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## LEGISLATIVE REFERENCE SERVICE

ROLE OF VICE-PRESIDENT DESIGNATE GERALD FORD IN THE  
ATTEMPT TO IMPEACH ASSOCIATE SUPREME COURT JUSTICE  
WILLIAM O. DOUGLAS

Gerald Ford's involvement in the effort by the House of Representatives to impeach Associate Supreme Court Justice William O. Douglas reportedly began in the Spring of 1969 with the resignation of another member of the high court, Abe Fortas. Fortas had stepped down after coming under severe attack over his relations with Louis Wolfson, the financier. This marked the first time a justice had resigned under a shadow of impropriety.<sup>1</sup>

Much of the controversy over Fortas concerned his association with foundations and fees he had received from foundations. Several years earlier an investigation by the Los Angeles Times had revealed that Douglas was being paid \$12,000 by the Albert Parvin Foundation for serving as its only paid officer.<sup>2</sup> With Fortas' resignation as a precedent, Douglas' conduct was being called into question and Members of Congress began receiving a considerable amount of mail critical of Douglas. House Minority Leader Ford was impressed at the response and decided to launch his own investigation of the allegations surrounding Douglas. One source close to the investigation

<sup>1</sup> Haynes Johnson, "The Douglas Case: No Neutral Ground," Washington Post, April 26, 1970.

<sup>2</sup> "Foundation Headed by Douglas Sells Its Stock in Company That Owns Casinos," New York Times, May 20, 1969.



recalled, "Jerry decided to look into it, but it wasn't being pressed on a crash basis."<sup>3</sup> As part of the investigation, Ford contacted White House aide Clark Mollenhoff who, as a former journalist, had written several articles on Douglas' position with the Parvin Foundation.<sup>4</sup> The investigation by Ford and his staff proceeded quietly through the summer and into the fall of 1969.<sup>5</sup>

Meanwhile, Justice Douglas, perhaps one of the more controversial members of the Court, often criticized for his outspoken liberal viewpoints and unconventional lifestyle, continued to be a figure of contention. In late May, as Douglas was resigning his position with the Parvin Foundation for the stated reason that the foundation's activities posed too heavy a workload it was revealed that he had been receiving fees from another foundation which he headed, the Center for the Study of Democratic Institutions in Santa Barbara, California.<sup>6</sup> Douglas then publicly criticized an Internal Revenue Service investigation of the Parvin Foundation as a "manufactured case" designed to

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<sup>3</sup> Johnson, op. cit.

<sup>4</sup> Fred P. Graham, "Ford Hints Move To Oust Douglas," New York Times, November 8, 1969.

<sup>5</sup> Johnson, op. cit.; Graham, op. cit.; Spencer Rich, "Ford Eyes Ousting Douglas," Washington Post, November 8, 1969.

<sup>6</sup> John P. MacKenzie, "Douglas Resigns From Foundation," Washington Post, May 24, 1969; "Foundation Says That It Paid Douglas \$4,000 for Two Seminars," New York Times, May 22, 1969.



force him from the bench.<sup>7</sup> As the extent of Douglas' involvement in the foundation's affairs became known, he was further criticized by House Judiciary Committee Chairman Emanuel Celler (D-N.Y.) and his outright resignation was called for by Rep. H.R. Gross (R-Iowa) and John R. Rarick (D-La).<sup>8</sup> He was assailed by critics in the Senate for authoring articles that appeared in Playboy and in Avant-Garde, a magazine put out by controversial publisher Ralph Ginzburg who had recently been convicted of violating Federal obscenity laws.<sup>9</sup> In late July the ethics committee of the American Bar Association refused to decide whether Douglas had violated the canons of judicial ethics by his relationship with the Parvin Foundation. The ABA had been asked to look into the matter by Senator John J. Williams (R-Del.).<sup>10</sup>

In early November, as the Senate was embroiled in debate over the confirmation of Supreme Court nominee Clement F. Haynsworth, Ford's investigation was revealed. Haynes Johnson, reporting for the Washington Post, wrote later that "Ford himself suffered an embarrassment. A Washington reporter learned of the investigation and asked Ford point-blank about it. Ford, understandably, wanted to keep his investigation out of the public arena -- particularly at a time when the President, the leader of his party,

<sup>7</sup> Bernard Collier, "Douglas Says Tax Inquiry Aims to Get Him Off Court," New York Times, May 25, 1969.

<sup>8</sup> Congressional Record, May 26, 1969, pp. H 4133-H 4134; George Lardner, Jr., "Celler Raps Douglas On Letter to Parvin," Washington Post, May 28, 1969.

<sup>9</sup> George Lardner, Jr., "Sen. Fanin Assails Douglas on Article," Washington Post, May 29, 1969; Bernard L. Collier, "Thurmond Urges Douglas To Quit," New York Times, May 30, 1969; Congressional Record, June 16, 1969, pp. H 4830-H 4833.

<sup>10</sup> "Justice Douglas Gets A Pass," Chicago Tribune, July 23, 1969.





was facing a major fight over his Supreme Court choice. News that a key Republican congressman was looking into a liberal justice appointed by a Democrat might harm Haynsworth's chances. Faced with either confirming or denying the report, Ford said it was true."<sup>11</sup>

In announcing the investigation, Ford emphasized that ethical standards being applied to nominee Haynsworth should also apply to present justices. "If the Senate votes against a nominee for lack of sensitivity," Ford stated, "it should apply the same standards to sitting justices." Ford said that several colleagues had come to him suggesting the investigation including GOP Conference Chairman John Anderson (R-Ill.) and Rep. Guy Vander Jagt (R-Mich.). He said that he had not discussed the matter with the President and at the White House Press Secretary Ron Zeigler made a similar statement.<sup>12</sup>

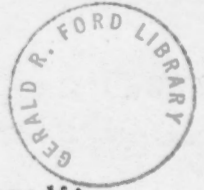
Whether the investigation was disclosed as Johnson later reported it, whether Ford leaked the news himself, or whether the effort was coordinated at the White House remains a matter of speculation. But response to the news was immediate and many observers saw it as heavy-handed attempt to hold Douglas hostage for a Haynsworth confirmation.<sup>13</sup> The New York Times

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<sup>11</sup> Johnson, op. cit.

<sup>12</sup> Spencer Rich, "Ford Eyes Ousting Douglas," Washington Post, November 8, 1969; Fred P. Graham, "Ford Hints Move To Oust Douglas," New York Times, November 8, 1969.

<sup>13</sup> Royce Brier, "Douglas Hostage For Haynsworth," San Francisco Chronicle, November 19, 1969; "The Impeachment Bungle," Washington Post, November 11, 1969.



editorialized: "The transparency of Mr. Ford's move does him no credit either as statesman or tactician....we think he will find that anti-Haynsworth Senators will hardly be induced to switch by a poorly veiled threat."<sup>14</sup>

The Senate failed to confirm Haynsworth but Ford said he was continuing his investigation. In a UPI interview he said that his original decision to study possible impeachment of Douglas was related not to the Haynsworth matter, but to the published charges about Douglas' connection with the Parvin Foundation.<sup>15</sup>

While the issue dropped from sight, the Haynsworth defeat apparently intensified the bitterness among many conservatives and strengthened their determination to do something about Douglas.<sup>16</sup> Signs that preparations were being made to move against Douglas when Congress reconvened in January were revealed in a Washington Evening Star story in late December by Lyle Denniston. Denniston wrote: "A commitment to go ahead with the often-discussed challenge ... is -- at this point -- a loosely organized effort. It has several champions, but no leader. It has no timetable, beyond the plan to file "articles of impeachment" during the House's 1970 session. Moreover, the preparation of the case against Douglas involves an unusual combination of House staff work,

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<sup>14</sup> "Contempt of Court," New York Times, November 11, 1969.

<sup>15</sup> "Rep. Ford Says He Pushes Study Of Justice Douglas," Washington Post, November 22, 1969.

<sup>16</sup> Johnson, op. cit.



plus continuing private investigations of the Justice by news organizations. These private investigations almost have the status of a semi-official inquiry, since the anti-Douglas lawmakers are definitely counting on the results to help make their case.

"The move is dominantly if not exclusively a Republican effort. While the House GOP leader, Rep. Gerald R. Ford of Michigan, is among the promoters of the continuing probe of Douglas' activities, he has not yet assumed the role of leading the effort, or even the job of coordinating it. Ford's own staff is generally doing the House part of the investigation. That activity gained a windfall of 'tips' -- some believed to be solid, others plainly frivolous -- after Ford's staff investigation of Douglas became public over a month ago.

"While the GOP House leader is centrally involved, he apparently is not yet ready himself to conclude that the impeachment effort will go forward. His staff, in fact, expressed surprise at being told that a commitment to go ahead had been made.

"Among those known to be either a part of the group that will seek impeachment, or else acting as an adviser to the group, are Reps. Clark MacGregor, R-Minn., and H.R. Gross, R-Iowa. It is understood that there are at least two or three others in the group."<sup>17</sup>

Douglas, meanwhile, continued to infuriate his critics. On February 18, Random House published his latest book, *Points of Rebellion*. The volume,

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<sup>17</sup> Lyle Denniston, "Lawmakers Pushing Effort To Impeach Justice Douglas," Washington Evening Star, December 21, 1969.

<sup>18</sup> Israel Shenker, "Justice Douglas Says Revolution May Be Only Honorable Reply to Oppression," New York Times, February 1, 1970; William McPherson, "On Revolt," Washington Post, February 20, 1970.





employing much of the controversial political though and rhetoric of the day, argued that revolution might prove the only alternative to oppression by the "American establishment." Douglas wrote, "George III was the symbol against which our founders made a revolution now considered bright and glorious.... We must realize that today's Establishment is the new George III. Whether it will continue to adhere to his tactics, we do not know. If it does, the redress, honored in tradition, is also revolution."<sup>19</sup>

Points Of Rebellion produced a predictable response among the anti-Douglas faction in Congress. One Congressman, Louis Wyman (R-N.H.), already troubled by Douglas' foundation activities, recalled that after reading advertisements about the book, he sent a staff aide out to buy an advance copy. "I took the whole morning off and read it. It disturbed me very much."<sup>20</sup> Without informing anyone else, Wyman began drafting a resolution calling for the need to investigate Douglas with a possible view of impeachment. When he went to Ford's office, he was asked by an aide not to introduce his resolution, the timing was inappropriate. The Senate was once again considering a Supreme Court nominee, G. Harold Carswell, and it was considered politically unwise to make any moves that might jeopardize the Republican nominee's chances.<sup>21</sup> One individual reportedly close to the matter recalled, "By this time quite a number on both sides of the aisle wanted to go after Douglas, but to be perfectly honest about it, they didn't have the material Ford's staff had. That staff had been working off and on for about a year."<sup>22</sup>

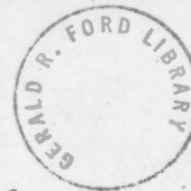
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19 Ibid.

20 Johnson, op. cit.

21 Ibid.

22 Ibid.



After the Carswell defeat, conservative emotions intensified. Haynes Johnson wrote: "When news of Carswell's defeat reached the House floor, it is understood that several congressmen immediately approached Ford. They were angry and emotional. In effect, they laid down an ultimatum: either Ford would act on Douglas or one of them would. All it took was for one member to stand up and call for impeachment, Ford was reminded.

"Ford, who was not available for comment on this episode, is reliably reported to have told them to hold off. If anything was going to be done it should be done right, and not just for one day's headline in someone's hometown newspaper.

"Ford deliberated for several days. Part of the time he went to his home district in Grand Rapids, Mich. He returned to Washington on Sunday and studied the case further. About noon the next day, Monday, April 13, Ford met with several key congressmen at the Capitol. Among them, it is reported, were Leslie Arends of Illinois, Robert Sikes of Florida, Joe D. Waggoner Jr. of Louisiana and William L. Scott of Virginia.

"Wyman remembers the essential question as boiling down to this: whether to ask for impeachment or an investigation to see if impeachment proceedings were justified.

"Ford told them he intended to lay out, publicly, his probable cause case against Douglas in a speech later that week. He also said he favored an investigation rather than impeachment.

" 'Jerry,' one Capitol Hill source speculated, 'was in the position of being stampeded or of staying in front of the pack.'"<sup>23</sup>





At about the same time Vice-President Agnew called for a thorough examination of Douglas' record. He said: "It seems rather unusual for a man on the bench to advocate rebellion and revolution, and possibly we should take a good look at what he thinks, particularly in view of the fact that two fine judges have been denied seats on the bench for statements that are much less reprehensible, in my opinion, than those made by Justice Douglas."<sup>24</sup>

As Ford was preparing his speech against Douglas, another incident served to further enrage the anti-Douglas faction and catalyze many who were undecided about joining the move against the Justice. The April issue of Evergreen magazine appeared on Washington newsstands and among its contents was an excerpt from Points of Rebellion. The substance of the article was offensive to his critics, but as Johnson wrote, "...it wasn't the justice's words that set off a furor; it was their juxtaposition with other material. There was a full-page caricature of Richard Nixon made to look like George III. There was an article by Tom Hayden on repression and rebellion. But the centerpiece was the object of most attention. A seven-page rotogravure section contained 13 half page photographs of nudes. Men and women were embracing, making love. Genitals were clearly shown....As pornography goes these days, the pictures were not that titilating, but they were enough to solidify the opposition against Douglas."<sup>25</sup>

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<sup>24</sup> Milton Viorst, "Bill Douglas Has Never Stopped Fighting The Bullies of Yakima," New York Times Magazine, June 14, 1970, p. 52.

<sup>25</sup> Johnson, op. cit.



Describing the magazine, Ford later told Congress; "There are nude models of both sexes in poses that are perhaps more shocking than the postcards that used to be sold in the back alleys of Paris and Panama City, Panama."<sup>26</sup>

Feelings against the Justice were thus running high as Ford delivered his promised speech on the evening of April 15. "It was," Johnson wrote, "something of a Roman circus atmosphere on Capitol Hill. One Republican congressman who sat listening that night says he was reminded of Julius Caesar and Mark Antony. Indeed, a feeling of the Forum and the public trial was present. Ford himself added to the impression. At one point during his speech, he recalled that the censor was an ancient Roman office, the supervisor of the public's morals. He and his colleagues didn't intend to set themselves up as censors, but he added: "Let me substitute, if I might, another Roman office, the tribune. It was the tribune who represented and spoke up for the people. This is our role in the impeachment of unfit judges and other federal officials. We have not made ourselves censors; the Constitution makes us tribunes!"<sup>27</sup>

In his speech, Ford made five major charges against Douglas:

-- Douglas' failure to disqualify himself from the obscenity cases of Eros publisher Ralph Ginzburg. In 1969, Ginzburg had also paid Douglas \$350 for an article on folk-singing which appeared in Avant Garde. Ford termed the action a "gross impropriety."

-- Ford charged that Points of Rebellion violated the standard of good behavior and was "an inflammatory volume."

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<sup>26</sup> Congressional Record, April 15, 1970, p. H 11916.

<sup>27</sup> Johnson, op. cit.



-- Ford charged that Evergreen magazine which had published the excerpt from Points of Rebellion was "hardcore pornography."

-- Ford again brought into question Douglas' relationship with the Albert Parvin Foundation linking the Justice with gambling concessions in the United States and the Dominican Republic and alleged international gangsters.

-- Ford charged that the Center for the Study of Democratic Institutions, of which Douglas was chairman of the board of directors and had received consultant's fees, was a "leftish" organization and a focal point for organization of militant student unrest.<sup>28</sup>

Two days before Ford's speech, he had called a news conference and announced that a bipartisan group would introduce resolution creating a special investigating unit to look into the Douglas matter and report to the House in ninety days.<sup>29</sup> By calling for a select committee, the anti-Douglas forces sought to avert any impeachment measure away from liberal Representative Emanuel Celler's (D-N.Y.) Judiciary Committee, the group that normally considers any House action to impeach. Aware of this tactic, Celler's aides had contacted Andrew Jacobs Jr., (D-Ind.), and in the midst of Ford's speech, Jacobs "marched to the well dropped in the hopper"<sup>30</sup> a resolution stating: "Resolved, that William O. Douglas, associate justice of the

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<sup>28</sup> Congressional Record, April 15, 1970, pp. 11912-11927; "House Committee Studies Charges Against Douglas," Congressional Quarterly Weekly Report, November 13, 1970, pp. 2786-2789.

<sup>29</sup> Warren Weaver Jr., "Inquiry By House On Douglas Urged," New York Times, April 14, 1970.

<sup>30</sup> Marjorie Hunter, "Ford Asks Douglas' Ouster," New York Times, April 16, 1970.





Supreme Court of the United States, be impeached of high crimes and misdemeanors and misbehavior in office."<sup>31</sup> Fifty-two Republicans and fifty-two Democrats, mostly from the South, signed the Ford resolution but as the result of Jacobs' action Celler's committee had jurisdiction and the conservative's measure later died in the Rules Committee.<sup>32</sup>

At the White House, Press Secretary Ron Zeigler denied any role in the Ford investigation by White House aide Clark Mollenhoff and stated: "There is no involvement and no concentration on this matter from the White House,"<sup>33</sup>

Celler moved swiftly to form a special subcommittee to investigate the charges against Douglas. On April 21 he announced that Byron Rogers (D-Co.), Jack Brooks (D-Texas), William M. McCulloch (R-Ohio) and Edward Hutchinson (R-Michigan) would serve on the subcommittee created by Jacob's resolution, H.Res. 920. Celler, himself, would chair the group. He said the unit would report its finding to the full Judiciary Committee in 60 days.<sup>34</sup> Earlier Celler had joined with a group of forty other House liberals in protesting the Ford move as "an attack on the integrity and the independence of the United States Supreme Court."<sup>35</sup> He had also commented that the timing of the anti-Douglas move suggested that "this probably is somewhat in the spirit of retaliation" for Carswell's defeat.<sup>36</sup>

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31 Philip Warden, "2 Factions Grab For Probe Of Douglas," Chicago Tribune, April 17, 1970.

32 Hunter, op. cit.

33 Ibid.

34 Norman C. Miller, "House Judiciary Committee Names Panel To Investigate Charges Against Douglas," Wall Street Journal, April 22, 1970.

35 Hunter, op. cit.

36 Richard L. Lyons, "Ford Seeks Removal Of Douglas," Washington Post, April 14, 1970.



Douglas remained unperturbed, at first refusing to take the matter seriously. In an interview with ABC News he said that if his latest book advocated rebellion, "I'll eat it without mayonnaise or anything."<sup>37</sup> When asked whether "you find this controversy more heated than some of the others you've been in," Douglas countered, "What controversy are you talking about?"<sup>38</sup> Some of Douglas' friends finally convinced him the impeachment move was serious. The group -- including Clark Clifford, former Secretary of Defense; Ben Cohen, one of the original New Deal "brain trusters;" and David Ginsburg, a Washington lawyer and Douglas' first law clerk -- saw the move as "nothing less than an effort by the Nixon Administration to stifle dissent and build a campaign issue for the fall election. After analyzing Ford's statement and the impeachment resolution, they concluded -- over Ford's strong denial -- that the Administration was deeply involved in it all."<sup>39</sup> Douglas agreed and announced that he was disqualifying himself from participating in rulings on obscenity appeals involving the film "I Am Curious (Yellow)" and a libel suit against Look magazine (in response to which Ford commented that the action was "tacit admission" that Douglas should have disqualified himself from the Ginsburg libel and obscenity case),<sup>40</sup> and retained an old friend and former Federal judge, Simon Rifkind, to represent him against possible impeachment charges.<sup>41</sup>

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37 "Douglas Denies Book Advocates Rebellion," Washington Post, April 18, 1970.

38 Ibid.

39 Viorst, op. cit.

40 "Douglas To Skip 3 Court Rulings," New York Times, April 28, 1970.

41 Majorie Hunter, "Lawyer Is Retained By Douglas To Help In Impeachment Fight," New York Times, April 29, 1970.





The first action the special subcommittee took has to request from Ford and the other sponsors of the impeachment resolution material relevant to the charges against Douglas. The subcommittee also requested relevant material from the Department of Justice, the Securities and Exchange Commission and the White House.<sup>42</sup> The subcommittee began the long process of collecting, collating and analyzing the information. However other events, the incursion of American troops into Cambodia and the accompanying unrest on college campuses, overshadowed the work of the investigating group, and for his role, Ford was forced to turn his attention to defending the Administration's actions in the face of renewed anti-war efforts in Congress.

By early June, it appeared that the subcommittee had made little progress. Members of the group complained that they had received little cooperation and little new information from fellow Congressmen. Most of the evidence, solicited in earlier letters, proved to be newspaper clippings and the like. Rep. Brooks added that the Federal Government was not much more of a productive source of evidence. He commented: "They're just as slow as molasses to come up with any facts. We're slowly getting papers from the Justice Department. They didn't have very much, apparently."<sup>43</sup>

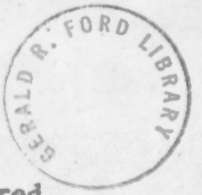
The subcommittee, stating that it needed additional time to conduct its investigation asked for, and was granted, sixty day extension. It issued, on June 20, an interim report containing material on the investigation up to that point.<sup>44</sup>

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<sup>42</sup> U.S. Congress. House. Committee on the Judiciary. First Report By The Special Subcommittee on H. Res. 920. 91st Congress, 2d Session. June 20, 1970. p. 9-10.

<sup>43</sup> "Evidence Meager On Douglas," Washington Post, June 7, 1970.

<sup>44</sup> U.S. Congress. House. Committee on the Judiciary. First Report by the Special Subcommittee on H. Res. 920, 1970. pp. 25-26.



At the same time that some members were stating that there appeared little substantial evidence to impeach Douglas, there were reports that "recent checks on House attitudes" revealed that "if the House votes on charges any time before election day, Nov. 3, it very likely would vote to impeach Douglas." The reports stated that public opinion was running so heavily against Douglas, that most Congressmen would be forced to vote against him or run the risk of losing at the polls in November. Therefore, there was pressure from the leadership not to conclude the subcommittee investigation before the fall elections.<sup>45</sup>

On August 3, amid further reports that the Douglas unit was stalling its investigation,<sup>46</sup> Ford, who had little to say publicly about the Douglas investigation for the past several months,<sup>47</sup> joined with Reps. Waggonner and Wyman in a charge that the investigation was a "whitewash" and a "travesty."<sup>48</sup> Ford demanded that the panel hold public hearings, examine witnesses under

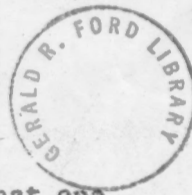
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<sup>45</sup> Lyle Denniston, "Pressure Building in House For Douglas Impeachment," Sunday Star, June 14, 1970; Willard Edwards, "Word For Douglas Case — Delay," Chicago Tribune, July 2, 1970.

<sup>46</sup> Robert S. Allen and John A. Goldsmith, "Celler Probe Of Douglas Raises Doubt of Sincerity," Jackson, Miss. Daily News, July 27, 1970.

<sup>47</sup> Ford had said very little on the floor of the House and in an appearance on the ABC radio and television program "Issues and Answers," on June 22, had not commented on the subject at all.

<sup>48</sup> Carroll Kilpatrick, "Douglas Whitewash Charged," Washington Post, August 3, 1970; Marjorie Runter, "Critics of Douglas Call Inquiry A 'Whitewash' and 'Travesty'", New York Times, August 3, 1970; Shirley Elder, "Waggonner Irked, Starts Own Probe of Douglas," Washington Evening Star, August 3, 1970.



oath and make public "all pertinent documents." He also revealed that one of his staff assistants, Robert Hartman, had been working with Waggoner in an independent investigation of Douglas. Waggoner had reportedly hired Benton L. Becker, a former trial lawyer in the Criminal Division of the Justice Department to conduct the probe. Becker had been on Waggoner's office staff for about two months.<sup>49</sup>

Celler replied saying that his inquiry was being obstructed by the refusal of Federal agencies to supply necessary information. He said that the State Department, the Justice Department and the Central Intelligence Agency had not furnished his material requested six weeks ago. Celler stated: "These delays and obstructions have hampered the special subcommittee in this investigation and hindered the completion of its task. In the light of the lack of cooperation from the executive branch, criticism of the special subcommittee is not justified." Celler indicated the investigation could run on for many months. So on August 11, the subcommittee released a second document, "Legal Materials on Impeachment," containing briefs by Rifkind and Detroit law firm retained by Ford.<sup>51</sup>

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49     Ibid.

50     Warren Weaver, "Celler Says 3 Agencies Obstruct Douglas Inquiry," New York Times, August 5, 1970.

51     U.S. Congress. House. Committee on the Judiciary. Legal Materials On Impeachment. Special Subcommittee on H. Res. 920. 1970.





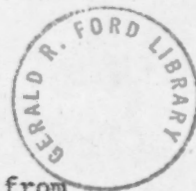
While political charges and countercharges continued, the case seemed to crystalize around Ford's views of what constituted an impeachable offense. In his April 15 attack on Douglas, Ford had stated: "The only honest answer is that an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history."<sup>52</sup>

On May 18, Douglas' attorney, Simon Rifkind, had submitted a Memorandum On Impeachment of Federal Judges. Rifkind wrote: "A careful examination of the Constitution itself...clearly demonstrates that Federal judges may be impeached only upon charges of 'Treson, Bribery, or other High Crimes and Misdemeanors'. There is nothing in the Constitution...to suggest that Federal Judges may be impeached for anything short of criminal conduct. Rifkind's memorandum concluded: "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...In consequence, while the Federal judiciary has over the years suffered a few judges who were unable to perform their duties, since 1805 it has been free from political purges and from harrassment directed at the beliefs, speeches and writings of individual judges."<sup>53</sup>

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52 Congressional Record, April 15, 1970, p. H 11913. The Constitution, Article III, Section one, provides that "The judges both of the Supreme and inferior Courts, shall hold their offices during good behavior...." Article II, Section Four, 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."

53 Congressional Quarterly Weekly Report, November 13, 1970, p. 2788.



On August 5, Ford had submitted a memorandum to the subcommittee from the Detroit law firm of Dykema, Wheat, Spencer, Goodnow, & Trigg, which at Ford's request had studied the question of what constitutes an impeachable offense. Bethel B. Kelley, a member of the firm, wrote Ford, "If a judge's misbehavior is so grave as to cast substantial doubt upon his integrity, he must be removed from office regardless of all other considerations.... We conclude, that misbehavior by a Federal Judge may constitute an impeachable offense though the conduct may not be an indictable crime or misdemeanor."<sup>54</sup>

On August 18, Rifkind wrote a letter to Celler indicating astonishment at the Kelley Memorandum. "Mr. Ford's definition of an 'impeachable offense' means that judges serve at the pleasure of Congress. This is so utterly destructive of the principles of an independent judiciary and the separation of powers that I could not believe that convincing historical support could be found for so radical a proposition. Now that I have read the Kelley memorandum, I am more than ever convinced that Mr. Ford's <sup>view</sup> is historically and legally as untenable as it is mischievous."<sup>55</sup>

In defending Douglas against the particular charges of Ford and the anti-Douglas forces, Rifkind made the following points:

-- On the Ginzburg case: "The Justice has never had any dealings with Ralph Ginzburg."

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<sup>54</sup> Ibid; Fred P. Graham; "Impeach Douglas Plea Raises Constitutional Question," New York Times, August 24, 1970.

<sup>55</sup> Congressional Quarterly Weekly Report, op. cit., pp. 2788-2789.





-- On Points of Rebellion: "The attack on the Justice's book...is not only profoundly subversive of the First Amendment, but is based upon an inexcusable distortion of what the Justice actually wrote...The book...is a patriotic call for our democratic processes to meet challenges of the day so as to pull the rug from under the small minority advocating violent rebellion."

-- On the Evergreen magazine article: "The Justice did not authorize its editors to reprint a portion of his book. Pursuant to its standard contractual rights, Random House, one of the nation's most prestigious publishers, made the decision."

-- On associations with Albert Parvin, alleged international gamblers, and the Albert Parvin Foundation: "The Foundation had no connection with the 'international gambling fraternity.' ...Justice Douglas does not know the alleged underworld persons named in the attacks upon him...(He) has not engaged in the 'practive of law' ...The corporate papers he is alleged to have drafted were drafted by a Los Angeles attorney...In serving as a director of the Albert Parvin Foundation, and receiving modest compensation for such services, Douglas followed long precedent -- as, for example, did Chief Justice Warren Burger and Justice Harry Blackmun with respect to the Mayo Foundation and the Kahler Corporation."

-- On the Center for The Study of Democratic Institutions: "Mr. Douglas has participated in the activities of one of the free world's great academic institutions...So have Chief Justices Warren and Burger, George Romney and Robert Finch, and scores of other distinguished Americans. His services... have been uncompensated."<sup>56</sup>



While Ford was leading the Washington challenge against Douglas, he was reportedly presenting a different image in his reelection campaign in his home district of Grand Rapids, Michigan. In an election that was marked by emotional appeals from many contenders, Ford's campaign was surprisingly low-key. Wrote a Washington Post correspondent: "In the GOP's grand crusade for victory over permissiveness this fall, House Republican Leader Gerald R. Ford is clearly out of step. It is largely a matter of style and emphasis, but the distinction keeps popping up on TV screens throughout Michigan's heavily Republican 5th Congressional District: 'Return a man of peace to Congress. Support Jerry Ford. He gets things done.' That's it. No shrill cries for law and order. Not one of Ford's TV ads dwells on street crime or campus unrest. Perhaps more significant, not one of them mentions President Nixon -- or the Republican Party -- by name."<sup>57</sup>

After the November election it appeared that the Douglas impeachment move was running out of steam, despite reports that the action might be continued by some unnamed "lame-duck" Congressmen.<sup>58</sup> Celler's special subcommittee staff had completed the bulk of its work in mid-September and on December 3, the subcommittee met and voted three to one that there were no grounds to impeach the Justice. One of the two Republican members, Edward Hutchinson of Michigan, announced that he would file a minority view. The other, William M. McCulloch of Ohio, refrained from joining in either

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George Lardner Jr. "Ford Strides Out of Step With His Party," Washington Post, November 2, 1970.

58

Arlene Alligood, "Impeach Douglas Drive May Be Pushed by Lame-Ducks," San Francisco Chronicle, November 15, 1970.



the majority or minority view. McCulloch later said that there was "just not enough evidence to come to a final, fast, hard conclusion on whether an impeachable offense has been committed." Celler termed the report, "the most exhaustive inquiry I've known of during my 48 years in Congress."<sup>59</sup>

In response to the subcommittee's vote, Ford said: "For the present I can only say that this matter is far from finished and that the sentiment of House members, both Democrats and Republicans, is not accurately reflected in the subcommittee's vote."<sup>60</sup>

But when the new session of Congress opened in January, Ford indicated that he had decided to spend less time and effort in leading the public challenge against Douglas. One source was quoted as saying that Ford "doesn't intend to be so much the ball-carrier." And, though the anti-Douglas forces offered an opening day resolution to create a special six-member committee to conduct what they called a "meaningful" investigation, nothing came of the effort.<sup>61</sup>

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<sup>59</sup> Marjorie Hunter, "House Unit Finds No Basis For Action On Douglas," New York Times, December 4, 1970; Lyle Denniston, "Bid To Impeach Douglas Fails," Washington Evening Star, December 4, 1970; Richard L. Lyons, "No Grounds To Impeach Douglas Found," Washington Post, December 4, 1970.

<sup>60</sup> "Ford Calls Efforts To Oust Douglas Far From Finished," New York Times, December 5, 1970.

<sup>61</sup> Lyle Denniston, "Justice Douglas' Critics In House Renew Attack," Washington Evening Star, January 22, 1971.