has broadened to include elements of 'good behavior.' "

The Rifkind Memorandum neglects to reveal that virtually every learned student of the Constitution since the founding of our Government (and who were assuredly not just "disgruntled supporters of impeached judges") supports the conclusions of the Kelley Memorandum and denies the validity of Rifkind that only "*criminal* conduct" is impeachable. Rifkind mentions the distinguished Ritter cases but omits mention of other distinguished authorities who likewise endorse those principles.[1]

In conclusion, of the nine federal judiciary impeachments in this nation's history, there were four acquittals; two who did not defend and one resignation (all proceedings lacking precedental value) and there is the Archbald conviction immortalized in Cannon's Precedents, the Ritter conviction, Cannon and virtually every recognized authority to completely demolish the Rifkind thesis that only "criminal conduct" is impeachable. We reiterate the opinions and conclusions expressed in the Kelley Memorandum.

Respectfully,

BETHEL B. KELLEY.

MEMORANDUM ON IMPEACHMENT OF FEDERAL JUDGES

A careful examination of the Constitution itself, of the materials reflecting the intent of its draftsmen, and of the records in actual impeachment proceedings clearly demonstrates that federal judges may be impeached only upon charges of "Treason, Bribery, or other High Crimes and Misdemeanors." There is nothing in the Constitution or in the uniform practice under the Constitution to suggest that federal judges may be impeached for anything short of *criminal* conduct. And the prohibition against *ex post facto* laws, the notice requirement of due process, the protection of the First Amendment, and considerations of "separation of powers" prevent any other standard.

I. THE CONSTITUTIONAL PROVISIONS

As Thomas Jefferson noted in his "Manual of Parliamentary Practice," "the provisions of the Constitution of the United States on the subject of impeachments" are found *exclusively* in Article I, Sections 2 and 3; Article II, Section 4; and Article III, Section 2.

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[1] Wrisley Brown, Clarence Cannon, the distinguished House of Representatives of the United States in adopting Cannon's Precedents (see Jefferson's Manual, 1969 ed. p. vi) and Senator Elihu Root, as discussed above;

Rawle in his work on the Constitution (p. 211);

Story on the Constitution (V. 1, 5th ed. pp. 584 and Sections 796, 799);

Cooley in his Principles of Constitutional Law—(p. 178);

George Ticknor Curtis in his Constitutional History of the United States, (V. 1, pp. 481–482);

Watson in his Treatise on the Constitution, (V. 2, pp. 1034, 1036–1037);

American and English Encyclopedia of the Law (2nd ed., V. 15, pp. 1066–1068);

Black in his work on Constitutional Law (2d ed. pp. 121–122).

Article I, Section 3 provides that the House shall have the "sole Power of Impeachment," and that the Senate shall have the "sole Power to try all Impeachments." Article II, Section 4 provides that "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."

Section 2 of Article III provides that "the Trial of all Crimes, except in Cases of Impeachment, shall be by Jury."

Note that Jefferson did *not* include the provision, found in Article III, Section 1, that federal judges are to serve "during good Behavior" among the provisions relating to the impeachment power.[1]

II. THE DRAFTSMEN'S INTENT

The records of the Constitutional Convention reinforces Jefferson's conclusion that impeachment of federal judges is to be confined to charges of "Treason, Bribery, or other high Crimes and Misdemeanors." In the Convention, impeachment was discussed principally with reference to removal of the President. Early drafts provided for "impeachment and conviction for malconduct or neglect in the execution of his office," and later for "malpractice or neglect of duty," 1 Farrand, Records of the Federal Convention, pp. 89–90, 226, 230, 236. Later, the draft language was changed to focus more narrowly upon charges of "treason, bribery or corruption." 2 Farrand, pp. 185–86. It was thereafter suggested that the more general phrase "maladministration" be added. When James Madison argued that "so vague a term will be equivalent to a tenure during the pleasure of the Senate," the general phrase was rejected in favor of "for other high Crimes and Misdemeanors against the United States." 2 Farrand, pp. 445, 450. When an effort was made to insert a separate judicial removal provision in Article III, following the words "good behavior," it was rejected upon the opposition of Morris, Randolph, Rutledge and Wilson. 2 Farrand, 428, 429.

That it was the intention of the Founding Fathers to deal with impeachment of judges exclusively under the language of Article II is made clear by Hamilton's writings in the *Federalist Papers*, our most authoritative guide to the meaning of the Constitution. In No. 79, Hamilton wrote that it was the intention of the draftsmen to make federal judges more independent than were any state judges, and that—

"The precautions for their responsibility are comprised in the article respecting impeachments. . . . This is the only provision on the point which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own Constitution with respect to our own judges."

Hamilton proceeded to indicate that there had been a deliberate decision not to make judges impeachable "on account of inability." He argued that "an attempt to fix the boundary between the regions of ability and inability would more often give scope to personal and party attachments and enmity than advance the interest of judges in the public good."

In short, in order to preserve judicial independence, provision was made by the Founding Fathers to permit removal of judges only when they could be shown to have committed criminal offenses. Broader bases for removal were rejected as being too dangerous.[2]

And in the summer of 1789, in the debate on establishing the first executive department, Congressman Livermore of New Hampshire observed that federal judges "hold their offices during good behavior, they have an inheritance which they cannot be divested of *but on conviction of some crime.*" 4 Elliot's Debates, at 365. (Emphasis supplied.)

Moreover, in 1802 Senator Stone of North Carolina delivered a classic argument, which appears to have persuaded the Senate which was then considering abolition of certain inferior courts, that the Constitution provides for removal of judges by impeachment only in the case of high crimes and misdemeanors, and that accordingly judges might be guilty of lapses from "good behavior" for which they cannot be impeached. In the Senator's words:

"If the words, impeachment of high crimes and misdemeanors, be understood according to any construction of them hitherto received and established, it will be found, that although a judge, guilty of high crimes and misdemeanors, is always guilty of misbehaviour in office, yet that of the various species of misbehaviour in office, which may render it exceedingly improper that a judge shall continue in office, many of them are neither treason, nor bribery, nor can they be properly dignified by the appellation of high crimes and misdemeanors; and for the impeachment of which no precedent can be found; nor would the words of the Constitution justify such impeachment." 11 Annals of Cong. 72 (1802)

On April 9, 1970, Assistant Attorney General William E. Rehnquist testified before Senator Tydings' Subcommittee on Improvements in Judicial Machinery, and said of Senator Stone's argument:

"The fact that it was persuasively set forth and really not refuted on the floor that early suggests to me that this is probably consistent with the view of the framers on the matter." (Tr. 9)

III. THE PRACTICE

It has been our practice under the Constitution to impeach only on the basis of charges which state criminal offenses.

The first impeachment case, that of Judge John Pickering in 1803, although brought and decided on purely political grounds, illustrates how wide was the recognition that impeachment was confined to "Treason, Bribery, or other high Crimes and Misdemeanors"—the criminal offenses enumerated in Article II. Although Judge Pickering had been hopelessly insane for three years, was an incurable drunkard, and had misconducted himself on the bench, the leaders of the effort to remove him felt it necessary to couch their charges under the rubric "high Crimes and Misdemeanors," [3] and to charge him with three counts of willfully violating a Federal statute relating to the posting of bond in certain attachment situations, and the misdemeanors of public drunkeness and blasphemy. They not only believed that strong evidence of insanity, drunkeness and judicial misconduct were insufficient to justify impeachment, but because they viewed impeachment as requiring proof of criminal conduct they found it necessary to attempt to exclude evidence of Pickering's insanity "only from the fear, that if insanity should be proved, he cannot be convicted of high crimes and misdemeanors by acts of decisive madness." I *Memoirs of John Quincy Adams* 299–300.

The next, and most important, judicial impeachment case not only affirmed the rule that impeachment is confined to "high Crimes and Misdemeanors," but made it clear that to warrant impeachment actual criminal conduct must be shown. The case involved a major effort by the Jeffersonians, newly in power, to remove Associate Justice Samuel Chase from the Supreme Court. As Senator Giles of Virginia openly avowed, the impeachment of Justice Chase was to be the first step by the Jeffersonians in the removal of all the Justices appointed by prior administrations, including Chief Justice John Marshall—the principal target.

Chase was impeached in the House by a vote on straight party lines, Jeffersonians against Federalists. Each of the eight articles of impeachment dealt with his official conduct during judicial proceedings and none stated a criminal offense, although each one was captioned "high crimes and misdemeanors"—the House did not then, and never has since, attempted formally to impeach for want of "good behavior." He was charged, for example with the "high crimes and misdemeanors" of using intemperate language in instructing a grand jury, in conducting a trial in an arbitrary way, and in unreasonably refusing to excuse a juror from jury duty.[4]

Chase's Senate trial turned into a great constitutional debate over whether a federal judge may be removed on charges which do not amount to "high Crimes and Misdemeanors." For the Jeffersonians, George Washington Campbell of Tennessee unsuccessfully contended that impeachment was "a kind of an inquest into the conduct of an officer . . . and the effect that his conduct . . . may have on society."

For Chase and the Federalists, counsel argued successfully that impeachment could only be had for "an indictable offense," noting that "high Crimes and Misdemeanors" were technical legal terms:

"Well understood and defined in law. . . . A misdemeanor or a crime . . . is an act committed in violation of a public law either forbidding or commanding it. By this test, let the respondent . . . stand justified or

[1] As is indicated later in this Memorandum, the settled construction of the Constitution is to confine impeachment to charges of "Treason, Bribery, high Crimes and other Misdemeanors," and without regard to the "good behavior" provision. This Memorandum has no bearing upon the present debate between those who believe that impeachment for high crimes and misdemeanors is the exclusive avenue to remove judges, and those who contend that the Constitution permits remedies short of impeachment to deal with lapses from "good behavior" which do not amount to grave criminal offenses. With regard to this controversy, see Kurland "Constitution and the Tenure of Federal Judges: Some Notes from History," 36 Chi. L.Rev. 665 (1969); Memorandum on the Constitutionality of a Statutory Alternative to Impeachment, Submitted by the Senate Subcommittee on Improvements in Judicial Machinery, printed in the Congressional Record for June 5, 1969.

[2] Justice Story, writing a half century later but relying not only on Hamilton but also on Mr. Justice Wilson's lectures of 1804, agreed, see 2 Story, Commentaries on the Constitution, §§ 1624–26, 1631. Justice Wilson had written of Federal judges that "they may be removed, however, as they ought to be, on conviction of high crimes and misdemeanors."

[3] The removal of Pickering was sought, not because of his incapacity, but to test the procedure for purging the Federalist judges. As the Jeffersonian leader, Senator Giles of Virginia, asserted, "We want your offices, for the purpose of giving them to men who will fill them better." Historian Henry Adams observed it was "an infamous and certainly an illegal conviction." 3 Beveridge, *Life of John Marshall*, p. 157, 143.

[4] Chase was widely regarded as one of the most able members of the Supreme Court. He had been a delegate to the Continental Congress, a signer of the Declaration of Independence, a member of the Maryland Convention to ratify the Constitution and Chief Justice of his state's Supreme Court. 3 Beveridge, *Marshall*, pp. 184–185.

condemned." 3 Beveridge, *Life of John Marshall*, p. 199.

The Nation's most distinguished lawyer, Luther Martin of Maryland, on Chase's behalf reiterated the principle that only "indictable offenses" could support impeachment, arguing that any other interpretation was barred by the *ex post facto* clause of the Constitution. 3 Beveridge, *Marshall*, p. 202.

In response to the charge that Chase had given an inflammatory grand jury instruction with the intent of stirring "the good people of Maryland against their state government, and constitution," counsel asserted Chase's right to freedom of speech. He asked the Senate:

"Is it not lawful for an aged patriot of the Revolution to warn his fellow-citizens of dangers, by which he supposes their liberties and happiness to be threatened?"

The Senate was asked to decide whether Chase's appointment to the bench deprived him of the "liberty of speech which belongs to every citizen?" 3 Beveridge, *Marshall*, p. 206.[5]

The turning point came when the lead prosecutor openly conceded that impeachment *was* a "criminal prosecution." Although controlled by Jeffersonians (25 to 9), shaken by the debate and by the defenses resting on the *ex post facto* and free speech clauses, the Senate on March 1, 1805 acquitted Chase, putting beyond doubt the principle that impeachment was to be for criminal offenses only.

So it has remained in our history. The point was driven home during the impeachment of President Andrew Johnson in 1867 for alleged "high Crimes and Misdemeanors." The former Justice Curtis summarized Johnson's successful defense as resting 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.

In the twentieth century, only five federal judges have been impeached.[6] In *every* case, the articles of impeachment charged acts amounting to "High Crimes and Misdemeanors." Consider them case by case:

A. *Charles Swayne* (District Judge—N.D. Fla. 1903): Judge Swayne was formally charged by the House with three counts of falsely certifying to excessive traveling expenses and thereby unlawfully obtaining money from the United Sttaes, committing a "high crime and misdemeanor in his said office." He was also charged with two counts of unlawfully appropriating to his own use a railroad car for the benefit of himself, his family and friends while the railroad involved was under the receiver appointed by him. In the Senate there was much debate over whether the high crimes and misdemeanors charged had to have been committed in the discharge of Swayne's official duties—but no debate about the necessity of establishing actual criminality, which was conceded. Swayne was acquitted in the Senate.

B. *Robert W. Archbald* (Circuit Judge—Commerce Court 1912): Archbald, a former district judge and later circuit judge assigned to the Commerce Court (which had jurisdiction over ICC orders), was formally charged with inducing railroads with cases pending before him to sell or lease to him certain coal properties; with accepting $500 from a coal operator for seeking to persuade another railroad with a matter before him to lease certain coal properties to the operator; with generally speculating in coal properties while a member of the Commerce Court and with selling his services to compromise matters pending before the ICC for his own personal profit. With respect to his prior service as a district judge, he was charged with "accepting" loans from lawyers and litigants who had cases pending before him. Archbald, who admitted the factual basis for the charges but denied any criminal intent, was convicted on five counts. Senator Elihu Root, joined by Senator Henry Cabot Lodge, explained that he had voted to convict Archbald—

"Because I find that he used the power and influence of his office as judge of the Court of Commerce to secure favors of money value for himself and his friends from railroad companies, some of which were litigants in his court and all of which were under the regulation of the Interstate Commerce Commission, subject to the review of the Court of Commerce.

"I consider this course of conduct, and each instance of it, to be a high crime and misdemeanor.

"I have voted 'not guilty' upon the other articles, because while most of them involve improper conduct, I do not consider that the acts proved are high crimes and misdemeanors. . . ."

C. *George W. English* (District Judge—E.D. No. 1925): Judge English resigned after being impeached but before trial in the Senate on charges of personal corruption in the handling of bankruptcy cases, to his own personal profit and that of Charles B. Thomas, a referee in bankruptcy with whom he was charged with conspiring.

D. *Harold L. Louderback* (District Judge—N.D. Cal. 1932): Judge Louderback was formally charged by the House with improper conduct in the appointment of receivers and receivers' attorneys in bankruptcy and reorganization cases. In particular, it was charged that Louderback had improperly appointed as a receiver the son of a California Senator, to whom he owed his judicial appointment. Louderback was acquitted.

E. *Halsted L. Ritter* (District Judge—S.D. Fla. 1936): Judge Ritter was impeached and formally charged with "high crimes and misdemeanors," including: "corruptly and unlawfully" receiving $4500 out of a $75,000 receiver fee he improperly ordered to be paid to his former law partner, after another judge had set a much lower fee; committing the "high misdemeanor" of continuing to practice law and to receive fees for such practice while on the bench;[7] willful failure to report $17,300 in income on his Federal income tax returns for 1929 and 1930; and conspiracy in a champertous foreclosure proceeding. Although the Senate narrowly failed to convict him on the specific criminal charges, it did convict on a blanket charge which asserted that he was guilty of "high crimes and misdemeanors in office," specifically including "income tax evasion."

Some academics have been misled by the heated statements of disgruntled supporters of impeached judges to conclude that they have been impeached for less than criminal offenses. Professor Corwin, for example, relies upon the *Archbald* and *Ritter* cases for the proposition that in this century the meaning of "high Crimes and Misdeameanors" has broadened to include elements of "good behavior." But Archbald was charged by the House with extorting bribes from litigants before his court, with interfering in cases before the ICC for a monetary compensation, and other "corrupt conduct" for personal gain. Ritter was formally charged with receiving illegal kickbacks, with the misdeameanor "of practicing law" while on the bench, with willful income tax evasion, and with conspiracy; and having admitted receiving the fees involved and not reporting them on his income tax returns in violation of law, he was convicted under an article charging "high crimes and misdeameanors in office," and including "income tax evasions" with respect to unlawful income.[8]

IV. CONCLUSION

The constitutional language, in plain terms, confines impeachment to "Treason, Bribery, or other high Crimes and Misdemeanors." The history of those provisions reinforces their plain meaning. Even when the Jeffersonians sought to purge the federal bench of all Federalist judges, they felt compelled to at least assert that their political victims were guilty of "high Crimes and Misdeameanors." The unsuccessful attempt to remove Justice Chase firmly established the proposition that impeachment is for *criminal* offenses only, and is not a "general inquest" into the behavior of judges. There has developed the consistent practice, rigorously followed in every case in this century, of impeaching federal judges only when *criminal* offenses have been charged. Indeed, the House has *never* impeached a judge except with respect to a "high Crime" or "Misdemeanor." Characteristically, the basis for impeachment has been the soliciting of bribes, selling of votes, manipulation of receivers' fees, misappropriation of properties in receivership, and willful income tax evasion.

As Hamilton noted in the *Federalist Papers*, this stringent standard for impeachment makes the unwieldy procedure unavailable to deal with such problems as disabled judges. But that, according to Hamilton, and Story as well, was the price the Founding Fathers deliberately paid to insure the independence of the federal judiciary. If federal judges commit grave crimes, they may be impeached. If not, they are not subject to impeachment. In consequence, while the federal judiciary has over the years suffered a few judges who were unable to perform their duties,[9] since 1805 it has been

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[5] According to then Professor Frankfurter, political speeches by Justices to grand juries (in those days the Justices "rode circuit") were no rarity around 1800:

"They utilized charges to the grand juries as opportunities for popular education, Jay, Cushing, Wilson, Iredell, all indulged in the practice. . . . Having a Federalist flavor [the speeches] promptly aroused political opposition," Frankfurter & Landis, *Business of the Supreme Court*, 20–21 (1927).

[6] After Chase's acquittal, impeachment was used against judges in only two isolated instances before 1900. In 1830 Judge Peck was impeached for "high misdemeanors in office", but acquitted on a charge of having harshly sentenced a lawyer for contempt (one day in jail and 18 months suspension from practice.) The impeachment and trial of Judge Peck focused on the illegality of his action and his alleged guilty intent, not his fitness to hold office. Judge Humphreys was impeached and convicted *in absentia* in 1862 for acts amounting to treason, including aiding and abetting armed rebellion against the United States.

[7] In the Mulford Realty matter, he had written to a former client to indicate that he would continue in the case while on the banch and to demand a $2000 fee for himself—which was not reported to his former law partner. He earned his fee. From another client, he obtained $7500 for legal services in connection with several real estate transactions. Those fees were deliberately not reported on his income tax returns.

[8] Indeed, a solid majority of the Senate found him guilty of all but two of the specific charges of criminality.

[9] To deal with this problem, the Federal Judiciary Act of 1801 provided that when a federal judge could no longer discharge his duties, the circuit judges could appoint one of their number to fill his place. Thus, Judge Jeremiah Smith had been designated in 1801 to do Pickering's work.

free from political purges and from harassment directed at the beliefs, speeches and writings of individual judges. In consequence, it has not been necessary to test Luther Martin's argument in the Chase case that the *ex post facto* clause of the Constitution forbids legislative punishment for conduct not defined in advance as punishable, or to measure impeachment for a judge's beliefs, speeches and writings against the flat prohibition contained in the First Amendment that Congress shall not abridge freedom of speech. History has, therefore, demonstrated the wisdom of the choice made by the Founding Fathers.

Respectfully submitted,

SIMON H. RIFKIND,
Counsel for Mr. Justice Douglas.

STRATEGIC ARMS LIMITATION TALKS

HON. JOHN C. CULVER

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Friday, August 14, 1970

Mr. CULVER. Mr. Speaker, the second phase of the strategic arms limitation talks has recently been concluded in Vienna with an indication that significant progress continues to be made.

The United States has been seeking discussions with the Soviet Union on limiting the arms race since 1964. The first indications of reciprocal interest appeared in 1967, and on July 1, 1968. The President announced that an agreement had been reached to open talks "in the nearest future." The subsequent Soviet invasion of Czechoslovakia followed by the U.S. election and the presidential transition period delayed further action until last November, when preliminary talks began in Helsinki.

The arms race today is costing the world $182 billion a year, almost the entire U.S. budget, and 16 times the amount of the total world investment in the potentially explosive emerging countries of Africa, Latin America, and Asia.

The ultimate hopes for SALT are that a formal agreement will be reached. That will certainly be a long and difficult process. But in the shorter term, SALT, may be of major importance just by providing the forum for a closer understanding of each other's nuclear philosophy and an unwritten agreement for mutual restraint.

A recent article in the Washington Post by Chalmers M. Roberts, ably describes the level which the talks reached before their recent adjournment and some of the issues which will be coming up during phase III, which will begin in November. I insert pertinent excerpts of the article in the RECORD at this time:

ARMS TALKS: PROGRESS AND PROSPECTS

(By Chalmers M. Roberts)

Many long months ago, when the way finally was cleared for what have become known, redundantly, as the SALT talks, some American arms controllers argued that the talking would be more important than any agreement that might be reached. Now that phase II of SALT (the four months at Vienna), has ended and phase III (at Helsinki) has been scheduled to begin Nov. 2, it appears that the talking has been highly profitable but that the agreement is vital.

Despite the official lid of silence on the substance of the talks, a number of points are clear. One is that the United States started out far in advance in its thinking, both inside and outside government, on the subject of the nuclear arms race—its problems and how it might be curbed. Some experts estimate there was perhaps a year's time gap involved.

Historically, the Soviet bureaucracy forces the diplomats, the scientists and the military to stay in their own baliwicks, sending their ideas up their own bureaucratic ladders to the top. Only then, if approved, does an idea of one group start down the bureaucratic ladder of the others. Now there is evidence that this procedure has been altered radically, that, for example, foreign office desk officers can talk directly to military counterparts and others about the issues involved in SALT.

One reason for the change has been the Soviets' observation of how the process works in the United States. Another has been a necessity born of the thousands of pages of printed hearings of last year's American ABM debate, plus the Congressional Record's account of Senate floor debate, all of which had to be absorbed. There has been more such material, though not in equal amount, pouring into Moscow this year. Another factor in the changing Soviet ways has been, the United States effort to speed up the Soviet process by letting Moscow know in advance of Vienna how it was itself proceeding. This was the so-called "building block" technique described in President Nixon's State of the World report last spring. There is evidence the Soviets have accepted the technique.

This talking out process appears to have speeded up Soviet understanding of the complex nuclear arms issue and produced some common understandings of the elements involved—elements that have no ideological coloration and are susceptible to a high degree of mathematical precision, as in the case of the laws of nature.

Because this process has proved so valuable at the SALT talks it is excepted to become a permanent part of any treaty. The idea is not to establish a new international bureaucracy but to provide, in an arms limitation treaty, for periodic Soviet-American meetings. Such meetings would offer an opportunity for one side or the other to raise what seem to it suspicious goings on that hint of treaty violation, or for one side to tell the other why it is doing this or that outside the treaty if its actions might be taken as an infringement of the treaty's provisions. For example, if the United States were to erect new radars for airways control or as part of an early warning system to protect against Soviet missiles, its actions could be construed by Moscow as work toward an ABM system banned by the treaty. Explanation, with evidence, might be vital in avoiding a crisis.

Beyond the value, both in the SALT talks and as part of a treaty setup, of the talking process, however, there remains the necessity of an agreement. SALT has made it clear beyond doubt that any treaty must be built around a trade-off of the American Safeguard ABM system for a Soviet curb on its massive SS–9 missiles. Since the talks began last November in Helsinki (phase I), both sides have proceeded with testing and deployment of these and other strategic nuclear weapons. Only a treaty will halt the process.

The treaty now in prospect, however, is limited to an initial "building block:" quantitative control. It would permit qualitative improvements in numerous respects. Most widely known among these is the continuation of multiple warhead development and deployment—the MRVs and MIRVs. The way the American treaty proposal has been framed substitutions would be permitted under a gross ceiling on missiles with a special sub-ceiling for huge missiles such as the SS–9. Thus Poseidon could be substituted for Polaris on submarines, Minuteman III for Minuteman I and II and the B–1 bomber for B–52s; each represents a major qualitative improvement. The same would be true for comparable Soviet weapons systems. The dramatic new submarine project, ULMS, however, might be inhibited by the sub-ceiling for huge missiles. That sub-ceiling would limit the size of missiles that might be deployed for this system which is still at the drawing board stage. Some ULMS concepts call for missiles beyond the proposed limitation.

But even though the treaty in prospect would basically limit only numbers, it would certainly represent a major gain. It would be the first substantive curb on the nuclear arms race in history, and beside it the nuclear test ban treaty would pale in importance.

Given the treaty now in prospect, what logically should follow is the next building block: a curb on further qualitative improvements. Continued multiple warhead testing, the initial American deployment of Minuteman III with MIRV warheads and the scheduled January deployment of Poseidon along with similar Soviet advances all make this more and more difficult as time goes on. One possibility being discussed is a second stage SALT agreement that would lower the permissible number of missiles from that set by the first agreement. But such a move would make only a dent in the problem, especially with MIRV warheads in place.

It should be observed at this point that the Vienna phase did not get as far as some in Washington hoped. Not until July 24 did the United States put forward its proposal in what amounted to one package, although the pieces had been discussed long before. And the Soviet Union simply did not make the necessary decisions before the Vienna phase closed. Part of the reason was the thinking lag, but another part, as far as can be perceived, has been Kremlin hesitancy in taking the momentous steps involved.

By now, however, SALT has reached a fish-or-cut-bait point for Moscow. A counter proposal is expected at Helsinki, and—unless the Americans at Vienna have totally misconstrued their Soviet counterparts—it cannot vary on the major premises and thus the parameters of the American proposal. It might, of course, vary in detail and quite probably will. If the Kremlin gives a "go" signal and if the counter-proposal is within range of the American proposal, it should take perhaps six months to hammer out a treaty. History teaches, as the Soviets say, that once the necessary political decisions are taken in Moscow and Washington the details are manageable.

By most accounts the Soviet military are the most resistant to, or at least suspicious of, a treaty. Yet there are military subdivisions, it is believed. The Navy wants to go on expanding its global role; the Army wants to hold onto its manpower, especially given the Chinese threat; the rocket forces perhaps may be the hardest to convince that a ceiling is acceptable.

The alternative, as the Kremlin knows, is a continuing arms race moving into new levels of strategic systems. If there is no treaty, Safeguard will proceed and might become an area defense system. There will be new bombers in larger numbers than otherwise and perhaps ULMS will get off the drawing boards. Land based missiles probably would go into hard rock silos and become mobile as well.

Billions of rubles—and dollars—are involved here. But perhaps even more persuasive to Moscow is the technological strain of a new weapons round. Currently thousands of scientists badly needed elsewhere are locked into the weapons business. The

Kremlin's answer, and the fate of the treaty, thus are unlikely to be known until sometime after Nov. 2. It will be a critical decision for the world.

JUDGE FRANK C. HAYMOND OF THE WEST VIRGINIA SUPREME COURT OF APPEALS PRESENTED WITH AMERICAN BAR ASSOCIATION'S TOP AWARD, THE ABA MEDAL—JUDGE HAYMOND HAS SERVED ON THE COURT FOR 25 YEARS—REPRESENTS FOURTH GENERATION OF HIS FAMILY TO SERVE ON WEST VIRGINIA BENCH

HON. JENNINGS RANDOLPH

OF WEST VIRGINIA

IN THE SENATE OF THE UNITED STATES

Friday, August 21, 1970

Mr. RANDOLPH. Mr. President, Hon. Frank C. Haymond, judge of the West Virignia Supreme Court of Appeals for the past 25 years, has received a high honor from the American Bar Association. Judge Haymond was presented with the ABA highest award, the ABA Medal. The award is made each year to a member of the bar who has provided outstanding service in the cause of American jurisprudence.

Judge Haymond is a highly respected citizen and is held in the high esteem by members of the bar. He is an outstanding jurist and has served his State and Nation well.

The judge is the only ABA member to have served twice on the association's board of governors.

Mr. President, Judge Haymond is to be commended for his devotion to American jurisprudence and for the discharge of responsibilities which have been placed in him.

It is my desire, Mr. President, to have the release of the American Bar Association on Judge Haymond award printed in the RECORD at this point.

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

JUDGE FRANK C. HAYMOND PRESENTED HIGHEST ABA AWARD

ST. LOUIS, Mo., August 12.—Judge Frank C. Haymond of Charleston, W. Va., a member of the West Virginia Supreme Court of Appeals, was presented Wednesday night with the American Bar Association's top award, the ABA Medal.

Bernard G. Segal, president of the ABA, made the presentation at the official Association dinner of the ABA annual meeting, which began last week in the "Gateway City" and closes Thursday. The medal is awarded each year to a member of the Bar who has provided "outstanding service in the cause of American jurisprudence."

Judge Haymond, 83, has been a judge for the past 31 years. Before that he had practiced law for 27 years. He has served on the West Virginia Supreme Court of Appeals since July 1, 1945, when he was appointed to fill a vacancy.

He was elected in 1946 to complete the unexpired term, and was re-elected to fill 12-years terms in 1952 and 1964. From 1939 to 1945 he had served as a judge of the Circuit Court of Marion County, W. Va.

In his long service to the Supreme Court of Appeals, Judge Haymond has set several state records. He is the first judge ever elected to the court three times, has served longer than any other judge, and is the only one to serve as president of the court six times.

Judge Haymond also is the only ABA member to serve twice on the Association's Board of Governors, 1943–46 and 1966–68. He has been the West Virginia state delegate in the House of Delegates for a total of 27 years, was a founding member and the second chairman of the Section of Insurance Law, and has served on a number of committees.

He also was a founding member of the Conference of Chief Justices. Judge Haymond has been vice president and a director of the American Judicature Society, and past president of the Marion County and West Virginia Bar Associations. He has served as a member of the state legislature and of the West Virginia Commission on Constitutional Revision. And he has lectured at the West Virginia College of Law.

"During his long and distinguished career on the Bench, Judge Haymond zealously pursued his duties toward the Bar," President Segal said at the presentation. "He has been extraordinarily devoted to his Association and has made major contributions to its work and progress. He richly shares credit for the leadership the Association has attained in professional and public affairs."

President Segal added that Judge Haymond "has won the high esteem and warm affection of his associates on the Bench, of the members of the Bar who practice before him, and of his countless friends and associates in the work of the organized Bar."

Born in Fairmont, W. Va., on April 13, 1887, he was graduated with distinction from Harvard College in 1910 and completed his law studies at Harvard Law School in 1912. He also holds honorary law degrees from Morris Harvey College and West Virginia University.

Judge Haymond practiced law in Fairmont from 1912 to 1939, except for military service from March, 1918 to August, 1919. He was a member of the West Virginia Legislature from 1916 to 1918 and served on several committees of the House of Delegates.

The judge represents the fourth generation of his family to serve on the West Virginia bench. His great grandfather, Thomas S. Haymond, was a justice of the peace and president of the Marion County Court. His grandfather, Alpheus F. Haymond, served on the supreme court from 1873 to 1882 and was a member of the Second Constitutional Convention in 1872. William S. Haymond, his father, was a circuit judge.

"I feel that this office offers an unusual opportunity for public service," said Judge Haymond. "And that is what I have tried to do, to the best of my ability and according to the law as I see it."

MAN'S INHUMANITY TO MAN—HOW LONG?

HON. WILLIAM J. SCHERLE

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Friday, August 14, 1970

Mr. SCHERLE. Mr. Speaker, a child asks: "Where is daddy?" A mother asks: "How is my son?" A wife asks: "Is my husband alive or dead?"

Communist North Vietnam is sadistically practicing spiritual and mental genocide on over 1,500 American prisoners of war and their families.

How long?

FIFTY YEARS OF BROADCASTING

HON. JAMES G. FULTON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, August 14, 1970

Mr. FULTON of Pennsylvania. Mr. Speaker, it is a pleasure to place in the CONGRESSIONAL RECORD a brief history of Pittsburgh's excellent radio station KDKA, the world's first radio station, which this year is celebrating its 50th anniversary. The citizens of our good community can rightly be proud of the many historic firsts in the broadcasting industry that have been accomplished by KDKA radio 1020. Even today in an era of advanced communications we note in the programing of this fine station the spirit of pioneering for the future of this important medium. And though KDKA's signal today beams around the globe and has the entire world as its domain, it is especially gratifying for us to know that KDKA is the descendant of a small experimental station built in our community a half century ago.

The information follows:

PITTSBURGH'S KDKA RADIO 1020—50 YEARS OF BROADCASTING

KDKA Radio 1020, the world's first radio station, began a continuous schedule of broadcasting with the Harding-Cox elections of November 21, 1920. KDKA was licensed by the federal government on Oct. 27, 1920 and its call letters were assigned from a roster maintained to provide identification for ships and marine shore stations, these being the only regular radio services then in operation under formal license at that time.

KDKA is the direct descendant of experimental station 8XK constructed and operated by Doctor Frank Conrad from a garage at the rear of his residence in Wilkinsburg, a Pittsburgh suburb. First official record of this station appears in August 1, 1916 edition of the radio service bulletin issued by the Bureau of Navigation of the U.S. Department of Commerce. Conrad had become interested in radio in 1915, when to settle a $5.00 bet on the accuracy of a $12.00 watch made with a friend, he built a small receiver to hear time signals from the Naval Observatory at Arlington, Virginia. Experimental station 8XK was off the air due to the wartime amateur ban from April 7, 1917 until Oct. 1, 1919.

Dr. Conrad was kept busy answering mail from listeners in widely separated locations. Radio messages, in early days, were chiefly discussions of the kinds of equipment being used and the results obtained. Bored by this monotonous routine and anxious to save his voice Dr. Conrad, on Oct. 17, 1919 placed his microphone before a phonograph and substituted music for voice. Requests poured in for records to be played at certain times to convince skeptics. Because of the demand, within a few days, Conrad announced that instead of complying with individual requests he would "broadcast" records for two hours each Wednesday and Saturday evenings.

By late summer of 1920 interest in these broadcasts had become so great that the Joseph Horne Company, a Pittsburgh department store ran an ad in the Pittsburgh Sun featuring Dr. Conrad's "wireless concerts" and offering amateur wireless sets at $10 up.

H. P. Davis, Westinghouse Vice President, an ardent follower of the Conrad venture reasoned that the real radio industry lay in the manufacture of home receivers and in supplying radio programs which would make people want to own such receivers. Westinghouse officials were won to the same view

and a station was authorized, license application submitted, and election night—then only a little more than two weeks away—selected for the grand opening.

KDKA has broadcast regularly ever since and many of KDKA firsts are firsts for the radio industry.

On January 21, 1921, KDKA broadcast the first religious service live from the Calvary Episcopal Church.

On March 19, 1921, KDKA aired the first official government broadcast with members of President Harding's cabinet speaking.

On April 11, 1921, the first sports broadcast, a boxing bout for the lightweight title, Johnny Ray vs. Johnny Dundee, was broadcast from Motor Square Garden.

The first farm program was May 19, 1921.

On October 5, 1921, the first World Series broadcast was transmitted from the Polo Grounds in New York City.

A Newark, New Jersey, station WJZ was listed in the radio service bulletin of June 1, 1921, although not officially licensed until September 20, 1921, went on the air September 19 with a remote pickup from the eastern states exposition at West Springfield. KDKA, WBZ, and WJZ constituted broadcastings first group of stations under one ownership, and Westinghouse became the first such owners. Today the Group W, Westinghouse Broadcasting Company, owns seven radio stations and five television stations in the United States.

KDKA began in a tiny transmitter shack atop the East Pittsburgh Westinghouse plant. Today its 50,000 watts clear channel has been heard in every state and at sometime in every foreign country around the world. KDKA Radio 1020 has become an integral part of the Pittsburgh community through direct involvement. In cooperation with the urban coalition KDKA sponsors "Call for Action" an urban hot line for residents to get direction on solving housing and related problems. KDKA and the Allegheny Board of Trial Lawyers produce an annual "Mock Trial" hearing to spur legal awareness in the community and give encouragement to promising law students. In 1970 KDKA received the annual Judge Wallace S. Gourley Award for this service. KDKA utilizes the services of worldwide Group W and press services as well as a staff of news specialists to keep Pittsburghers informed with objective reports on their world. KDKA's "Open Mike" show features experts and personalities in the news and allows listeners a chance to talk back to newsmakers.

KDKA is proud to be the pioneer station of broadcasting and witness the growth of radio from a handful of wireless amateurs to today's industry which reaches all Americans through over 350,000,000 radio receivers.

MRS. MAXINE BROWN AND CITIZENS OF BURLESON, TEX., SPEAK OUT ON THE STATE OF THE NATION

HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, August 14, 1970

Mr. TEAGUE of Texas. Mr. Speaker, back in June, I received a letter from Mrs. Maxine Brown of Burleson, Tex., which letter was also signed by a number of other citizens of the same town. I believe the letter to be one of the finest I have received ever from a constituent and portrays vividly the great concern of what I believe to be the majority of my constituency on the state of the Nation. The people of Burleson, Tex., are good American citizens, God fearing, and deeply concerned for what is happening in our country as is evidenced by this letter. I urge all Members of this body who have expressed concern for the future of this great Nation to read this letter, as follows:

Congressman OLIN E. TEAGUE,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. TEAGUE: As a citizen of this country, and a registered voter, my conscience will no longer let me remain one of the silent majority.

I feel it is my duty to my country and my God to protest the major issues facing the Free Americas.

My concern ranges from the riots on our college campus to poverty on the home front, and most emphatically the course of the Vietnam war.

As we approach the middle of 1970 statistics show that interest rates are higher than they have ever been, cost of living increases with each monthly report, crime and poverty is tremendously high, and numerous other subjects reaching their peak.

Our country is in a recession because of internal problems and mismanagement.

We, the working people, have had to gird our belts, and carry the burden of the national debt, and send our fathers, sons, and husbands to fight and defend a country who apparently do not want us there. They have, however, become wealthier due to narcotics and stolen goods sold openly on the streets by Vietnamese civilians. The real tragedy aside from the death, heartbreak and broken bodies is the opportunity of industrialists to pounce on the sufferings of humanity, filling their fat pockets with additional monetary gain. Since we are in the war, let's take steps to do the job that should have been finished long ago, and bring our boys home.

It is amazing that the great minds of this world can probe outer space, place men on the moon, and design weapons to destroy nations with one push of the button. The superior intelligence of these people was a gift from our Creator, and would be much more pleasing to him if their thoughts, time and energies could be spent in creating devices for saving lives instead of total destruction.

I firmly believe the present peace movement, racial problems, and riots with moral strife have the undercurrent of communism at work. These people, most of them American citizens, are protected by our Constitution; with only a requirement for them to register as Communists. They must register, I am told, so that the government can be informed of their activities. Well, the whole world is watching as they divide our nation using a weapon dear to our hearts, a plea for peace. They nurture the minds of minorities, the emotionally disturbed, the poverty stricken and the youth of our nation whose task it will be to correct the problems we created today.

This must cease immediately if we are to survive as a people. It is imperative that the majority reign, and strongly support those who are in the position to enforce the laws of our land. These immoral Hippie Fests are allowed to exist because it is a social problem we have allowed to evolve out of the miseries of humanity. Every day people are convicted on charges of possession of marijuana and punished; yet nothing is done by law enforcement to stop these public Pot Parties. Why?

Since the surtax has been introduced, nothing constructive to my knowledge has been done on the homefront to alleviate the problems of those paying. We have homes now encircling us built with Federal Grants at the interest rate of one percent to the purchaser. A cheap home, built cheaply, with the taxpayer paying the outstanding debt of high labor and interest. In this same period, our Senate and Congress voted themselves a salary increase along with the President getting a larger sum. He also felt the need for a summer White House in California with the expense of travel, communication, installations and of course the windscreen for the pool, all at the taxpayer's expense of $60,000. Yet, we are encouraged to buy only what we need to control inflation. Well, the majority of us obviously are Indians and not Chiefs, to coin a phrase, and examples set by our leaders leaves us somewhat confused.

Because of high costs of daily living, we cannot decide whether to fence our back yard. The cost of $300 would be mere trivia to some, yet if we do get a fence that will keep at least three children out of the street.

As our representative in Congress, I have written you on separate occasions expressing my views, and have received very cordial replies stating your understanding and sympathy to my problems. Your voice in Congress is the voice of the people in your District, and we are ready to have our grievances heard. We can no longer be a silent majority weeping silent tears in privacy and praying in earnest concern for our nation, and the future of its people.

Will you help us?

Mrs. W. E. Brown, Mr. W. E. Brown, Mr. and Mrs. William H. Fox, Mrs. B. H. Colling, Bobby H. Colling, Mrs. A. L. Porter, Mrs. Earl Brown, Mrs. Irwin Cameron, Irwin Cameron, Pauline Webb, Mrs. W. A. Greer, Mr. Donny Timmis, Mrs. Donny Timmis, Mrs. Berta Bennett, Mrs. Bob Roberts, Emma Lee Love, Donald B. Trimble, Ernie E. Dill, Mrs. Mamie Dill, all of Burleson, Tex.

SECOND ANNIVERSARY OF SOVIET-BLOC INVASION OF CZECHOSLOVAKIA

HON. ROBERT TAFT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, August 14, 1970

Mr. TAFT. Mr. Speaker, as we are all sadly aware, the week of August 17 marks the second anniversary of the Soviet bloc invasion of Czechoslovakia. I am proud to join with freedom-loving people everywhere in saluting the courageous people of Czechoslovakia and to assure them that their cause has not been forgotten.

The continued Soviet occupation of Czechoslovakia is another crime against the right of a small country to determine its own destiny and aspirations. While we enjoy the individual liberties of a free society, the people of Czechoslovakia, wracked with fear and frustration, have seen the spark of freedom stamped out by the heavy boot of communism.

In times such as these, we in the United States must sustain the hopes of these people by affirming and activating our own deep dedication that they have what their country has so seldom enjoyed through the years—freedom and liberty.

POLLUTION OPINION POLL

HON. EDWARD I. KOCH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, August 14, 1970

Mr. KOCH. Mr. Speaker, in the next few weeks I will be sending to my constituents a brief summary of my congressional efforts with regard to the growing pollution crisis now facing our country, and a short questionnaire posing alternative steps that might be taken to help meet New York City's pollution challenge.

This mailing, which will go to approximately 170,000 households, is a product of the responses I received from my April questionnaire indicating that pollution and sanitation are uppermost in people's minds when considering all of the problems facing New York City.

With the thought that it might interest my colleagues I would like to insert at this time the complete text of my report and questionnaire:

CONGRESSMAN EDWARD I. KOCH ASKS FOR YOUR OPINION

DEAR CONSTITUENT AND FELLOW NEW YORKER: The 25,000 residents of the 17th Congressional District replied to my April questionnaire. It was an enormous response and in my June newsletter there was only time and space to report the statistical results.

Since then I have read with great interest your recommendations on how I can improve the job I am doing and, in particular, what single change you would suggest to make New York City more livable.

Over half of those responding singled out pollution and sanitation as the most obvious and obnoxious problems requiring action. People want something done about the dirty air, polluted waters and filthy streets of New York City.

Let me tell you what I've been trying to do and then ask your opinion about some proposals that constituents made when replying to my April questionnaire. I think we all have some hard choices to make if we really mean to clean up our City.

CITIZEN ENFORCEMENT OF POLLUTION LAWS

On June 29, I filed affidavits with the U.S. Attorneys in Manhattan and Brooklyn requesting prompt and vigorous prosecution of 10 industries which have been listed as polluters of major importance in New York City by the State Department of Health. I relied on the Federal Refuse Act of 1899 which provides for citizen action against those who unlawfully discharge refuse into navigable waters. In the past, the Justice Department has refused to use this potentially powerful and effective federal statute except in a very limited way. I will continue to press for strict enforcement of this important water pollution control law.

Last month I co-sponsored and testified in support of a bill which would allow an individual citizen, or group of citizens united by a common grievance, to bring lawsuits directly against those industries who threaten or those government officials who neglect the citizen's right to a pollution free environment.

WATER POLLUTION

Recently I introduced the Regional Water Quality Act which establishes a national system of special taxes levied on industrial polluters based on the volume and toxicity of each polluter's waste. Such taxes provide the best incentive for polluters to install abatement equipment at their own expense. I believe when industry is faced with paying taxes on waste, it will find it more profitable to stop polluting.

AIR POLLUTION

I have joined the formation of a Congressional Clean Air Committee, an ad hoc group of Congressmen now pressing for stronger air pollution control legislation proposed by Environmental Action and endorsed by several major conservation organizations.

I am particularly interested in getting the federal law changed so that New York can establish auto emission standards that are more restrictive than national standards. At present, California is the only state which can adopt tougher standards yet the auto pollution problem in New York City is just as bad as in Los Angeles.

If you want further details on this and other legislation proposed by our Congressional Clean Air Committee, please drop me a note.

(Space has been given for answers by two persons to allow for differences of opinion in a household.)

QUESTIONNAIRE

1. Would you favor banning all vehicles (except taxis, buses, police, fire, sanitation, commercial vehicles etc.) on a trial basis in the 17th C.D.?

2. Would you favor prohibiting all street parking Mon.-Fri. from 8–6 p.m. (except taxis, buses, police, fire, sanitation, commercial vehicles etc.) on a trial basis in the 17th C.D.?

3. Based on your current information about Con Ed's applications to enlarge their electric generating plant in Astoria (involving the issues of adequate power and clean air) do you favor the approval of such applications?

4. Would you favor outlawing the internal combustion engine by 1975 if Detroit cannot make it non-polluting even if alternative modes of propulsion (steam or battery driven cars) prove to be more costly and less efficient?

5. Do you favor banning the use of non-returnable bottles and cans for beer and soft drinks?

THE SUBTLE SUICIDE OF FREE ENTERPRISE

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, August 14, 1970

Mr. CRANE. Mr. Speaker, for a number of years I have extolled the virtues of the free enterprise system in as many forums as were available to me.

One of my main themes has consistently been that the American business community has not done enough to sell itself and to present its case persuasively. In addition, it has not bothered to "dirty its hands" with the business of politics. As a result of this hands-off policy, the vital political decisions are too often made by those whose interests are not the interests of the free enterprise system.

Prof. Yale Brozen of the University of Chicago has found the same situation to exist, and he has told some businessmen about the problem in no uncertain terms. I commend Professor Brozen's speech—as reprinted from the August 10, 1970, issue of Barron's magazine—to the thoughtful attention of my colleagues:

FOR SWEEPING REPEAL

I bring you a message that will hardly surprise you. Free enterprise in this country is one-quarter dead and one-quarter strangled. It is only half alive. We are the inheritors of a proud tradition of peaceful, progressive, permanent revolution through free enterprise, but we are seeing about us increasingly unresponsive rigidity that is freezing us into a mold of stagnation.

That rising unresponsiveness leaves the young with, they believe, no alternative but either to obtain political power or begin thinking in terms of violent, destructive revolution. The peaceful, constructive, continuing revolution that was the hallmark of America's past creating the greatness of America today is neither understood nor regarded as an alternative. Many among the young mouth Marxist and Maoist slogans because they are too ignorant to know that that is the poison which is sickening them. But they do recognize that sickness is in the air. (Students listening to Ramsey Clark, former Attorney General of the United States, cheered when he said, ". . . an individual has to have some power to affect the quality of his schools, the quality of garbage collection, the quality of the police protection he gets, or he's utterly helpless. This means that we've got to involve communities in political power action and we've got to do it on whatever basis is necessary.")

The young recognize the senility that is setting in, if not its causes. The cause lies in the creeping socialism we have undergone. Just look around, and you see mail delivered by a socialized enterprise; children schooled in a socialized educational system; collectivized water; compulsory government annuity insurance; research for a major industry (agriculture) done by government agencies; food inspected by another government agency, cars and trucks rolling on socialized highways, and our aged parents protected by socialized medical insurance.

In that half way house to socialism, compulsory monopoly under government regulation, we ride monopolized and regulated, if not socialized, city transit systems, commuter railroads, taxicabs, air lines, buses, and trains. Our raw materials are delivered and our products shipped by regulated trucks, trains, barge and pipelines. Our homes are heated by regulated gas. We read by socialized or regulated light. And some of us clamor for regulated prices and wage rates where they are still free, crying that only price and wage controls can stop inflation. Free enterprise is half dead and some of us are asking for a noose to strangle what still lives.

Our national malaise is that every time someone sees a problem, we think that passing a law will cure that problem. We see postal service deteriorating—pass a law to reorganize the U.S. Post Office into a U.S. Postal Service. There is poverty—pass a law to get rid of it. There is crime in the streets—pass another law. There is congestion in the airports—put in another regulation. The schools are failing to educate—pass another appropriation to give them more money. Colleges face a financial crisis—pass a law providing state aid for private colleges. Juveniles are dropping out of school or becoming delinquent—pass a law providing more counselors. Our cities are burned by rioters—pass a law making it illegal to cross state lines to foment a riot. Japanese textiles are making life tough for cotton manufacturers—pass a law limiting imports. Consumers find their appliances need maintenance—pass a law requiring mandatory guarantees.

Pass a law. Pass a law. We are asking for so many laws that Congress has to stay in session almost the year round instead of going home after three or four months as they used to do. We are getting more laws

than we know what to do with. We should pass a law against more laws. We should pass a law limiting Congressional sessions to a maximum of six months each year. Pass a law. Pass a law. It's become a national refrain. Perhaps we ought to put it to music.

How many of us think about the fact that many of the problems that confront us could be better solved by repealing a law instead of passing another law. For example, perhaps the postal mess can be solved better by repealing a law than by passing another one. What would happen if we repealed the provision in our postal laws which makes it illegal for anyone but the U.S. Post Office to provide first class mail service?

It is, of course, un-American to propose an alternative to a governmentally operated postal system. After all, Ben Franklin, a great patriot, was a founder and supporter of this governmental enterprise. Anyway, what sensible American would want to go into a business which loses as much money as the Post Office?

Believe it or not, a good many Americans seem to think that the postal business is worth entering. The Post Office investigates thirty to forty cases a year where it suspects that its monopoly is being infringed. It prosecutes fifteen to twenty cases a year.

Of course, first class mail is profitable for the U.S. Post Office and it is in this class of mail in which it has a legal monopoly. It has never bothered obtaining a legal monopoly of other classes of mail since it believed that it lost money on other classes. It was glad to have anyone who wished take these over. But, of course, who would want to get a piece of a money losing business?

A number of people evidently have been anxious to move in on this money losing business—and some have done so. Tom Murray started a service in Oklahoma City where he offered to deliver third class mail for $25 a thousand, much less than the $43 a thousand the Post Office charged. Also, he guaranteed delivery within a specified time. The Post Office' habit of frequently delivering such mail after the event had already occurred that was being announced created many customers for Tom Murray, giving him the opportunity to lose even more money than the Post Office since he was charging less and giving better service. To everyone's amazement, he is making money. Others find the opportunity to compete with the P.O. on these terms so attractive that Mr. Murray has now franchised operators or is operating himself in sixty other cities under his Independent Postal System of America banner. His 1500 bonded carriers are serving 70 million people in these sixty cities in the U.S. and Canada, and he appears to be making money.

In parcel post, United Parcel Service is competing with the Post Office. Its service is enormously superior to that of the U.S. Post Office, and its rates are lower. Where the Post Office charges $1.17 for a 10 lb. package mailed in San Francisco and delivered in Portland in eight to ten days, United Parcel charges 98 cents and delivers in two days.

These are services on which the Post Office claimed to be losing money, yet private operators are providing better service at less cost and a lower price. Think of what private operators could do for first class mail service—which has deteriorated to the point of being ludicrous. The service is so poor that many companies pay the postage they are required to pay by law for first class mail but never let their mail get near a U.S. Post Office. They deliver the mail themselves rather than lose the time involved in letting a U.S. postal employe get his hands on their messages.

If we wish to improve our mail service and reduce its costs, we don't need to sell the Post Office. All we need to do is repeal the law monopolizing the carriage of first class mail for the U.S. Post Office. Also, it would help to repeal the law monopolizing the use of a householder's mail box. The would-be competitors who are now being prosecuted for violating the law could operate. The alternative services that would become available would not only be an improvement but also would greatly reduce our vulnerability to postal strikes.

At present, a large portion of the monopoly power in the hands of the U.S. Post Office accrues to the interest of the postal unions. The result has been that postal workers in the last ten years have been winning wage increases outstripping those of industrial workers. From 1959 to 1969, postal wage rates rose by 4.7% per year while industrial wage rates rose by 4.4% a year. You might never suspect that listening to the complaints of New York postmen. Given their recent success, a continuation of a monopoly Post Office is going to result in postal wage rates rising even more rapidly in the future. Postmen received a 6% increase this year and are scheduled to receive another 8% for a total increase of 14.5% as compared to the 7.8% average unions have won this year in private industry.

Simply setting up a U.S. Postal Service will not cure that situation, as has been demonstrated by the transportation unions. With competition from potential entrants to the common carrier transportation industry barred by the necessity to obtain a certificate of public convenience and necessity, the unions in the industry have a monopoly position which has enabled them to win wage increases well in excess of those won by other workers—and they win them at the expense of other workers. The Brotherhoods, the Teamsters, and the Air Line Pilots Association are a labor aristocracy engaging in wage setting activities which depress the wage rates of workers in other industries.

The alternative to the present proposals for passing a law to reform the Post Office—which will do nothing to improve many aspects of the situation—is simply to repeal the law monopolizing first class mail.

Free enterprisers have been remiss in bringing about a free enterprise solution to the postal scandal. A bill has been dropped into the Congressional hopper by Congressman Philip Crane from Illinois repealing the monopoly provisions in present postal laws (H.R. 16691). Has the Midwest Employers Council, or any other association of free enterprisers, given Crane's bill any support? I have seen none.

The few I have talked with have been afraid of losing their subsidies. The newspapers and magazines want their postal subsidy continued. The advertisers in these media want the subsidy continued. They are afraid that the elimination of monopoly in first class mail will mean no subsidy for second class mail. So Crane's bill receives no coverage in the media and few know of this proposed solution.

I would suggest to the advertisers who complain about governmental regulation of advertising and of their businesses, of governmental competition with their businesses, and of the burden of taxes on their businesses—which in combination are strangling the free enterprise sector—that they have only themselves to blame. If they abandon the free enterprise principle when they think it is to their interest, the whole principle becomes suspect. Who is going to rally with them to the defense of the free enterprise principle when these enterprisers want it defended if they do not support it when it may cost them something. It becomes a principle with friends only in fair weather.

To heap irony on irony, the postal subsidies which the newspaper owners and advertisers think are in their interest benefit them but little. Most, if not all of the subsidy is consumed in inefficiency, not in providing cheaper service. The subsidy they think they receive at other people's expense yields so little benefit that it is more than offset by their own tax contributions to the subsidy—a tax they pay everytime they use first, third and fourth class mail as well as the directly perceived taxes paid to provide the billion dollar a year operating loss suffered in postal operations plus the taxes paid to provide the interest on the Federal debt incurred to finance postal facilities.

If you free enterprisers want to avoid suicide, you can start on the socialized postal monopoly. Get rid of the monopoly element in this socialized enterprise. Let free enterprise provide now unimagined solutions for delivering better and less costly service than that now provided by this legal monopoly. With the elimination of this socialized monopoly, there will be less opportunity for the strangulation of free enterprise and free choice via postal regulations on what may be transported in the mail as well as via the tax and cost burdens imposed on free enterprises by this creaking, inefficient, giant governmental business.

Let me turn to another area where we have passed a law—and more laws—to cure the problem when a more appropriate action would have been the repeal of a law—or of several laws. We were concerned about poverty, and we passed an Economic Opportunity law in 1964 to launch a war on poverty. Numerous programs managed by an Office of Economic Opportunity were set up. These were all presumably designed to lift the incomes of those making less than $3,000 a year. We could do more to raise the incomes of the poor by repealing laws than has been done or will ever be done by this law.

Minimum wage laws create poverty by forcing people into unemployment. Agricultural price support programs make people poor by raising the price of food and by decreasing job opportunities through the production restrictions imposed to maintain high agricultural prices. The laws regulating transportation rates prevent industry from moving to disadvantaged regions where the poor live and providing jobs for them. They increase the cost to the poor of migrating to regions where better paying jobs can be found and prevent them from curing their own poverty.

Union supporting legislation causes poverty by permitting and encouraging union power to grow to the point where it can be and is used to restrict the entrance of the poor into higher paying jobs. . . . The urban renewal program is forcing the poor out of inexpensive housing into more costly shelter. The Federal migrant housing act is eliminating the jobs available to migrant labor by forcing farmers to choose between constructing expensive housing if they use migrant labor or buying less expensive crop harvesting machinery. The tariff law is monopolizing low paying jobs for Americans in protected industries which yield only $2.00 an hour and preventing the expansion of our export industries which pay $3.00 to $6.00 an hour.

The Tennessee Valley program is subsidizing people to stay put in a region where their opportunities are poor. The Rural Electrification Program is eliminating job opportunities for farm labor and depressing rural wage rates. And the taxes levied to support these programs are reducing the rate at which we increase our stock of capital—tools, machines and other equipment—and are reducing the rate at which better paying jobs would become available if these taxes

were not levied. We could do more for the poor by the repeal of all this legislation than we can possibly do by the special enactments designed to help the poor.

That was a rapid summary of some complex pieces of legislation, but rather than elaborate on this topic, I want to take the few minutes remaining to analyze two other proposals. We are all puzzled by the fact that our children receive so much schooling but so little education. Without dwelling on this point, let me just say that this is the inevitable consequence of subsidizing teachers and schools. If we bought a product and let free enterprise compete to see who could win the customers' favor, we would get a better product. But if we subsidize production with no competition for customers, we are guaranteed either a lousy product or a terribly expensive product or both. That is why we are getting lots of schooling at great expense and little education.

How can we cure the situation? Let schools compete for customers. How can that be arranged? Stop giving money to schools. If you want to give money away for education, give the parents of school age children vouchers which they can use to pay tuition at whatever school that can attract their patronage. If it costs $600 a child to operate the Omaha school system, give the parents of your school children vouchers good for up to $600 to pay tuition at any school. Public schools would then have to compete with each other and with private schools to see whose product can attract customers. Parents who want their children in programs with an abundance of individual attention or other especially expensive features could add the $200 or $300 required to pay the tuition in schools offering such programs. Present public schools would have to compete with each other for students as well as with private schools. The badly run schools would lose out to the well run schools. Schools would become more efficient in their use of resources as well as producing a better product in the competition to obtain students.

It's time we applied the free enterprise principle to this socialized arena in order to get our children educated. It's time that we stop putting children in jails labeled school from 9 to 3 every day.

This would have the advantage not only of improving the education of our children. It would also slow the indoctrination of our children with a socialist theology. The employes of a socialized enterprise are not likely to feel much loyalty to the free enterprise principle. (There are, of course, some exceptions.) Their analysis of the virtues of socializing economic activity is not likely to be balanced with more than a passing nod to the disadvantages. Their analysis of the defects of free enterprise is not likely to be balanced with equal enthusiasm for the discussion of the advantages of a free enterprise system.

You are killing the political support for the free enterprise principle by your support of socialized schooling. If you persist in this suicidal course, you will continue to get costly education and poor education for your children and an erosion of the free enterprise arena. Free enterprise will continue to die by the salami technique—slice by slice. . . .

SENATE—*Monday, August 24, 1970*

The Senate met at 10 a.m., and was called to order by the President pro tempore (Mr. RUSSELL).

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Eternal Father, we thank Thee for the world in which Thou has placed us. Help us to learn its laws and to trust its mighty powers.

We thank Thee for the world within us, fashioned for Thy presence—for the silent spaces of the soul and the kingdom of the mind.

We thank Thee for the world of the spirit revealed to us in the Man of Nazareth, for the vastness of His love, the purity of His life, and the grace of His forgiveness.

Let that mind be in us which was in Him that we may be gentle as He was gentle, true as He was true, brave as He was brave, loyal as He was loyal, and prompt as He to do the Father's will. Grant that we may so live this day that Thy kingdom may be advanced in and through us.

For Thine is the kingdom and the power and the glory forever. Amen.

CALL OF THE ROLL

The PRESIDENT pro tempore. Since the Senate adjourned on Friday, August 21, 1970, without a quorum, the first order of business is to obtain a quorum.

The Chair directs the clerk to call the roll to ascertain the presence of a quorum.

The assistant legislative clerk called the roll and the following Senators answered to their names:

[No. 265 Leg.]

Allen	Byrd, W. Va.	Fong
Allott	Cook	Griffin
Anderson	Dominick	Hansen
Bellmon	Eagleton	Harris
Bennett	Eastland	Hart
Bible	Ellender	Hatfield
Boggs	Ervin	Holland
Burdick	Fannin	Hruska
Jordan, N.C.	McIntyre	Sparkman
Jordan, Idaho	Metcalf	Spong
Mansfield	Muskie	Stennis
Mathias	Packwood	Williams, Del.
McClellan	Ribicoff	Young, N. Dak.
McGovern	Russell	

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), the Senators from Minnesota (Mr. MCCARTHY and Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Wisconsin (Mr. NELSON), the Senator from Rhode Island (Mr. PELL), the Senator from Missouri (Mr. SYMINGTON), the Senator from Georgia (Mr. TALMADGE), the Senator from Maryland (Mr. TYDINGS), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Ohio (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Rhode Island (Mr. PASTORE) is absent because of the death of a friend.

Mr. GRIFFIN. I announce that the Senator from Vermont (Mr. AIKEN), the Senator from New Hampshire (Mr. COTTON), the Senator from Florida (Mr. GURNEY), the Senator from New York (Mr. JAVITS), the Senator from California (Mr. MURPHY), the Senator from Kansas (Mr. PEARSON), the Senator from Ohio (Mr. SAXBE), the Senators from Pennsylvania (Mr. SCOTT and Mr. SCHWEIKER), the Senator from Illinois (Mr. SMITH), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Tennessee (Mr. BAKER) and the Senator from Maine (Mrs. SMITH) are absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Iowa (Mr. MILLER) is temporarily absent.

The PRESIDENT pro tempore. A quorum is not present.

Mr. BYRD of West Virginia. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

The PRESIDENT pro tempore. The Sergeant at Arms will execute the order of the Senate.

After some delay the following Senators entered the Chamber and answered to their names:

Brooke	Goldwater	Percy
Byrd, Va.	Goodell	Prouty
Case	Hartke	Proxmire
Cooper	Hollings	Randolph
Cranston	Long	Thurmond
Curtis	Magnuson	Yarborough
Dole	McGee	
Fulbright	Moss	

The PRESIDENT pro tempore. A quorum is present, and the clerk will proceed to call the roll again on the final passage of H.R. 18127, the public works appropriation bill.

The clerk will proceed to call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Minnesota (Mr. Mc-