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# NOMINATION OF HAMER H. BUDGE

GOVERNMENT

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## HEARING BEFORE THE COMMITTEE ON BANKING AND CURRENCY UNITED STATES SENATE EIGHTY-EIGHTH CONGRESS SECOND SESSION

ON  
THE NOMINATION OF HAMER H. BUDGE TO BE A MEMBER OF  
THE SECURITIES AND EXCHANGE COMMISSION

JUNE 24, 1964

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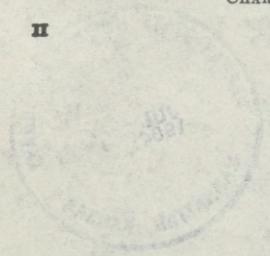
COMMITTEE ON BANKING AND CURRENCY

HEARING  
COMMITTEE ON BANKING AND CURRENCY  
UNITED STATES SENATE  
SEVENTY-FIFTH CONGRESS  
SECOND SESSION

**COMMITTEE ON BANKING AND CURRENCY**

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II



## NOMINATION OF HAMER H. BUDGE

WEDNESDAY, JUNE 24, 1964

U.S. SENATE,  
COMMITTEE ON BANKING AND CURRENCY,  
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 5302, New Senate Office Building, Senator A. Willis Robertson, chairman of the committee, presiding.

Present: Senators Robertson, Sparkman, Proxmire, Williams, Neuberger, McIntyre, Bennett, Javits, Simpson, and Dominick.

The CHAIRMAN. Will the committee please come to order.

As the announcement was made in the Senate, the first matter to be taken up today is the nomination of Judge Hamer H. Budge of Boise, Idaho, to be a member of the Securities and Exchange Commission for a term of 5 years, expiring June 5, 1969.

I should like to insert in the record at this point subsection 4(a) of the Securities and Exchange Act of 1934, which establishes the Commission.

### SECURITIES AND EXCHANGE COMMISSION

SECTION 4. (a) There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be composed of five Commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such Commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No Commissioner shall engage in any other business, vocation, or employment than that of serving as Commissioner, nor shall any Commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this title. Each Commissioner shall receive a salary at the rate of \$20,000 a year,<sup>1</sup> except that the Chairman shall receive additional salary at the rate of \$500 a year and shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the Commissioners first taking office after the enactment of this title shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after the date of the enactment of this title.

The CHAIRMAN. I should also like to insert in the record a biographical statement of the nominee, together with a letter from Mr. Carl L. Shipley, giving his support to the nomination.

<sup>1</sup> Public Law 86-619, approved July 12, 1960 (74 Stat. 408), and Public Law 86-771, approved Sept. 13, 1960 (74 Stat. 913), amended the fourth sentence of sec. 4(a). This section was previously amended by: Public Law 859, 81st Cong. (63 Stat. 880); Public Law 429, 81st Cong. (63 Stat. 972); and, Public Law 854, 84th Cong. (70 Stat. 736).

(The biographical sketch and the letter follow:)

HAMER H. BUDGE

Hamer H. Budge: home, Boise, Idaho; born, Pocatello, Idaho, November 21, 1910; son of Idaho Supreme Court justice and Mrs. Alfred Budge. B.A. degree, Stanford University, Palo Alto, Calif.; LL.B. degree and instructor, business law, University of Idaho; private law practice 1936-42; U.S. Navy 1942-45, honorable discharge as lieutenant commander; private practice Budge & Clemons, Boise (Clemons, Skiles, & Green) 1946-50. Member of the State house of representatives in 1939, 1941, and 1949, serving as Republican floor leader in 1949. Member of Congress 1951-60: Appropriations Committee (subcommittees: Defense; Labor; Health, Education, and Welfare; Interior; Public Works), Interior Committee, and Rules Committee. District judge, Boise, 1961 to present. Member: Latter-day Saints Church, Salvation Army Advisory Board, Sigma Alpha Epsilon, Idaho Bar Association, American Bar Association. Admitted to practice before the Supreme Court of Idaho and the Supreme Court of the United States and the lower courts thereof. Married Jeanne Keithly 1940, one daughter, Kathleen.

SHIPLEY, AKERMAN & PICKETT,  
Washington, D.C., June 19, 1964.

HON. A. WILLIS ROBERTSON,  
Chairman, Senate Banking and Currency Committee,  
Senate Office Building, Washington, D.C.

DEAR CHAIRMAN ROBERTSON: Our office has done a great deal of work in the field of securities and represented the interests of many persons regulated under the Federal securities laws. Because of this experience, we have a continuing interest in seeing the Securities and Exchange Commission composed of members who can meet the high responsibilities imposed upon it by Congress in a truly objective fashion in the national interest.

The Securities and Exchange Commission should be truly bipartisan, and its members should be men of broad experience and varied background.

The addition of former Congressman Hamer H. Budge to the membership of the Commission will be an important strengthening influence. Mr. Budge has a reputation for independence, unshakable integrity, and keen intelligence.

His experience as a Member of Congress and as a judge give him special qualifications not possessed by any other member of the Commission at the present time. We hope your committee will confirm his appointment in the near future.

Very truly yours,

CARL L. SHIPLEY.

The CHAIRMAN. I have already received from the nominee a list of his securities, which is being placed in the confidential file of the committee.

The nominee will be presented to the committee by two fine Senators from his home State of Idaho. We will be glad to recognize at this time Senators Church and Jordan.

Of course the nominee may come up to the witness stand with the Senators and we will later ask him a few questions.

Mr. Church, we will be pleased to hear from you.

STATEMENT OF FRANK CHURCH, U.S. SENATOR, FROM THE  
STATE OF IDAHO

Senator CHURCH. Thank you very much, Mr. Chairman.

Members of the committee, Judge Budge, the nominee, whom the President has designated to fill a vacancy on the Securities and Exchange Commission, has long been a very prominent citizen of Idaho. He served for 10 years in the Congress of the United States, representing the Second Congressional District of Idaho.

In recent years he has been judge of the district court, the court of general jurisdiction for the Third Judicial District of Idaho.

He has been throughout most of his adult life, a leading figure in the Republican Party. Though our views have differed politically, I can personally say that he is a man of fine character and unquestionable personal integrity.

As a Republican—and this is a position which under the law is to be filled by a Republican—I should also say that he is senior in entitlement among the Republicans of my State by virtue of his service in the Congress.

My colleague, Senator Jordan, is here with me this morning. He has had a long and close association with Judge Budge, and I should like, for that reason, to defer to him in extending and amplifying these remarks.

The CHAIRMAN. We will be glad to hear from Senator Jordan.

#### STATEMENT OF LEN B. JORDAN, U.S. SENATOR, FROM THE STATE OF IDAHO

Senator JORDAN. Mr. Chairman and members of the committee, I feel it a privilege to be here this morning to endorse the nomination of Judge Hamer Budge for the Republican vacancy on the Securities and Exchange Commission.

I have known Judge Budge since the end of World War II, when he returned to his home State of Idaho from service in the Navy.

I have known him since the late 1940's, when he served in the legislature of the State of Idaho, as a very prominent member of the house of representatives of that legislature.

I have known him intimately throughout his 10 years of service in the Congress of the United States. And I live in the same city of Boise, where the judge and his lovely wife, Jeanne, and daughter reside. It has been a happy and rewarding association back through the years.

I have known the judge's family, too. Judge Budge is a well known title in Idaho, his father having been on the supreme court of the State for many, many years before his passing. I know this brothers and sisters, who are among our leaders in community and State life and in the professions of law and medicine.

I would say, without hesitancy, Mr. Chairman and members of the committee, that the Budge family is now, and has been back through the years, one of the leading families in the State of Idaho.

You have before you his biography. I would only say to you that I do not hesitate in the slightest to commend him to you for your favorable consideration. I vouch for his integrity. I think that his background has qualified him well to serve the public interest in this very important position to which he has been nominated.

I am sure the judge is well able to answer any questions you may wish to propound to him, and it would be interesting to me to see a judge answer questions rather than ask them himself. And I yield, Mr. Chairman, for that purpose.

The CHAIRMAN. The Senator from Utah.

Senator BENNETT. Mr. Chairman, I would like to claim the privilege of paying my tribute to the nominee who has been selected by the President. I was not fortunate enough to be consulted at the time his name was under consideration, so that his nomination was a welcome surprise to me, as it was to other people in the West.

The States of Utah and Idaho are neighbors, the border is pretty faint in many respects, and a lot of the Budges came across the border and we have had some fine lawyers in Utah who are members of this same family.

I have had many pleasant business associations in Idaho, and over the years have come to have a tremendous respect, not only for the man who is before us, but for the members of his family, and I think the President made a very wise suggestion in nominating this westerner from the intermountain area to serve on the Securities and Exchange Commission.

Out in our part of the country there has been a kind of folklore that we were pretty well controlled by Wall Street. So it is poetic justice that a man should come out of the mountains who will have some power to have some control over these Wall Street tycoons. And I don't think we could send a better man for that job.

The CHAIRMAN. The Chair notes with interest that Senator Jordan said that Judge Budge is a native of Idaho, and I remember a very distinguished Senator from Idaho by the name of Borah. However, Senator Borah, I believe, was born in Illinois. Now we have the son of a chief justice of the Supreme Court of Idaho, a man who got a B.A. degree at Stanford and belonged to the same fraternity there that my youngest boy did at Washington & Lee, ΣAE, I believe, wasn't it?

Mr. BUDGE. Yes, sir.

The CHAIRMAN. And he got a law degree, from his State university. He has been a member of the legislature, just like I was before I got to Congress. Then he went to Congress just like I did, and then he became a judge.

I think all told that Idaho has the right to be rather proud of him. I don't mean to indicate how I am going to vote, but it seems like a right good record.

The Senator from Alabama.

Senator SPARKMAN. I have no questions.

The CHAIRMAN. The Senator from Wisconsin.

Senator PROXMIRE. Mr. Budge, do either you or your wife have any investment holdings at present that would constitute any kind of a conflict of interest in this position?

Mr. BUDGE. I would think not, Senator. My holdings are very modest. We own some common stocks.

I filed a list of our holdings with the chairman.

Senator PROXMIRE. Judge, I am going to be blunt. First I want to say that I am delighted you have the support of the two Senators from Idaho, two men whom I respect very highly and admire and like. I think both Senator Church and Senator Jordan are two of our very finest Senators.

What I am going to ask has no personal animosity at all, and as a matter of fact I haven't made up my mind on this at all, my mind is open. But there are certain disturbing charges that I think should be aired publicly. I guess the best way to find out exactly where you do stand, and what we are voting on when we vote on your nomination, is to get your comments on the judgments of those who oppose you. So I quote briefly from some editorials, which question this nomination, and I ask for your reaction so we can get a clear statement of where you stand.

I will start by reading three short paragraphs from the Wall Street Journal, and you are probably familiar with that article. It says:

President Johnson's nomination of a conservative Republican, Hamer H. Budge, to the Securities and Exchange Commission provoked grumbling among liberal Democrats in Congress and rumbles of an exodus among reform-minded staff members inside the SEC.

It also produced reactions bordering on jubilation among some leaders of the securities industry.

"He sounds like a good man to me," declared one prominent Wall Streeter. "Mr. Budge ought to please the industry," said another industry figure.

More than any other Johnson action, this nomination, sent to the Senate Friday for confirmation, substantiated expectations that his administration will steer the regulatory agencies on a less venturesome course than they followed under President Kennedy.

Mr. Kennedy filled the agencies with liberal-leaning, reform-minded types. At the SEC and elsewhere they proved the toughest regulators industry had since New Deal days.

Then I have editorials from three of the outstanding newspapers in the country, one from the New York Times, which said in part as follows:

Under Mr. Cary the SEC, watchdog of the marketplace, has been completely revitalized. It is no longer enfeebled or insensitive to the many changes taking place in the sale and distribution of stock. On the contrary, it has played an active, reformist role, taking the lead in raising standards in the securities industry. Its position will be strengthened by congressional passage of the proposed securities reform bill.

Professionals should be chosen for the regulatory agencies. There is always a grave risk that political regulators will either succumb to industry pressure or simply go to seed. It is a risk that we cannot afford to run.

And they started off their editorial by saying they felt your lack of professional background and your unsympathetic attitude toward reform might result in stemming the zeal of the SEC toward regulation.

Just one more quotation. It is from the Washington Post:

The appointment of men who are more interested in "cooperation" than in regulation can only make matters worse by interjecting a strong element of "clientism," the jargon word used to characterize the regulatory agency which protects the interests of its client industry rather than those of the public.

The Milwaukee Journal also opposed your nomination for the same kind of reasons. Now, these are all judgments made by editorial writers, who haven't had, I think, a chance to question you on your attitude toward your new appointment.

Part of your record appeals to me very much, your record of economy, which I think is very wise. I try my best to do the same kind of thing. But what I want to ask you to begin with is, what do you think is the function of the SEC? Why should we have this regulatory agency to regulate private industry in view of the fact that both you and I certainly, you particularly, in view of the philosophies you have expressed in Congress, have favored a minimum amount of regulation and want to keep business as free as possible?

Mr. BUDGE. Well, Senator, it seems to me that the major function of the SEC is to protect the investing public of America. And frankly, I don't see how any editorial writer could conclude what would be my attitude toward enforcing the law. I think in my whole career, I have done everything within my means to enforce the law. That is what I would expect to do on the Commission.

Senator PROXMIRE. Then you feel your responsibility is one of enforcing the letter of the law?

Mr. BUDGE. Yes, sir.

Senator PROXMIRE. Don't you also feel, however, that the SEC has a great deal of discretion as to how the law is enforced, how vigorously it is enforced?

Mr. BUDGE. I am sure that would be true.

Senator PROXMIRE. Have you had a chance to examine S. 1642, or the House companion bill?

Mr. BUDGE. I know generally what is in it. The bill before the Rules Committee in the other body?

Senator PROXMIRE. In the House, yes. Of course the Senate bill is passed.

Mr. BUDGE. It seems to me that bill which extended the authority of the SEC over the over-the-counter market is something that is very necessary. We trade, you know, in securities in Idaho. In fact we have two very busy brokerage offices in my hometown, both of which employ seven or eight brokers. And it seems to me that the easiest place for a business in the trading of securities is in the over-the-counter market. It is something that Congress should be congratulated for doing, when Congress extends the authority of the SEC to protect the public in the over-the-counter market.

Senator PROXMIRE. You then approve of the main thrust of the bill, which is in that direction, plus the qualifications of the people who are permitted to deal in securities?

Mr. BUDGE. Yes, sir. As far as I know, the responsible people in any industry or in any profession should not object to regulation which, in effect, weeds out the bad apples. I think responsible people in any line of endeavor should welcome it.

Senator PROXMIRE. What do you think should be the relationship between the Securities and Exchange Commission and the National Association of Security Dealers?

Mr. BUDGE. Well, Senator; you used the word "cooperation." At least one of the newspaper articles which I saw used that word in a little different sense than I would use it.

To me the word "cooperation" simply means seeing the other person's viewpoint and being willing at least to hear their side of the story, and then try and work out something that carries out the law, and yet, is something that they can live with. In other words, spelling out what the rules of the game are and expecting them to live up to them.

I certainly would not use the word "cooperation" in any sense that the industry should tell the Commission or any other administrative agency what action the administrative agency should take.

Now my understanding of the history of the legislation of the Securities and Exchange Commission is that it has been to a large extent based upon cooperation. The last statement of the Commission points that out very clearly. In the words of the Commission itself, down through the years most of the rules and regulations under which they are operating have been worked out cooperatively with the industry. There are rather long statements about the cooperation they have had from the National Association of Security Dealers.

Incidentally, I don't know any of the brokers in New York City who might have been quoted as being jubilant.

Senator PROXMIRE. Do you feel the National Association of Security Dealers can serve as a regulator or it is primarily representa-

tive of the industry? How close should the relationship be and what should be the nature of the relationship between the Securities and Exchange Commission and the National Association of Security Dealers, specifically?

Mr. BUDGE. Well actually I am not familiar with the National Association of Security Dealers as an official society. I don't know exactly how many dealers or brokers it represents. I have always felt, just as I do on the bench, that I like to hear both sides, all sides of the question, before I decide what my position should be. And my understanding, in the history of the Securities and Exchange Commission legislation and of the Commission, is that they have welcomed recommendations from the industry. Now whether or not those recommendations should be adopted or implemented, of course, is a decision for the Commission.

Senator PROXMIRE. What concerns me more than anything else—it is very hard with this kind of inquiry to get down to specifics. After all, you are not a former broker or a man who has dealt as a lawyer with corporate reorganization, as I understand, are you? You haven't had a great deal of experience with stocks that would be listed on the stock market or with stocks that would necessarily be traded in over-the-counter market?

Mr. BUDGE. No. I don't suppose we have over a half dozen corporations at the most in the State of Idaho that are listed on either of the major exchanges.

Senator PROXMIRE. It would be unfair to have an examination on the details and specifics of security markets. But I am very, very concerned—it is hard to know exactly how to bring it out—with this charge which the Washington Post made of so-called clientism. I think this is the greatest weakness of all of our regulatory bodies. There is a great tendency on the part of the Commission to become adaptable to the wishes of the people which it must regulate, because those are the people the Commissioner sees and works with, and, as you say, you sit down and try to work out a compromise that meets the law. But as you said at the beginning of this colloquy, the function of the Securities and Exchange Commission is to represent the investing public.

Mr. BUDGE. That is what I would intend to do, Senator.

Senator PROXMIRE. This is something, it would seem to me, that would require a degree of arm's-length attitude, and a capacity to take an adverse position, wherever the interest of the security seller might conflict with the investing public, it would seem your real responsibility is to the investing public.

Mr. BUDGE. Most certainly. And I have no connections of any kind that would prevent me from doing so.

Senator, I have tried a number of cases, both as an attorney and on the bench, involving fraud and misrepresentation. I think I understand what evidence is necessary to carry out the mandate of the Congress in enforcing the law, and I see no bar of any kind that would prevent me from doing what both of us agree is the proper function of the Commission, which is to protect the investor from fraud.

Senator PROXMIRE. I received a wire just yesterday from an organization representing shareholders, in which they said that they felt that the members of the Securities and Exchange Commission should take a kind of Hippocratic oath, the kind of oath doctors take, that

their responsibility is to shareholders, stockholders. Of course they have a broad public responsibility that is even greater than the shareholders. But in all of these problems that the Securities and Exchange Commissioners have, they certainly should feel that the only champion that the American buying public, stockholding public has, is the Securities and Exchange Commission. And there is constant change in this industry. It is becoming very complex. It requires a great deal of adaptability on the part of the Securities and Exchange Commissioners. At the same time it would seem to me it requires a tough-minded independence, because the business-interest dealer-interest atmosphere that you are coming in contact with will require great character.

Senator Church spoke of your personal integrity. I know of nothing to contradict this. I know you have very, very conservative views. I just hope that as a member of the Securities and Exchange Commission you realize you are the only hope, really, that the 17 million shareholders and investors have. If you and your fellow Commissioners don't stand up against those who would try to take advantage of them, the public just doesn't have any protection at all.

Mr. BUDGE. Senator, I have sentenced some individuals to the State penitentiary for fraud and misrepresentation. If a person is a crook, whether he is in the securities industry or any other industry, I would deal with him as such.

Senator PROXMIRE. It is not that clear cut. I don't think we are dealing with people who are conspicuous crooks. It is a matter, it seems to me, of trying to get as zealous and devoted an administration of this law that we have on the books now and the new law as we can.

I am delighted you say you support enthusiastically S. 1642, and the House companion bill extending it to over-the-counter markets.

Mr. BUDGE. I think it is most necessary.

Incidentally, I feel that the activities of the Securities and Exchange Commission are just as necessary, and probably more necessary in my State than they are in most States of the Union, because our blue-sky laws have never been really implemented. The Securities and Exchange Commission is the enforcing agency in my State, whereas in a lot of the larger States, the State regulatory boards have been far more active.

Senator PROXMIRE. Thank you, Mr. Chairman.

The CHAIRMAN. Well, as the distinguished Senator from Wisconsin has said, he brought up a very interesting point. He says to you, for instance, about the National Association of Securities Dealers, who represent all of the security dealers of the Nation, first that you must deal with them at arm's length, then you must stand against those who would try to take advantage of you, but now, he says, I am not saying that they are a bunch of crooks, but you better watch them.

Well, I have never heard anybody say that we should watch the Farmers Union, when they are trying to sell us a billion dollar wheat bill, or a \$500 million butter and milk bill. I have never heard anybody say you should stand off and not let Walter Reuther get too close to you when he wants to tell you what the automobile workers want. Or that you shouldn't associate with Mr. Meany or anybody else who is connected with the AFL-CIO. I did read where somebody, trying to make amends for not investigating the sex life of all the Members

of the Senate, said that no Senator should associate with anybody that had any dealings with the Government. For instance, I couldn't go down to Newport News and associate with anybody in the shipbuilding company there. They are building a big carrier down there, and they were the low bidders on a contract of \$29 million, but I couldn't associate with them because they are dealing with the Government. That is an interesting viewpoint.

I remember—I reckon I ought not to remember when Coolidge was President, but I do—one day somebody walked into his office and said: "Mr. President, I think you better look at this editorial that criticizes you." He said: "I don't want to see it. It is just the opinion of one man."

So thank you for the editorials, but that is the way I feel about them.

Any other questions or observations, friendly or hostile?

Senator JAVITS. Mr. Chairman, I have some questions, if it is my turn.

Senator BENNETT. I will be happy to yield. I just want to make one comment at the end.

Senator JAVITS. Thank you. Judge Budge, I served with you in the House. I think I know a little about your views. You are conservative, of course, and that is just as good a passport in this country as being liberal, in my judgment.

I would like to ask you this question, though: The general philosophy associated with conservatism is that the least Government regulation is the best. And therefore the normal tendency is for people who are conservative to hold down the amount or the intensity of Government regulation when they have an opportunity.

Really, I think that is what my colleague, Senator Proxmire, was searching for in the way of a connection between you and these alleged statements in the editorials.

Because this is a hearing on a nomination where even the personal philosophy of the nominee is in issue, could you tell us how in your own judgment you square your becoming a member of a regulatory commission which does regulate private enterprise—which was developed under Franklin D. Roosevelt, which was one of the reasons for a good deal of hostility to Franklin D. Roosevelt—with your own attitude toward public affairs generally?

Mr. BUDGE. Senator, the first time I saw the word "conservative" attached to my name was when I was seeking to do what Senator Proxmire was seeking to do yesterday. I always felt that the Government was spending too much money and as a member of the Appropriations Committee I was somewhat active in attempting to reduce the spending and that is when that label was first applied.

Of course, I would have to agree with the appraisal, that I am a conservative, that is my philosophy. But I don't see that that has any real bearing upon my efforts or lack of efforts to regulate anyone. To me this position is not a bit different than the position I now hold on the trial bench. I think that the securities industry needs regulating just as much as any other phase of our activity. I think Government agencies should be very careful to spell out the rules, so that industry or anyone else who is being regulated will know what the rules are, so they would voluntarily attempt not to violate them.

But insofar as carrying out the functions of the Commission, I don't see how anyone could conclude that because I am a conservative, I would not see that industry was regulated for the benefit of the general public.

Senator JAVITS. Judge Budge, you defined the function of the Securities and Exchange Commission, and I tried to note it down as you said it. But please correct me if I am wrong. You said the major function of the Securities and Exchange Commission is to protect the investing public of the United States. Am I right on that?

Mr. BUDGE. Well, that seems to me to be a fair statement.

Senator JAVITS. Now what would be your comment upon another question which would be a corollary to that one? It is also a major function of the Securities and Exchange Commission to keep open the channels of investment, is it not, so that American business may be adequately financed so as to flourish both at the present and in the future?

Mr. BUDGE. I think that is most necessary, Senator.

Senator JAVITS. Now have you as yet studied the SEC laws enough to have a feeling about what their authority is in both of those functions?

I have been attorney general of my own State and administered what is probably one of the toughest blue-sky laws. There are some crooks in the securities business as in any business, but it is by no means the standard of the investment community, any more than crime is the standard of the ordinary secular community.

The other questions, I assure you, are much bigger. I haven't the remotest doubt, Judge, that you will give the most vigorous, informed, and fair administration to those sections which deal with cheats and criminals and people who would bilk the public. I have no doubt of that whatever.

I do feel, also, that your thought, as you are entering into a new field, needs to be directed to the fact that the securities business is the key to American prosperity and American power. After all, the two things the Communists haven't got, which are epitomized in the securities business, are credit and ownership. They haven't got it, they can't get it even if they wanted to. It is just completely foreign to their system.

So I would hope you would give us something of your thinking on that aspect of the work of the Securities and Exchange Commission, which is also a critical point.

Mr. BUDGE. Well, Senator, I am a believer in the American system, I am a believer in the capitalistic system, and I don't see how the American system, as I have been privileged to know it, can continue to exist unless we permit American industry to operate as it has in the past. And it can't operate unless it can secure finances from the citizens of this country.

Senator JAVITS. Do you see anything wrong with a person buying a speculative security, so long as that person knows that the security is speculative and has all of the facts and figures to make it possible for him to understand that it is a speculation?

Mr. BUDGE. No.

Senator JAVITS. Do you think that you as an SEC Commissioner would have to prevent him from speculating if he wanted to?

Mr. BUDGE. I think that would be impossible.

Senator JAVITS. That would probably have stopped the development of Ford Motor Co., or any other company?

Mr. BUDGE. Yes; and all of the mines in my State.

Senator JAVITS. So you understand that as one of the dynamics of the system?

Mr. BUDGE. Yes, sir.

Senator JAVITS. The rules of the game must be observed, but there is no law against speculation in the SEC?

Mr. BUDGE. No.

Senator JAVITS. Now finally, I appreciate that you have had no great experience in the securities business, but as a man of a studious turn of mind, if we do confirm you as a Commissioner, what would you do? Would you really dig into this in a very real and studious way?

Mr. BUDGE. Well, it is a subject, Senator, that interests me. We buy and sell securities out in Idaho. As a matter of fact, in our brokerage offices out there, there are small machines, about maybe 14 inches long, scattered around the customers' room, and any customer can walk over to that machine and, for example, push CPB, which are the letters for Campbell Soup Co., and within less than 10 seconds he will have the last bid and the last asking price and the last sale price, all three figures in front of him on that machine. Or if he punches ADA, he would get Astrodata on the American Exchange.

I am not entirely unfamiliar with the mechanics of it. Some of my money has gone into it.

Senator JAVITS. Have you as a judge had tried before you any cases involving the securities laws of the United States?

Mr. BUDGE. No; I have not.

Senator JAVITS. But you have heard some securities fraud cases?

Mr. BUDGE. Yes.

Senator JAVITS. What is your reversal record like as a judge?

Mr. BUDGE. Well, I would just have to approximate this. In the 3 years I have been on the court, I have probably handled something like 300 or 400 matters that have gone to final judgment. I think the Supreme Court has reversed me less than six times. And in one of those instances it did it with an apology, because they said they were also reversing themselves.

Senator JAVITS. Well now, as a man of conscience, would you say that there is any association or affiliation that you have which would prevent you from carrying out the duties of this office in the manner and spirit and with the philosophy which is represented by your answers to Senator Proxmire and to me?

Mr. BUDGE. I would state unqualifiedly, no.

Senator JAVITS. And you feel you can dedicate yourself to this task with complete fidelity to these principles you have just stated?

Mr. BUDGE. I do, yes sir, Senator.

Senator JAVITS. Thank you. That is all.

The CHAIRMAN. The Senator from Utah.

Senator BENNETT. I just wanted to rise and say a word for the conservatives. I think there is a place in our system for some of us, even though we are considered by some to be dying and to belong with the dinosaurs and other creatures of the past ages.

I would like to remind this committee that just 3 years ago we had the privilege of passing on the nomination of a former member of our own group to be a member of the Securities and Exchange Commission, Senator Allen Frear, who was essentially a conservative. And I don't think he wrecked the SEC by his service. I am sorry that ill health required him to withdraw from it.

I think there is a place, even on a regulatory agency that has to do with Wall Street, for a man who has the kind of philosophy that I know Allen Frear had and that I know Judge Budge has.

I have never had any doubt about the judge's ability to carry the responsibility to which President Johnson has called him, and I suppose that if President Johnson had great fears about the impact of a conservative point of view on the Securities and Exchange Commission he would not have appointed him.

Did you serve in the Congress with the then Congressman Johnson? Was he there when you came there?

Mr. BUDGE. No, sir, he was a member of the Senate when I first came to Congress.

Senator BENNETT. Well, having made that plea for the continuation of the conservatives, even in regulatory agencies, I will yield, Mr. Chairman.

The CHAIRMAN. Before the Chair recognizes our distinguished colleague from New Jersey, the Chair wants to call attention to the fact that this nominee, if confirmed, will be called upon to administer a law which I introduced in the Senate last year, which the Senate passed, and which the House has amended only slightly. That bill either has been approved or will be approved by the Rules Committee, and it will pass the House very shortly. It will be enacted into law before the end of this session. That bill was handled very ably in the Senate by our friend from New Jersey, Mr. Williams. I recognize Senator Williams.

Senator WILLIAMS. Thank you very much, Mr. Chairman. I gather, Judge, if you were a member of the Rules Committee now, you would vote for that bill, vote it out of the Rules Committee and vote for it on the floor of the House. Is that right?

Mr. BUDGE. Senator, I can't say I am familiar with that bill in all of its details. Insofar as the bill seeks to protect the public against misrepresentation in the over-the-counter market, it seems to me it is very, very much needed. Most of the securities traded in my State are of local corporations and, of course, are sold over the counter. I have thrown away some stocks, one I think of at the moment, the Golden West Dredging Co., and I became the proud owner of 100 shares of that at one time and found out there wasn't enough water in the area to float a sailboat, let alone a dredge. It is that kind of thing that I think the Government owes a duty to protect the citizen against.

Securities are by their very nature a very difficult thing for the public to know much about. It isn't like buying a house or looking at the teeth of a horse to see how old the horse is. You can't tell much from that piece of paper.

Senator WILLIAMS. This legislation will substantially strengthen the hand of the SEC to deal with the securities market and you support the strengthening legislation?

Mr. BUDGE. Yes, sir.

Senator WILLIAMS. We had a lot of quotations from newspapers here, from Senator Proxmire. I was surprised to read in the paper that two members of this committee were said to have grave reservations about your appointment, the Senator from Pennsylvania, Mr. Clark, and the Senator from New Jersey. It was a surprise to me, because I hadn't offered an opinion to anybody. I don't know how Senator Clark felt. But I hadn't talked about this. The article did provoke a call from the White House, I might say, a rather earnest inquiry of what is this all about. I told them I hadn't expressed any public opinion.

I will say that in that call the White House told me the routine checks and investigations of you brought forth one of the highest reports, one of the best reports they had ever heard.

Mr. BUDGE. I appreciate that.

Senator WILLIAMS. I think all of the questions I might have raised have been raised, so I have nothing further.

The CHAIRMAN. I would like to comment on the statement of our distinguished colleague from New Jersey. Of course, some people not only called me a conservative, but a reactionary, but nobody calls our friend from New Jersey a conservative. He is an enlightened liberal, or a progressive liberal, or something like that. He handled this legislation and he says it strengthens the hand of the Commission. It was endorsed by the National Association of Securities Dealers.

Any other comments? The Senator from Oregon.

Senator NEUBERGER. Judge Budge, how long have you known that you might become a member of the Securities and Exchange Commission?

Mr. BUDGE. Might become? Less than 30 days.

Senator NEUBERGER. I was really quite surprised in your reply to Senator Williams that you didn't know the details of that bill. I would think if there was anything you knew about this business before you came today, it would be the details of the bill that, as our chairman has said, is very likely to be passed soon, and that you would know, therefore, not that you would be behind it in its broad general principles, but in detail.

I would have been more assured if I felt you had boned-up on that bill before you came.

Why do you think you were appointed?

Mr. BUDGE. Well, I would hesitate to speculate on that.

Senator NEUBERGER. You obviously haven't very much experience in this field. That is why I wondered if you had some other qualifications.

The statement about conservatism interested me because conservatives always seem to be willing to abide by the good things that liberals have enacted into law. F.D.R. could hardly be called a conservative, but under his regime the very agency we are talking about was put into our Government. So it would seem to me that conservatives love to go along with liberal ideas but try to fight them all of the way. The great liberal, Franklin D. Roosevelt, saw the need for the Securities and Exchange Commission. Wasn't it Justice Douglas who was one of the first Commissioners?

Senator SPARKMAN. And Joseph Kennedy.

Senator NEUBERGER. After Kennedy was Douglas. I am very concerned about the attitude toward the regulatory agencies as a

whole. I have observed in past years a tendency on the part of the commissioners of these agencies to contact the industry they are supposed to be regulating. Perhaps it is natural that they would, more than the people they are supposed to be representing, because those people are in Idaho and Oregon and Utah and New York, and they are not here en masse.

So if there ever was a consumer interest in our Government, it must lie in the regulatory agencies. I believe that when these agencies were set up, that was what they were supposed to do, to be the consumer representative. We have to be constantly on guard and that is why we are concerned with appointees, whether it is the Federal Power Commission or the SEC or Food and Drug Administration, as to what the make-up of the person is. The agency is no different from its members. And if they are inclined to lean more heavily one way than another—of course I fear leaning toward industry more than toward the consumers—then I am concerned that this fourth branch of Government, which hangs out there sort of free from lobbyists and free from all sorts of pressures, does continue to represent the consumer.

I hope if you are appointed, and I am sure you will be, that you will certainly have that in mind.

Mr. BUDGE. I certainly will, Senator.

Senator NEUBERGER. Thank you.

Senator JAVITS. Would you yield on one point?

Senator NEUBERGER. Certainly.

Senator JAVITS. I think you are right about this bill. May I make this suggestion to you, Mrs. Neuberger, that if you think well of it, perhaps we might ask the judge to take a look at the bill and see how it has fared in the House and then ask him to advise the committee by letter whether he sees anything in it that would prevent him from administering it in the way in which he has assured us he intends to administer the securities and exchange laws.

Senator NEUBERGER. That would satisfy me.

Senator BENNETT. Would the Senator yield to me? The judge was on the bench until last Friday. In other words, he had all of the burden of the responsibility of a judge deciding cases being argued before him. So this didn't give him very much time to bone up on the job that he might be appointed to.

Senator JAVITS. He could briefly summarize this, I think.

Senator BENNETT. Yes, I join in the present request.

(The letter was not received prior to the printing of the hearing.)

Senator SPARKMAN. May I suggest if he is going to study the bill that he particularly read the report from this committee reporting the bill.

Mr. Chairman, I note with interest the original Commission. I might say, by the way, that the one who injected life into the Securities and Exchange Commission was one who I think is generally considered a conservative, Joseph F. Kennedy. There were some liberals on there with him, however. I notice James M. Landis was with him, and Judge Ferdinand Pecora, and two others, George C. Matthews and Robert E. Healy. It is rather interesting to see the makeup of the original Commission that set it on its feet, and I think set it on a very good course.

Senator SIMPSON. Just a word, because I happen to know the distinguished judge, I have known him for 25 years, and renewed my acquaintanceship each year, and that doubles my admiration for him. I am going to say I am not going to indulge in the parlor pastime of labeling different political philosophies and then interpreting those philosophies to suit my own knowledge or my own views or thoughts. There is too much of that and the record is replete with it already.

But I do have something I want to say. I am going to say this at the outset, that I am going to support you, because I know you to be a man of unimpeachable integrity, I know, I have witnessed that over the years. But the thing I am interested in is not the labeling of the philosophy here, or my interpretation, because I wouldn't want mine to go on the record, but what I want to know is this: If we do confirm your nomination, will you uphold and defend the laws and regulations of the Securities and Exchange Commission and the Government of the United States in the enforcement of your duty?

Mr. BUDGE. I will.

Senator SIMPSON. And will you treat everyone and all people before you, parties of interest, with fairness and impartiality in the performance of those duties?

Mr. BUDGE. Yes, sir.

Senator SIMPSON. Thank you.

The CHAIRMAN. Any further questions?

Senator DOMINICK. Mr. Chairman, I just want to welcome Judge Budge as a fellow westerner and a self-imposed exile from the East. It is a pleasure to have you here. I had the pleasure of meeting Judge Budge some 2 years ago, when he had been on the bench just about a year, and I had the opportunity while in that State of hearing people comment about him. And I have never heard higher praise for anybody.

It is a pleasure to have a man of your judgment, ability, and integrity with us.

Mr. BUDGE. Thank you, sir.

The CHAIRMAN. Does any other Senator wish to be recognized? If not, Judge, we thank you. Senator Jordan, we thank you.

(Thereupon, at 11:05 a.m., the consideration of the nomination was concluded.)







