ADDRESS BY

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NASA REMARKS

We have come a long way together. I regret deeply the fact that I cannot be with you this year. Even I cannot be in two places at once and government business requires that I be elsewhere at this time.

I have been Chairman of the Securities and Exchange Commission now for over four years and a Commissioner for almost seven. During the 26 years I have been with the Commission, I have attended a good number of your meetings. More important we have shared many accomplishments and considerable experience. You and the Commission have come a long way.

If we look back only seven years, many things have changed dramatically. It is now commonplace to see 10-15 million share days on the New York Stock Exchange. In fact, the industry was forced to close Wednesday because it was literally drowning in business. Mutual funds and other investment companies are over the $50 billion mark. There are 24 million direct shareholders today, many millions more through pension plans and other institutions. All of these account for nearly 50% of the vastly expanded trading volume.

This may be the last time I address you as Chairman of the Securities and Exchange Commission. This is not an election prediction; nor is it intended as a statement of intention. I hope you will forgive me if I look back a bit.

The great economic crises are dim to some and unknown to many. Those of us who lived through the economic shocks of the 1920's and 30's remember very well that an entire generation was hurt by or otherwise feared the securities markets. The great reforms of the New Deal, which were cursed by many on Wall Street, led to renewal of confidence in our economy in general and the stock markets in particular. An entire generation of persons in the securities business, now in their twenties and thirties, has no recollection of all this. They take confidence in the market for granted; some take regulation for granted. While some take many things for granted which once were the products of toil, heated argument and spilled blood, others raise questions long since answered and forgotten. This is the greatest tribute,

I would think to the reforms of the thirties, at the State as well as the Federal levels, and to the regulatory policies and programs which sprang from those reforms. Grass, it was predicted, would grow in Wall Street. Well, Wall Street is certainly green these days but I think the youngsters now refer to it as "bread." Life is still full of surprises. As I think of the vital concerns of the present and the future, the past keeps cropping up. In 1933 and 1934 before I came to the Commission, I worked for the 20th Century Fund in its study of the securities markets. I was a lowly Research Associate concerned with the effects of the great crash and subsequent depression on institutional investors. Here we are -- thirty years later -- setting up a study on institutional investors and their impact on the securities market. (That is one bill that did pass this session.)

Thirty years ago the Investment Trust Study was started. Its revelations led to the passage in 1940 of the Investment Company Act. This year we saw the first meaningful amendments to that Act survive a determined industry effort to kill the bill in the Senate. Unfortunately the bill was not considered on the merits in the House. The mutual fund industry will, I believe, yet regret its short sighted decision to fight this modest legislative reform. The need for reform is there and it will not stay buried long. I remind you that mutual fund reform was a bi-partisan effort -- begun in 1958 and supported by a unamimous Commission.

We have had some successes in recent years. Witness the 1964 Amendments, the Takeover Bid Bill, the authorization of the Institutional Study. We have done fairly well in the courts. Texas Gulf Sulphur is perhaps the most recent example which has received a lot of attention. Those who are familiar with the teaching of Cady Roberts, and Capital Gains were not surprised at the result in Texas Gulf. I have really been amazed at the great amount of loose talk we have had in the wake of Texas Gulf about the wells of corporate information drying up and the new and uncharted seas we were exploring. Those who would have the public believe that insider trading without disclosure of material information was perfectly appropriate

prior to Texas Gulf are distorting some pretty material facts. As you are aware there has been a long line of cases limiting the use of inside information. As early as 1909, the Supreme Court held _/ that a controlling shareholder of a corporation defrauded a minority shareholder by purchasing his stock without disclosing the current status of negotiations for the sale of the corporation's property.

In 1951 the same rule was laid down under Rule 10b-5 in the famous Speed v. Transamerica case. There the majority shareholder neglected to tell the minority holders of a great increase in the value of the Company's tobacco inventory. Judge Leahy said:

> "The rule is clear. It is unlawful for an insider, such as a majority stockholder, to purchase the stock without disclosing material facts affecting the value of the stock, known to the majority stockholder by virtue of his inside position but not known to the selling minority stockholders, which information would have affected the judgment of the sellers."

I wonder how many of our critics actually read Judge Bonsal's opinion in Texas Gulf. One of the key issues in the District Court was, of course, whether the information concerning the drilling results was "material information." You will recall that both the District Court and Court of Appeals held that, if the relevant facts were indeed material, the failure of the insiders to disclose such information when they purchased Texas Gulf stock was a violation of Rule 10b-5. This is the holding of Judge Bonsal and of all nine judges of the Court of Appeals. Another key issue was the time when information becomes public, that is, what constitutes public disclosure

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_/ Strong v. Repide, 213 US 419.

unfair is a market in which investor confidence is necessarily lacking -- where the public fears to bring its savings. The result in Texas Gulf should be welcomed by analysts and investors. Indeed, as the president of the Financial Analysts Federation correctly pointed out very recently, the decision in Texas Gulf should not be used by corporate executives as an excuse to shut the door of corporate information. On the contrary, the rule should, on reflection, result in more not less information being given to the public.

If our markets are to continue to deserve the confidence of the investing public, those markets must be fair. The corporate insider has a duty to refrain from taking advantage of the public investor. Even the appearance of such conduct should be avoided. If investors can decide that the market permits or sanctions such actions, they will be, to say the least, reluctant to commit their savings -- and we would have learned nothing from the tragic events of the 1920's.

If we have gone far in achieving a fairer market, we have also come far in the regulation of the securities markets and those who seek to serve the investing public in those markets. Together we have welded a federal-state tie that will endure. We have set reasonable standards for salesmen and broker-dealers; we have implemented an effective testing program, eliminated duplication, coordinated our efforts, become more effective in the elimination of fraud and in the detection of manipulation and deception and, I believe, at a lesser overall cost to the taxpayers. In short we have been waging a winning campaign together. What is even more important, the public has learned to expect that the regulators, state and federal, will act vigorously to protect the investor and general public interest in the integrity of the securities markets. As I have already stated, it is that expectation which must be fulfilled if our securities market is to continue to enjoy wide public acceptance.

We have sought -- and we shall obtain -- rates of commissions that are fair for investors and fair to those who provide the service. All of us understand the importance of reasonable profits as motivation to encourage the best talent and the expeditious use of time and effort. We have for the first

time achieved reductions in the odd lot differential. We have adopted more effective controls over floor trading. Rule 394 has been liberalized so that member firms have some access to the Third Market. We have improved our disclosure requirements, made them more meaningful. The forthcoming Report of our Disclosure Study should make it possible to do even more in this area.

NASA has become a real coordinating body. Its meetings have become meaningful exchanges among regulatory authorities. The long-time devotion of Commissioner Owens to the cause of improved relations between federal and state authorities and your own work and cooperative effort has paid off in truly effective and coordinated enforcement throughout the country. The Commission does not take this relationship for granted. We have given it a great deal of attention and we hope to see even greater progress in coming years.

The work of NASA and the Commission will grow. Insurance companies and banks are entering or seeking to enter activities subject to our jurisdiction. Mutual funds are growing, other more novel securities packages are being offered. We must meet the challenges that these changes bring with imagination and vigor. We must be the voice of the investor -- for, as the recent defeat of the mutual fund bill demonstrated, the investor has no real organized voice. We cannot afford a Thalidomide scandal as an impetus for legislative reform. We must represent the interest of the investor and the public in one of the most complex areas of the economy -- one which the average investor does not often understand. We should not be ashamed to regulate. One reason that the crises of today are not economic, as they were in the 1930's, is because the federal state regulatory administrative system has worked so well. It is only an economically sound society which can face and deal with the immense issues of social concern which are before the country today. Regulation is not a dirty word! Regulation -- intelligent, articulate, meaningful regulation -- is vital to the survival of our capital markets. I trust that in the future the Commission and NASA will support and carry through the regulatory programs which we have put into effect and nurtured and will develop new ones as needs dictate -- all to the end that our securities markets will continue to maintain and deserve the public confidence they now enjoy.