concurred in an opinion written by Judge Winter. The opinion dated February 2, 1968, decided the case in favor of Brunswick. During the hearings Judge Winter testified as follows:

"I think it may be fairly stated that a case is never decided finally or never put to rest until an opinion has been filed, all post opinion motions have been denied, and the Supreme Court has denied certiorari." (Hearings, p. 243.)

On March 12, 1968, about three months after the nominee's stock purchase, the losing party in the *Brunswick* case filed a motion to extend the time for requesting a rehearing. The motion recited that a copy of the court's opinion had not reached the petitioner until February 27, 1968. On March 26, 1968, an order denying the motion, signed by Judge Haynsworth and Judge Winter, was entered by the court. (Hearings, p. 244.)

Later, on April 3, 1968, another motion to reconsider that order was filed. This motion apparently was misplaced for a time, and was finally denied on August 26, 1968. (Hearings, p. 244, 245)

Judge Winter testified that:

"Judge Haynsworth did prepare the order denying the second set of post-argument petitions." (Hearings, p. 257.)

Since the nominee, by his own admission, considered his interest in Brunswick to be *substantial,* his failure after acquiring the stock to disqualify himself from further participation in the proceedings was an obvious violation of the Federal disqualification statute. Even more disturbing in some respects is the fact that, after acquiring his Brunswick stock, the nominee made no disclosure to his colleagues on the court or to the parties to the case so as to afford them an opportunity to object to his continued participation in the proceedings.

As Judge Winter testified:

"Senator TYDINGS. Did Judge Haynsworth ever discuss with you or any members of the panel during this period that he was about to make a purchase of Brunswick stock?

"Judge WINTER. No; I had no knowledge of it until the matter was brought out before in these hearings." (Hearings, p. 252.)

Not only was there a violation of the Federal statute, but the nominee's continued participation in the *Brunswick* case violated the American Bar Association's Canons of Judicial Ethics. Canon 29 provides in part:

"A judge should abstain from performing or taking part in *any* judicial act in which his personal interests are involved."

The ABA's Committee on Professional Ethics has interpreted the Canon to mean that:

"A judge should not perform a judicial act, involving the exercise of judicial discretion, in a cause in which one of the parties is a corporation in which the judge is a stockholder." (Opinion No. 170.)

John P. Frank, a distinguished lawyer who is an acknowledged expert on judicial ethics, testified before the Committee that:

"The heavy weight of opinion in America is that if the judge has *any* interest in a corporation which is a party he may not sit." (Hearings, p. 113.)

In fact, Canon 26 even requires a judge to "abstain from making personal investments in enterprises which are apt to be involved in litigation in the court."

Despite this heavy weight of authority and the Federal disqualification statute, the nominee did sit in the *Brunswick* case—and in at least the following five other cases in which he had a stock interest:

1. *Farrow* v. *Grace Lines, Inc.,* 381 F. 2d 380 (1967)

The nominee participated in this decision involving an injured seaman's claim despite his ownership of 300 shares of stock in W. R. Grace & Co., the parent company of Grace Lines, Inc.

2. *Maryland Casualty Co.* v. *Baldwin,* 357 F. 2d 338 (1966)

3. *Donohue* v. *Maryland Casualty Co.,* 363 F. 2d 442 (1966)

The nominee participated in both of these cases despite his ownership of 67 shares of common stock and 200 shares of preferred stock in American General Insurance Co., the parent firm of Maryland Casualty Co.

4. *Nationwide Mutual Ins. Co.* v. *Akers,* 340 F. 2d 150 (1965)

5. *Toole* v. *Nationwide Mutual Ins. Co.,* 353 F. 2d 508 (1965)

The nominee participated in both of these cases despite his ownership of 500 shares of Nationwide Corp., an affiliate company of Nationwide Mutual Insurance Corp.

In light of *Brunswick* and these other cases, it is difficult to understand how the nominee could have assured the Committee Chairman by letter dated September 6, 1969, as follows:

"I have disqualified myself in *all* cases . . . in which I had *a stock interest* in a party." (Hearings, p. 28.)

III. PARTICIPATION IN CASES INVOLVING CLIENTS OF HIS FORMER LAW FIRM

The ABA's Committee on Professional Ethics has interpreted Canon 13 as follows:

"A judge is not prohibited from sitting in a case because his former firm is counsel in such case. However, to avoid any inference of impropriety, the judge should decline to sit . . . *where a regular client of the firm at the time he was a member is a party to the case.* (Opinion No. 594.)

During the hearings, there was testimony that the nominee sat in at least twelve cases involving clients of his former law firm. (Hearings, p. 396–397, 400). Two of the cases listed involved the *Judson Mills* Division of Deering-Milliken Research Corporation. [*Leesona Corp.* v. *Cotwool Mfg. Corp., Judson Mills Division, Deering-Milliken Research Corp., et al,* 308 F. 2d 895 (1962) and *Leesona Corp.* v. *Cotwool Mfg. Corp., Judson Mills Division, Deering-Milliken Research Corp., et al.,* 315 F. 2d 538 (1953)]

During the hearings, the nominee was asked:

"You didn't feel your past relationships with Judson (Mills) and with Milliken was significant enough that when the *Leesona Corp.* case came up in 1962 and 1963, involving Judson (Mills) and Milliken, you should disqualify yourself from the case?

"Judge Haynsworth. The relation was as casual as it could be. And as I said, I never was the lawyer for Milliken." (Hearings, p. 97.)

Nevertheless, the nominee conceded that "clear back to the beginning of the law firm, Judson Mills was a Haynsworth client." (Hearings, p. 97.)

The Martindale Hubbell Law Directory lists Judson Mills as a client of the nominee's former law firm in each of the years from 1931 through 1969. In fact, the nominee's former law firm is listed as General Counsel for Judson Mills in the years 1931 through 1957.

Inasmuch as his former law firm has represented Judson Mills continually since 1931, it is difficult to understand how the nominee could have testified that "there was no reason in past relations I had with Judson Mills for me not to sit on that case." (Hearings, p. 98.)

As the record now stands, it appears that the nominee particapated in numerous cases involving clients of his former law firm. It should be noted that of the twelve cases listed in the record, the nominee decided ten in favor of the clients of his former law firm. (Hearings, p. 400.)

IV. RESOLVING THE DOUBT

Clearly, the record raises substantial and legitimate doubt concerning the nominee's sensitivity to the high ethical standards expected of those who are to sit on the Supreme Court.

It may be argued that the nominee is entitled to a presumption of innocence; and that unless he is proven guilty, he should be confirmed. Such an argument misconstrues the Constitutional role and responsibility of the Senate. For the question before the Senate is not the nominee's guilt or innocence, it is whether he should be promoted to a place on the Nation's highest court.

The central issue was put in focus by a letter which came to me recently from a professor of law who teaches legal ethics to future lawyers and future judges. He wrote:

"In the U.S. district court a jury awards an injured seaman $50 on a claim against Grace Lines—a claim which he thought was worth $30,000. Saddened, he takes his case to the U.S. Court of Appeals. It is not difficult to imagine the bitterness in the heart of this injured seaman when he learns that one of the judges to whom he appealed in vain, was even a small owner of the company that owns Grace Lines.

"By the standards of the market place perhaps Judge Haynsworth's stock holding was trifling. But it looms large in the mind of the unhappy litigant searching to discover just what it was that tipped the scales of justice against him.

"To avoid such avoidable strains on the legal system, it has long been a maxim of the law that courts shall not only *do* justice—but they shall *seem* to do justice.

"This ancient wisdom finds expression in the Canons of Judicial Ethics providing that a judge's conduct should not only be 'free from impropriety' but from the 'appearance of impropriety.' The importance of the appearance of things is stressed over and over again (Canons 13, 24, 26, 33) culminating in the injunction that 'in every particular his conduct should be above reproach' " (Prof. David Mellinkoff, UCLA, October 20, 1969.)

Although the canons apply to all judges at every level, they should apply most stringently to those who are to grace the Nation's highest court.

Ironically perhaps, the nominee himself suggested the test which is appropriate in this case:

"While I am concerned about myself and my reputation, I much more am concerned about my country and the Supreme Court as an institution, and if there is substantial doubt about the propriety of what I did and my fitness to sit on the Supreme Court, then I hope the Senate will resolve the doubt against me." (Hearings, p. 105.)

Particularly at this point in history, it is essential that substantial doubt in a situation like this be resolved against the nominee—and in the interest of preserving public confidence in our system of justice.

ABUSE OF JUDICIAL DISCRETION

Mr. MONTOYA. Mr. President, the American GI Forum, a Mexican-American veterans' family organization with chapters in 23 States and the District of Columbia, recently brought to my attention certain remarks made by Judge Gerald S. Chargin in the Superior Court of California on September 2, 1969, at the sentencing of a 17-year-old juvenile defendant. I quote in part Judge Chargin's remarks:

Mexican people, after thirteen years of age, think it is perfectly all right to go out and act like an animal . . . We ought to send you out of the country—send you back to Mexico. You belong in prison for the rest of your life for doing things of this kind. You ought to commit suicide. That's what I think of people of this kind. You

Judge Is Under Fire For Alleged Remarks

By PAUL R. WIECK
Of the Journal's
Washington Bureau

WASHINGTON — Sen. Joseph M. Montoya, D-N.M., has called for an investigation of the qualifications of a California superior judge because of remarks he directed at the Mexican-American community which Montoya said "evidence a patent prejudice which is reprehensible in any context in our free society."

He called upon both the California Judicials Qualifications Committee and the American Bar Assn. to investigate the conduct of Superior Judge Gerald S. Chargin.

MONTOYA REFERRED to remarks made by Judge Chargin on Sept. 2 in sentencing a 17-year-old juvenile delinquent.

The court transcript showed Judge Chargin said, in part:

"Mexican people, after 13 years of age, think it is perfectly all right to go out and act like an animal . . . We ought to send you out of the country — send you back to Mexico. You belong in prison for the rest of your life for doing things of this kind. You ought to commit suicide. That's what I think of people of this kind. You are lower than animals and haven't the right to live in organized society — just miserable, lousy, rotten people."

AT ANOTHER point, Judge Chargin said:

". . . Maybe Hitler was right. The animals in our society probably ought to be destroyed because they have no right to live among human beings."

Judge Chargin was dealing with a case of incest in which the defendant's sister, who was 15, became pregnant.

The case was brought to Montoya's attention by the American GI. Forum and also by a group of students and faculty members at Harvard Law School.

The Harvard group, which included 892 students and 37 faculty members—one of the students Phillip Vargas of New Mexico — called the action of Judge Chargin "reprehensible" and urged an investigation in his qualifications to continue in a judicial post.