

The Chair would like to be able to report the nomination today. I think possibly we should poll the committee, as we do not have a quorum present today. Then we could get prompt action on reporting the nomination.

We will go off the record for just a moment.

(Discussion off the record.)

The CHAIRMAN. The committee will resume.

The Chair is happy to yield to Senator Hansen.

Senator HANSEN. Thank you, Mr. Chairman.

First, I would like to add my congratulations to Mr. Weinberg and I would like to say in my experience with you, sir, and in the few times I have been privileged to hear you testify before this committee, that I have been particularly impressed with your knowledge and objectivity. I call particular attention to matters relating to oil shale development and matters relating to water, both of which are of great importance to my State of Wyoming.

I think on numerous occasions you have been involved in explaining to the committee matters very complex in nature and I have been impressed by your ability to recall facets of the law. I suspect that has somewhat set you apart from what I consider to be the typical, average lawyer. I don't think you are typical or average at all, you are way above that and I am delighted with the nomination the President has made. I have every confidence you will be objective in your treatment of matters.

I have had called to my attention a Supreme Court decision that I would like to invite your comments on. On Monday, April 22, the Supreme Court handed down its opinion in the *Coleman* case (*U.S. v. Coleman*, No. 630), in which it upheld the legitimacy of the so-called marketability rule as a logical complement of the prudent man test.

The lands in issue are in California in the vicinity of Los Angeles and had been located for quartzite building stone. A patent was applied for and Interior brought an action in ejectment, contending that the quartzite deposits were subject to the Common Varieties Act, despite the provisions of the Building Stone Act (30 U.S.C. 161).

The Court said:

The Secretary's determination that the quartzite stone did not qualify as a valuable mineral deposit because the stone could not be marketed at a profit does no violence to the statute. Indeed, the marketability test is an admirable effort to identify with greater precision and objectivity the factors relevant to a determination that the mineral deposit is "valuable."

I think Solicitor Barry argued the Government's case in the Supreme Court. I would just invite your observations on the effect that you believe this administration's adopted marketability rule might have had on the development of the West, say, for the last two decades, if you care to.

Mr. WEINBERG. Yes. First, let me thank you for the kind words that you have said about me, even though I don't always live up to them, nevertheless they sound good and give me a warm feeling.

We are happy that the Supreme Court, in deciding the *Coleman* case, has confirmed the construction of the mining law the Department has used and we are particularly pleased that the decision came from a unanimous Supreme Court.