and the talks dragged on through mid-1992. That July, Mr. Lemelson sued four of the companies, Toyota Motor Corp., Nissan Motor Co., Mazda Motor Corp. and Honda Motor Co. Within a month, the Japanese agreed to settle; the 12 companies paid him the $100 million.

At a post-settlement celebration of sorts, in the Brown Palace Hotel in Denver, the Japanese insisted on taking photographs, which show eight grim-looking Japanese surrounding a beaming Mr. Lemelson. He contends that it was a heroic victory, a patriotic act. ''My federal government has made [in taxes] probably over a quarter of a billion dollars on my patents over the years,'' he says. ''A good part of it has been foreign money.''

Similar infringement suits followed, against Mitsubishi Electric Corp., against Motorola Inc., against the Big Three Detroit auto makers. Initially, both Mitsubishi and Motorola decided to fight; later, they settled. The suits against General Motors Corp. and Chrysler Corp. were ''dismissed without prejudice.'' In effect, any further action against GM or Chrysler is in abeyance until the Ford outcome is known.

WHY THEY SETTLED

By all accounts, the strategy was well-planned and well-executed. Mr. Hosier says the Japanese were more inclined to settle than the Americans. Commissioner Lehman says the Japanese are ''particularly freaked by litigation. And so you start out with them. . . . And, of course, they all pay up, and that establishes a precedent.'' After the Japanese settlement, several European auto makers also agreed to take licenses on Mr. Lemelson's patents.

Some who settled say they concluded that Mr. Lemelson had a good case. Others call it an uphill battle to try to persuade a judge or jury that the government had repeatedly made mistakes in issuing him all those patents. With a legal presumption that patents are valid, his opponents say they had the burden of proving the Patent Office had goofed 11 times in a row.

In any event, by 1994, Mr. Lemelson had amassed about $500 million in royalties from his patents. But Ford has held out.

Even as the lawyers haggled over the law, many of the facts in the case were undisputed. In 1954 and 1956, both sides agree, Mr. Lemelson made massive patent filings, which included, for example, many drawings and descriptions of an electronic scanning device. As an object moved down a conveyor belt, a camera would snap a picture of it. Then that image could be compared with a previously stored one. If they matched, a computer controlling the assembly line would let the object pass. If the two images didn't match up, it might be tossed on a reject pile.

But because Mr. Lemelson's filings were so extensive and complex, the Patent Office divided up his claims into multiple inventions and initially dealt with only some of them. Thus, for whatever reason, his applications kept dividing and subdividing, amended from time to time with new claims and with new patents.

It was as if the 1954 and 1956 filings were the roots of a vast tree. One branch ''surfaced'' in 1963, another in 1969, and more in the late 1970s, the mid-1980s and the early 1990s. All direct descendants of the mid-1950s filings, they have up-to-date claims covering more recent technology, such as that for bar-coding scanning.

The lineage was presented to the court in a color-coded chart produced by Ford. It shows how the mid-1950s applications spawned further applications all through the 1970s and 1980s. One result: a group of four bar-code patents issued in 1990 and 1992, with a total of 182 patent claims, all new and forming the basis of 14 infringement claims against Ford. But because of their 1950s roots, these patents claim the ancient heritage of Mr. Lemelson's old applications and establish precedence over any inventor with a later date.

The entire battle has become numbingly complex, a battle over whether the long stretch between the mid-1950s and the new claims in the 1990s constituted undue delay. Ford says yes. Mr. Lemelson says no. The magistrate judge found for Ford.

Another question is whether Mr. Lemelson's original filings—his scanner and camera and picture of images on a conveyer belt—should be considered the concepts of bar-code scanning, and thus Ford's use of bar coding in its factories make it an infringer of his patents. Mr. Lemelson says yes. Ford says no, arguing Mr. Lemelson depicted a fixed scanner (bar-code scanners can be hand-held).

''As we said in our lawsuit, if you walk into the Grand Union and show up for work with a 'Lemelson' bar-code scanner, it won't work,'' quips Jesse Jenner, a lawyer for Ford.

It's impossible to say which side will ultimately prevail. Or whether there will be a settlement. But the clear winners so far are the lawyers. Mr. Lemelson alone employs a small army of them. And Mr. Hosier pretty much thanks himself for that, noting an old joke: ''One lawyer in town, you're broke. Two lawyers in town, you're rich.''

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Washington, Mrs. LINDA SMITH, is recognized for 5 minutes.

[Mrs. LINDA SMITH of Washington addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

STEAL AMERICAN TECHNOLOGY ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. FORBES] is recognized for 5 minutes.

Mr. FORBES. Mr. Speaker, I take the floor today in this, the people's House. Yes, we proudly proclaim that this is the people's House where we stand up for the individual.

Mr. Speaker, tomorrow there is going to be a very startling series of events on an issue that will be before this House. I refer specifically to H.R. 400, the Steal American Technology Act.

This act will take American individuals and American interests and supplant them to the foreign interests. It will take multinational corporation interests and put them over the individual's interest. It will weigh in for power and prestige over the needs of Americans and our economy.

Mr. Speaker, H.R. 400 is about gaining access to foreign markets. If my colleagues are concerned about the terrible exporting of American jobs overseas, they will be absolutely outraged if H.R. 400 is to pass this House and become law because it sells out our children's future and our grandchildren's future, it puts us at an economic disadvantage in the world marketplace, and it makes American interests secondary to foreign interests.

Patent protections go back to the beginning of this Republic. They are spelled out in our Constitution. They say that, if a man or woman comes up with a great idea, they can get that idea protected by our Government and by our patent offices, Eli Whitney and his cotton gin protected by the patent system, Henry Ford protected by the patent system, Thomas Edison protected by the patent system.

Mr. Speaker, what this body is about to do tomorrow will put us at a distinct disadvantage. It will say to the little guy, forget you, multinational interests are supreme over individual interests; we need access to foreign markets, so we are going to sell out the individual.

This is a horrendous activity that is about to take place. Mr. Speaker, telling men and women across America, the individuals, the little guys, that come up with the good idea that they are no longer going to be protected because after 18 months, whether they have their patent or not, we will open it up for the whole world to see their idea so that the whole world can copy that idea.

And who better than the more aggressive nations around the globe that are trying to take our American ideas, Asian nations particularly have pleaded with the administration to loosen up on patents, to loosen up those protections, water down our ability to protect American ideas; and in return, we will give you access to foreign markets.

Multinational corporations love it because with their vast legal departments they can protect their interests. But what about the little guy who does not have the resources to get a bank of attorneys to protect their idea?

The American patent system has historically protected the little guy, and tomorrow we are going to sell down the river the little guy in America for the sake of multinational corporations. We must oppose the watering down of our patent protections.

This will put Horatio Alger's notion of this Nation, that an average man or woman with a good idea could build upon that idea and create new jobs, create whole new industries, create a stronger and better America.

As we march into the 21st century, we are going to hand off that notion to foreign interests because multinational corporations want access to foreign markets. And if we let this pass in this House, shame on us, Mr. Speaker.

☐ 1545

Shame on us for selling down the American people in what we have lovingly called the people's House.

REGARDING JUDICIAL ACTIVISM

The SPEAKER pro tempore (Mr. ROGAN). Under the Speaker's announced policy of January 7, 1997, the

gentleman from Texas [Mr. DELAY] is recognized for 60 minutes as the designee of the majority leader.

Mr. DELAY. Mr. Speaker, I take this time to once again discuss an issue that is of great concern to the American people. That issue is judicial activism. And I am very pleased to join my colleagues in taking out this special order.

Last week a three-judge Federal appeals court reversed a decision made by Judge Thelton Henderson, who barred the enforcement of the California civil rights initiative. In reversing that decision, the appellate judge wrote, ''A system which permits one judge to block with the stroke of his pen what 4,736,180 State residents voted to enact as law tests the integrity of our constitutional democracy.''

Well, I think, Mr. Speaker, that is exactly right. Judicial activism threatens the checks and balances written into our Constitution.

And, Mr. Speaker, I would like to enter into the RECORD an article that appeared in today's edition of the Hill newspaper, written by Thomas Jipping, the director of the Free Congress Foundation's Center for Law and Democracy. The article is entitled ''Impeachment Is Cure for Judicial Activism.'' I think it is a well-reasoned and rational explanation of why impeachment should be used by this Congress as a tool to act as a check to the imperial judiciary.

[From The Hill, April 16, 1997]

IMPEACHMENT IS CURE FOR JUDICIAL ACTIVISM

(By Thomas L. Jipping)

America's founders knew that government power, if left unchecked, will always grow and undercut liberty and self-government. The judiciary is today proving them correct. Operating unchecked for generations, judges routinely reach beyond the ''judicial power'' granted by the Constitution and exercise legislative power they do not legitimately possess.

Judicial activism exists in part because Congress refuses to exercise the checks and balances the founders crafted. One of these is impeachment. Rep. Tom DeLay (R-Texas) recently drew howls of protest from the legal establishment and political left by suggesting that Congress revive this check on excessive judicial power, Rep. DeLay, however, is on solid ground. His critics like activist judges because they like what those judges do; they are simply not honest enough to say so. But it is Rep. DeLay's view of a judiciary exercising only judicial power, checked if necessary with the tools provided by the Constitution, that resonates with America's founders.

Activist judges claim the power to make our laws mean anything they wish. They practice Chief Justice Charles Evans Hughes' maxim that the Constitution is whatever the judges say it is. As President George Bush put it, they legislate from the bench. Even Humpty Dumpty could define judicial activism when he declared: ''When I use a word, it means what I choose it to mean—neither more or less.'' If judges have the power to determine the meaning of our laws, however, they have the power to make our laws. That is a power legitimately exercised only by the people and their elected representatives.

America's founders intended that Congress impeach activist judges. In The Federalist No. 81, Alexander Hamilton argued that ''the supposed danger of judiciary encroachments on the legislative authority ... is in reality a phantom.'' Why? Because, wrote Hamilton, ''there never can be a danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body entrusted with [impeachment].''

The Constitution allows impeachment for what it calls ''high crimes and misdemeanors.'' Advocates of unlimited judicial power yank this phrase from its constitutional moorings and give it whatever narrow meaning is convenient for their argument. American Bar Association President N. Lee Cooper repeated the current myth in The Hill (March 26) by arguing that judges may only be impeached for a ''criminal act.''

This bizarre theory has never been true and Mr. Cooper's reliance on high school civics for this theory demonstrates the dangers of both make-it-up-as-you-go judicial activism and the dumbing-down of American education. Arrayed against his position, however, is nothing less than 600 years of English and American legal and political history.

According to Prof. Raoul Berger, impeachment was created because some actions for which public officials should be removed from office are not covered by the criminal law. The phrase ''high crimes and misdemeanors'' already had 400-year-old roots in English common law when the framers placed it in the U.S. Constitution. English judges were impeached for misuse of their official position or power, mal-adminstration, unconstitutional or extrajudicial opinions, misinterpreting the law, and encroaching on the power of the legislature.

The Constitution's framers also believed that impeachable offenses extended beyond indictable offenses. When they settled on the phrase ''high crimes and misdemeanors,'' for example, George Mason and James Madison believed it included attempts to subvert the Constitution.

All of these are features of the judicial activism that today undermines liberty and self-government. Activist judges do not simply make decisions someone does not like; they exercise power they do not legitimately possess. If a willful exercise of illegitimate power is not impeachable, nothing is.

Faced with these facts, apologists for unlimited judicial power retreat to the cliché of ''judicial independence.'' They never utter a word when judges illegitimately steal legislative power, but suddenly discover judicial independence and the separation of powers at the suggestion of Congress legitimately checking judicial power. Checks and balances, however, cannot work only in the direction one likes.

Judicial independence is a means to the end of a judiciary exercising only the ''judicial power'' granted by the Constitution and leaving the lawmaking to the legislature. When judges go beyond their proper role and make up new meanings for our laws, it is those judges who violate their own independence and make necessary the checks and balances, such as impeachment, provided by the Constitution.

Mr. Speaker, an independent judiciary is the anchor of our democracy. A despotic judiciary may very well lead to the downfall of our democracy. I just urge my colleagues to consider all the tools within our constitutional authority as we, the Congress, take on a very real problem of judicial despotism. One of those tools is impeachment.

Despite the barrage of criticism that myself and my colleagues have suffered over the last few weeks, I think impeachment is a tool that we should consider using.

Mr. Speaker, I yield back the balance of my time.

JUDICIAL ACTIVISM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 1997, the gentleman from Texas, Mr. SAM JOHNSON, is recognized for the remainder of the time as the designee of the majority leader.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I appreciate the position of the other gentleman from Texas, Mr. DELAY. I come before the House today to talk about a problem that the gentleman has already laid out there, but it is quietly and steadily eating away at our constitutional system of government.

Judicial activism is not only compromising our long-held tradition of separation of powers, but throughout our academic and legal community they are pushing the judiciary to be activists in their decisions, so much so that any attempt by Congress to address this issue is immediately met with accusations of political sabotage and constitutional breach.

Mr. Speaker, I want to assure my colleagues that we in the Congress are not trying to undermine the Constitution. Far from it. We are trying to enforce it, to open the issue to public scrutiny and return the role of the Federal judiciary back to our Nation's intended belief, what our Nation's founders had always intended: That the third branch of the Government, the judiciary, is to be the weakest branch of government.

In The Federalist papers, number 78, Alexander Hamilton, for example, wrote that the judicial branch, quote,

> Will be always the least dangerous to the political rights of the Constitution, and that it may truly be said to have neither the force nor will but merely judgment.

The judiciary was intended to interpret the law, not to create it. But that is exactly what we are seeing in some of our courts today. They are not ruling on the law, they are creating the law.

Unelected Federal judges are furthering their own personal and political views by legislating from the bench and ignoring the will of the people of the United States. In fact, it has gotten so bad that judges are even overturning elections of our elected people.

David Barton, in his book, ''Impeachment: Restraining an Overactive Judiciary,'' said it best when he wrote that

> It has gotten to the point that any special interest group that loses at the ballot box only has to file a suit in Federal court to declare itself the winner.

And most of the time our judges are ruling with them.

If we just look at the recent instances of judicial activism, we will see some of the expansion of power that Federal judges are trying to achieve. I say some Federal judges, not all of