lieved in our political system as the greatest not because it could protect the status quo but because it could bring about change without tragedy. And he has been in the forefront of such change.

Loose talkers will never have much in common with this man from Richmond. Americans who have been, are, or could be wronged, will.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Wait a minute; any questions?

Senator HART. Thank you very much.

The CHAIRMAN. Mr. Biemiller.

Do you have a prepared statement?

TESTIMONY OF ANDREW J. BIEMILLER, LEGISLATIVE DIRECTOR, AFL-CIO; ACCOMPANIED BY KENNETH A. MEIKLEJOHN, LEGISLATIVE REPRESENTATIVE

Mr. BIEMILLER. I have, Mr. Chairman.

The CHAIRMAN. Will you give me a copy?

Mr. BIEMILLER. It was sent to the committee.

I beg your pardon; I thought they had been sent to the committee.

The CHAIRMAN. Well, it doesn't matter, just so you have a copy. Now proceed.

Mr. BIEMILLER. Mr. Chairman, for the record, my name is Andrew J. Biemiller. I am Legislative Director for the American Federation and Congress of Industrial Organizations. I am accompanied by Mr. Kenneth A. Meiklejohn, one of our legislative representatives.

Mr. Chairman, the AFL-CIO opposes the confirmation of William H. Rehnquist as an Associate Justice of the Supreme Court of the United States. We do so because Mr. Rehnquist's public record demonstrates him to be a rightwing zealot whose sole distinctions in public life are that he was the only major person of stature who opposed the Arizona civil rights bill in 1964 and that he has been one of the prime theoreticians of and apologists for this administration's root and branch assault on the constitutional system of checks and balances.

His nomination is consistent with and, indeed, can only be justified in terms of the President's program to secure a Supreme Court molded in his constitutional image. Mr. Rehnquist's name has been placed before this committee for consideration not because he has demonstrated the self-discipline, detachment and large minded independence that are the necessary prerequisites for distinguished judicial performance, but because he has demonstrated his complete fealty to the administration's programs, a quality that makes him an attractive servant for the President.

It is precisely because he is the administration's man rather than his own that he should not sit on the High Court, an equal and independent branch of the Government. Indeed, as the labor movement is all too acutely aware from its initial experiences with the Pay Board, a body of limited scope and authority, nothing is more destructive of the people's confidence than officials who have an obligation to the public but who view themselves as an extension of the executive, responsible to its interests rather than the public interest.

The central aim of this administration is the achievement of unbridled executive power. That is the lesson of its insistence on the right to engage in unregulated and unreviewable wiretapping in what it

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regards as domestic security cases, its attempts to downgrade the Senate's role in the process of judicial confirmation, its refusals to utilize the $12 billion Congress appropriated to stimulate the economy, its efforts to act unilaterally to breathe new life into the Subversive Activities Control Board and its campaign to intimidate the press culminating in the Pentagon papers litigation, to name just the instances out of many more that come most forcefully to mind. And during all of this Mr. Rehnquist has been the "President's lawyer's lawyer."

During the debate on Judge Parker's nomination, Senator William E. Borah of Idaho said:

> Upon some judicial tribunals it is enough, perhaps, that there be men of integrity and of great learning in the law, but upon this tribunal something more is needed, something more is called for, for here the widest, broadest and deepest questions of government and governmental politics are involved.

This campaign of executive self-aggrandisement at the expense of the people and the other branches of Government reveals the exact nature of the "something more" a nominee to the Supreme Court must demonstrate. What is necessary is a deep and abiding commitment to the proposition, stated by James Madison, that captures the essence of our constitutional system: "The people, not the Government, possess the absolute sovereignty."

The Constitution was adopted to limit the Government's power by declaring certain rights that may not be curtailed except by the people themselves through the amendment power, and to allocate those limited powers among the legislature, the executive and the judiciary.

The executive drive for dominance has created, and will continue to create, constitutional confrontations of the first magnitude. The Court is the final arbitrator in those confrontations. It is empowered to decide whether the executive will be rebuffed again when it overreaches as it was in the Pentagon papers litigation or whether the administration will receive judicial sanction in its campaign to subordinate both legislative authority and individual freedoms. There is no place on a tribunal with these responsibilities for a Justice who is dedicated to principles opposite to those of the Constitution.

The single example of the slightest concern of the individual freedoms voiced by Mr. Rehnquist, prior to his nomination, is to the rights of businessmen to refuse to deal with individuals on the basis of race. The thought that this position impinges on the freedoms of the customer apparently never entered Mr. Rehnquist's calculations or was discounted by him.

Mr. Rehnquist represented to the Phoenix City Council:

> I venture to say there has never been this sort of an assault on the institution [of private property] where you are told not what you can build on your property but who can come on your property.

Yet, as a lawyer, he must have known that since 1701, in an opinion by Chief Justice Holt, in *Lane* v. *Cotton*, the common law has been that a businessman, particularly an innkeeper, is "bound to serve the subject in all the things that are within the reach and contemplation of" his calling. Mr. Rehnquist's view is so far outside the mainstream of constitutional thought that it was unanimously rejected by the Supreme Court in sustaining the constitutionality of the public accommodations provisions of the Civil Rights Act of 1964.

Mr. Rehnquist's lack of understanding of what the Bill of Rights is all about is further illustrated by his criticism of the Supreme Court through the slogan "criminal defendants, pornographers, and demonstrators." That phrase shows, first, that Mr. Rehnquist rejects the presumption of innocence, for a man who is a defendant in a criminal case is only charged with an offense; he has not yet been found guilty.

Precisely because the balance which the Constitution strikes between the rights of the Government and the accused is a delicate one, in which the entire society has a grave concern, one who must make these nice judgments ought at least to accept the fundamental premise of the system. By assimilating pornographers and demonstrators, Mr. Rehnquist obscures the fact that obscenity is not free speech while the message of the demonstrators is.

He also shows an inability to distinguish, as the courts must distinguish, between peaceful demonstration, which is an essential form of that communication which the First Amendment is designed to protect, and mob action which, of course, is intolerable. The American labor movement has suffered sufficiently from judges who do not understand that there is such a thing as constitutionally protected peaceful picketing.

Thus, while the President has characterized Mr. Rehnquist as a "strict constructionist," he is, if anything, a strict constructionist of the Constitution prior to the adoption of the Bill of Rights, in other words, a man who construes the Constitution in favor of executive power.

Given his antilibertarian record, there was a heavy burden on Mr. Rehnquist to demonstrate to this committee that his service on the Supreme Court would be consistent with the basic Constitutional system. The burden of justifying his appointment was particularly great in light of the background of his nomination. For 5 weeks before Mr. Rehnquist's name was submitted, the Administration had floated trial balloons culminating in a list of six persons which caused dismay among the general public and in the entire legal profession.

This bizarre process tended to undermine the citizens' respect for the nominations by making it apparent that the administration cannot appoint justices to the highest court in the land any more than it can formulate international policy or domestic economic policy without Madison Avenue gimmickry more suitable for selling used cars.

Yet, when Mr. Rehnquist was given an opportunity to explain his basic Constitutional philosophy by careful inquiry by members of this committee, he did not grasp the opportunity despite the fact that in 1959 he had argued "The only way for the Senate to learn of a nominee's Constitutional views is to 'inquire of men on their way to the Supreme Court something of their views on these questions.'" Instead he chose to fence with the Senators and when this proved too transparent an evasion, he hid behind a spurious claim of privilege.

The proposition advanced was that Mr. Rehnquist could not answer the Senators' questions because he might reveal advice that he had given to the President.

It is clear that this claim was merely opportunistic because when it suited his purpose Mr. Rehnquist did describe advice he had given to the President.

But even if the claim could be taken at face value, its very invocation is but further evidence of Mr. Rehnquist's failure to give proper respect to the Senate's coordinate responsibility for the appointment of Supreme Court justices.

To deny this committee the information which it must have to make an informed choice is but a subtler version of the administration's discredited contention that the Senate is but a rubber stamp when it is asked to confirm a Supreme Court nominee.

In short, we oppose Mr. Rehnquist on the ground that he does not know what the Constitution is all about. We rest on this ground because the President has proclaimed that ideological conformity with his Constitutional views was his guiding consideration. That being so, it must also be a guiding consideration in the Senate, for the President should not be allowed to staff the Supreme Court as he would a Republican political caucus.

No President has in recent times attempted to do so. President Roosevelt nominated both Justices Black and Frankfurter, and President Eisenhower nominated both Chief Justice Warren and Justice Whittaker.

While a nominee's orientation is, of course, a highly proper consideration, extremism of the right or the left is not a virtue in a justice of the Supreme Court.

Since the evidence is that Mr. Rehnquist is an extremist in favor of Executive supremacy and diminution of personal freedoms, his nomination should be rejected, just as the nomination of William Kunstler, an extremist of the left, should be rejected if it were made.

Senator HART. Thank you very much, Mr. Biemiller.

I was struck by the excerpt that you give of Mr. Rehnquist's testimony before the Phoenix City Council in opposition to the Phoenix Public Accommodation Ordinance, or whatever it was called, and I am advised that his full testimony on that occasion is available to us; and I think in fairness to Mr. Rehnquist we ought to put the full testimony in the record.

There is a little more balance to it than that excerpt suggests, but it still does not resolve the dilemma that it presents to those of us who feel an obligation to find some demonstrated sensitivity to the rights and aspirations of minorities. The answer he gave to us was that he now has changed his position because the ordinance worked fairly well, and he didn't realize then how deeply troubled minorities were by the denial of the opportunity to make purchases in drug stores or buy a meal at a restaurant. However, we were reminded yesterday that when he was testifying in this fashion in Phoenix that Congress was about on the verge of adopting a Federal policy public accommodations; and I had the impression that, in 1964 anybody who owned a television set was aware of the depth of the concern, and some people had an appreciation of the sense of outrage which attached to that kind of denial.

Mr. BIEMILLER. You state our views most precisely, Senator.

Senator HART. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bayh?

Senator BAYH. Mr. Biemiller, I read your statement. I am sorry I did not have a chance to hear all of it personally, but I do appreciate the effort you have made to be here with us. Some of us who have

been concerned about the public statements of Mr. Rehnquist have had difficulty getting the answers to important questions.

The difficulty has not been placed by the nominee on the normal grounds of not wanting to take a position that might prejudge a case or prejudice his ability to be objective when a case comes before him, but on a lawyer-client privilege basis.

Do you have any thoughts on this? Given a whole series of public statements which are a matter of great concern to me and to you, what position should one assume if we are unable to get the nominee to come forth and say whether these are his personal views?

Mr. BIEMILLER. Well, as we state in our statement, Senator, we feel in the first place he even violated his own rules at one stage when he was testifying here, as the transcript shows. But way beyond that, we do feel that, as he himself stated in an article in the Harvard Law Record, that the Senate has a perfect right to try to find out what the views of a prospective justice are, and——

Senator BAYH. But if we are unable to do this, then what?

Mr. BIEMILLER. Then we would, of course, oppose his confirmation. I certainly wouldn't vote to confirm him if I were a Senator.

Senator BAYH. Do you think it is fair to assume that because of the statement he made, in response to one question, that if he didn't agree with the position he would no longer be there, that these stated or unrebutted views without change constitute his own?

Mr. BIEMILLER. I think that is a logical conclusion.

Senator BAYH. Now, Mr. Rehnquist has written, as I recall, that the Government can dismiss an employee who criticizes Government policy in public. There is a quote here to that effect from the Civil Service Journal.

Do you have any comments about this particular attitude?

Mr. BIEMILLER. As I recall, there was a rather considerable colloquy that took place between Mr. Rehnquist and Senator Ervin on this question.

We certainly do not agree with the position that Mr. Rehnquist has taken, and we think it certainly weakens his own position.

Senator BAYH. Inasmuch as we are concerned with strengthening our institutions, and given the nominee's background, given this statement relative to Government employees, given the feeling that he has expressed publicly in at least two areas where equal rights for minority groups were concerned, what, in your judgment, would be the effect on this broad base of public support if a man who has expressed these concerns were put on the highest court of the land?

Mr. BIEMILLER. We think it would be most undesirable. We think it would have an adverse effect on the confidence that the American people have in their institutions. We said that pointblank and I repeat it.

Senator BAYH. Thank you very much.

The CHAIRMAN. Senator Burdick?

Senator BURDICK. Mr. Chairman, I thank you, Mr. Biemiller, for your contribution this morning.

Just one thought occurred to me as you were giving your statement, and you were quite clear in your views. What weight do you attach to the fact that Mr. Rehnquist says he no longer holds the same views that he once did concerning public accommodations? Would you give that any weight?

Mr. BIEMILLER. Well, I think Senator Hart's remarks bear on this matter. It is difficult for me to understand how anybody could not have been aware of the situation that prevailed in 1964, and to say that he was not aware of the feeling of minorities at that time, that a recanting of that comes pretty late in the game; and if I were a Senator it would not influence my judgment on it.

Senator BURDICK. That is all I have, Mr. Chairman.

The CHAIRMAN. Senator Tunney?

Senator TUNNEY. Thank you, Mr. Chairman.

Mr. Biemiller, thank you very much for your statement.

As I understand your statement, you are saying that Mr. Rehnquist is not, in fact, a conservative, because, as I understand the tradition of conservatism in this country it is to oppose government imposing its will on the personal freedoms of the individual? In other words, a conservative would like the individual to have as much freedom as possible, and where government, any Federal, local, or State government, attempts to circumscribe freedom, the conservative feels on the face of it, it is wrong. Now, if Mr. Rehnquist is not a conservative, what would you consider him to be?

Mr. BIEMILLER. Well, as we say in our paper, we think he is way over on the extreme right; he is a radical of the right. I think you are using the terms quite accurately. I remember one time having a conversation with the late Senator Byrd in which we were discussing the question of the financing of the social security system. At that time an effort was being made by some Members of the Congress to sort of seize the social security fund and turn it into a baby Townsend plan. In that discussion he said, I have long admired the conservative economic views of the American Federation of Labor in the field of social security and I deplore the radical views of the U.S. Chamber of Commerce in this area. I think this is the proper use of the words.

The conservative is trying to conserve those things that have become imbedded on the American scene; and certainly we think that it is a proper thing that a conservative would respect the Bill of Rights which has been one of the great doctrines of this country.

You will note, also, we are not opposing the nomination of Mr. Powell, who, I think, fits that description.

Senator TUNNEY. As I understand your testimony then, you are saying that in your opinion Mr. Rehnquist is a person who wants to depart from the basic traditions of the country and give to the executive branch far greater powers than it has enjoyed under our constitutional system?

Mr. BIEMILLER. Precisely, and that is why we are opposing his nomination.

Senator TUNNEY. I think maybe you are a conservative, Mr. Biemiller.

Mr. BIEMILLER. On many things I am.

Senator TUNNEY. On many things I am, too. Thank you.

The CHAIRMAN. Senator Hruska?

Senator HRUSKA. Thank you, Mr. Chairman.

Mr. Biemiller, you have indicated it is not for a President to try to staff the Supreme Court as though it were a Republican caucus. Then you go on to say no President in recent times has attempted to do so

and you cited President Roosevelt who nominated Black and Frankfurter and President Eisenhower who nominated Warren and Whittaker.

Didn't you leave out a very important and distinguished President in the person of Mr. Johnson?

Mr. BIEMILLER. I don't recall that Mr. Johnson tried to stack the Supreme Court.

Senator HRUSKA. No, yet he did appoint Mr. Goldberg, Mr. Marshall, and Mr. Fortas. Were they extreme rightists or were they extreme leftists?

Mr. BIEMILLER. Mr. Goldberg was named by Mr. Kennedy, not by Mr. Johnson.

Senator HRUSKA. We will bring Mr. Kennedy into it; we will call it the Kennedy-Johnson administration.

Mr. BIEMILLER. Mr. Kennedy also named Mr. White.

Senator HRUSKA. Yes. But a ratio of three to one, if that were the ratio might be considered by some people as packing.

Mr. BIEMILLER. We would not.

Senator HRUSKA. You would not. It is plain from your paper that you would not.

Mr. BIEMILLER. And also as long as you brought President Johnson in, when he proposed to elevate Associate Justice Fortas to be Chief Justice at the same time he had named Judge Thornberry whose record in the Congress could hardly be labeled as very far to the left.

Senator HRUSKA. And you would not regard Mr. Thornberry's nomination as an effort to extend executive—what do you term it, executive dominance?—notwithstanding the very close personal and political affiliation between Mr. Johnson and Mr. Thornberry?

Mr. BIEMILLER. No, I would not, because Judge Thornberry's record both as a Member of the House and as a judge certainly does not show any inclination for concentrating power in the executive.

Senator HRUSKA. But in that case that was not an effort to extend the executive power?

Mr. BIEMILLER. Not in our opinion.

Senator HRUSKA. And you see nothing in the way of bias or anything in the way of extending the President's philosophy in the appointment of Mr. Marshall and Mr. Fortas?

Mr. BIEMILLER. I do not think that either of them were dedicated to the proposition of extending the power of the executive.

Senator HRUSKA. Were they men of strong personal beliefs?

Mr. BIEMILLER. Justice Marshall most certainly was of strong belief in protecting the Bill of Rights.

Mr. Fortas equally so.

Senator HRUSKA. And the rights of people?

Mr. BIEMILLER. Right.

Senator HRUSKA. And especially minorities?

Mr. BIEMILLER. Correct, but they were strictly—I repeat—in our opinion, correctly interpreting the Bill of Rights.

Senator HRUSKA. I have heard that there is a difference of opinion on that, a difference of opinion that even extended to the Supreme Court. Is that your recollection?

Mr. BIEMILLER. There may be a difference of opinion, most certainly. This is one of the things that makes America a great country, that we have differences of opinion.

Senator HRUSKA. Well, you have made a good statement, and I think it is clear; it is forceful, uncompromising, and certainly is an exercise of the free speech that everyone has in this country.

Mr. BIEMILLER. Which I hope will always exist.

Senator HRUSKA. Including the right to be wrong, all of us have a right to be wrong, don't we?

Mr. BIEMILLER. I hope that the right to be wrong, the right of free speech, will always prevail in the United States. We do not think, however, we are wrong in this instance.

Senator HRUSKA. Well, you know, it has always impressed this Senator as a little anomalous; we have people like Mr. Marshall who certainly were dedicated to a set of loyalties prior to his nomination. On the Court he has performed and executed his duties very, very well notwithstanding prior views. What did he do—win 31 out of some 32 cases as an advocate before the Supreme Court? That is a pretty good record.

Mr. BIEMILLER. That is my recollection.

Senator HRUSKA. Babe Ruth didn't do that well. And then we had Mr. Goldberg who certainly did his stint for organized labor and represented them well. That was his chief means of livelihood and he did very well.

There was one thing about him that I have always admired. When he was considered for Secretary of Labor he voluntarily and without any urging resigned and disclaimed any further interest in the pension that was already his. It was vested and it was payable by the labor organizations he represented so well.

Mr. BIEMILLER. The United Steel Workers of America.

Senator HRUSKA. That he represented so well, faithfully and expertly.

Mr. BIEMILLER. You will also recall that in those early days on the Court he refused to participate in certain cases.

Senator HRUSKA. That is right, but he did have biases and predudices; he did have loyalties built up over a quarter of a century of one guiding principle, "Let's get for labor everything we can get. That is my duty as a lawyer and as an advocate." And he pursued it well, didn't he?

Mr. BIEMILLER. He was a very competent labor lawyer.

Senator HRUSKA. Mr. Goldberg was very competent and highly satisfactory or he would not have lasted as long with his employers and clients as he did.

There we have examples of two well built-in, well instituted, highly disciplined loyalties. The men who held those views sat at this table and we asked them one question that was determinative for virtually all of the committee and for the Congress: "Will you be fair when a case comes before you in the Supreme Court, and will you consider the law and the evidence and the Constitution, and apply it the best you know how as a judge without respect to the color of the man's skin, his race or creed or whether he is an employer or a worker or a labor union or any other particular quality—will you be fair?"

And each of them said "Yes, I will be." And that pretty much concluded the matter; we knew that they said they would set aside those loyalties and we accepted that statement. Every nominee for the Supreme Court has amassed and has acquired loyalties of some kind

which he must set aside; he must set them aside. That has been the case throughout the history of the Supreme Court.

But then, when we elect a President who has another type of political philosophy, one who has an idea that may be another kind of loyalty embodied in a nominee would be nice to have on the Supreme Court so as to lend balance to the decisionmaking, a great outcry occurs. We find voices which for 30 years had been very happy with the very liberal Court crying out in shocked rage—"Wait a minute, our reservation here is being disturbed: we don't like it."

Doesn't that pretty well characterize the opposition to Mr. Rehnquist?

Mr. BIEMILLER. No. I think there is far more involved than you state. In the first place, you will recall the labor movement did not oppose Mr. Burger, did not oppose Mr. Blackmum, and as I stated a few moments ago, is not opposing Mr. Powell.

We have opposed other nominations.

Senator HRUSKA. Not Mr. Goldberg?

Mr. BIEMILLER. You were restricting yourself at the moment to President Nixon's people and I said we did not oppose—we have opposed now three of his nominees because in our opinion they would not be——

Senator HRUSKA. President Nixon's nominees would lend balance to the Supreme Court and you don't want balance?

Mr. BIEMILLER. Three good Supreme Court Justices.

Senator HRUSKA. Is that fair?

Mr. BIEMILLER. Our opposition has not been on that basis whatsoever. It has been on the basis that we did not think these people would properly serve as the kind of people we think should be on the Court. I am not going to rehash Haynesworth and Carswell with you, but in the case of Rehnquist it is our considered opinion that he has demonstrated that he does not have a good solid belief in the Bill of Rights, that he does definitely want to change the structure of the American Government, to strengthen the executive; and we are opposed to this move.

Senator HRUSKA. Well, you know some of us have known Mr. Rehnquist and seen him perform over a long period of time. Those of us who have been in a position where we listened to his discussions—some of which were extended and complicated and reach right into the field that you talk about—have reached other conclusions. Of course, that is——

Mr. BIEMILLER. Which you have a perfect right to do.

Senator HRUSKA. That is our respective privilege.

Mr. BIEMILLER. Exactly.

Senator HRUSKA. Thank you very much for your appearance. We always like to have you come here.

Mr. BIEMILLER. Thank you, Senator.

Mr. MATHIAS. Mr. Chairman, I would like to welcome my distinguished constituent, Mr. Biemiller, a very distinguished Marylander—glad to have him here in the committee.

In your opposition to Mr. Rehnquist, you have cited the position which you feel the nominee might take as a member of the Court with respect to civil rights, but beyond that do you have any concern as a

Justice of the Supreme Court that Mr. Rehnquist would prejudice any other group in American society? Would he be able to render fair justice with an even hand, say, toward labor?

Mr. BIEMILLER. We raised the issue, of course, of peaceful picketing where we have had some bad experiences with some judges; but that relates to the Bill of Rights essentially, which is the kind of thing that is involved there.

Our major thrust, I repeat, is on the question of his attitude on the Bill of Rights, and leading from that into his obvious position that he wants, in our opinion, to unduly strengthen the executive in our division of powers under the American Constitution.

Senator MATHIAS. Is there any record or any statement Mr. Rehnquist has made with respect to peaceful picketing that gives you concern, for example?

Mr. BIEMILLER. He certainly, when he talks about demonstrators being in the same category as pornographers, makes us worry because picketing is in one sense a demonstration.

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

Senator HRUSKA. Mr. Biemiller, I have been asked to suggest that among the craft unions there are those which practice discrimination against minority groups more than almost any other organized form of activity. Maybe they would be interested in having Mr. Rehnquist on the Supreme Court granting for this moment only that your interpretation of Mr. Rehnquist's views is correct.

Would you have any comment on that?

Mr. BIEMILLER. In the first place, I don't agree with your basic statement. There was a time, without any question, in American history where there was a lot of discrimination against Negroes, and we have said so very honestly and frankly in front of many committees of the Congress. In recent years that has been largely eliminated. Today the American labor movement is trying desperately to strengthen the hand of the EEOC by giving it cease and desist powers and that move has the absolute backing not only of the national office of the AFL–CIO. This stems from our conventions and it has the backing of the building trades department as well as the rest of the labor movement.

Senator HRUSKA. So you say that there isn't any discrimination, racially, now in the unions; you say it has been eliminated?

Mr. BIEMILLER. I say the craft unions are rapidly eliminating such discrimination and wherever we find instances of it we continue to drive for the elimination of any discrimination that is still extant.

Senator HRUSKA. Well, the thing that many people are wondering about, and frankly I find it a little mystifying myself, is why if what you say is accurate it was necessary for the Nixon administration to implement the so-called Philadelphia plan and, incidentally, it is my understanding that Mr. Rehnquist had a large role to play in the formulation and structure of that plan and its successor plans.

Now, if that discrimination has totally disappeared, why would there be any need for an organization such as the EEOC to be armed to the teeth with authority to do away with discrimination when it is already done away with, according to your testimony?

Mr. BIEMILLER. I repeat I did not say it was completely done away with; I said the labor movement has come in here consistently saying

we want the EEOC armed with that power. We said that way back in 1964; in fact, we said it before 1964. I testified in front of a House committee as early as 1954 on that same issue. We have always been for that power because we thought it was essential that it be there.

Now, this is the situation that prevails.

Now, on the Philadelphia plan, let me make an observation. We didn't fight the Philadelphia plan on the grounds that it would solve discrimination. We fought it on the grounds it would not solve discrimination and today the Labor Department, if you ask them carefully, will agree that they have accomplished very little with the Philadelphia plan.

The proper way to solve discrimination in the building trades is the way that we are going about it. We are reaching out; we have all kinds of programs underway bringing blacks and other minorities into the building trades, putting them through the apprenticeship system; and if you, for example, could take the time sometime to see a discussion of the Philadelphia plan that was held on the program "The Advocates" on public service TV, you would find that there were Negroes in Philadelphia testifying at that time that this was not solving any problem, that the only way that you are going to solve the problem of getting blacks and other minorities into the building trades is by bringing them through the apprenticeship program.

And the Philadelphia plan was simply a question of counting numbers, and what was happening under the Philadelphia plan was that an employer would find five Negroes and move them from job to job to prove that he was meeting the percentage—it was a percentage deal. There weren't any solid jobs ever created under the Philadelphia plan and I repeat that the Department of Labor has admitted it.

Senator HRUSKA. That is not exactly my understanding of the plan or the reasons for its implementation. Is it true that under your apprentice training plans, particularly in the craft unions, that there is free, liberal, and proper entry into the ranks of the apprentices by members of minority groups?

Mr. BIEMILLER. In recent years—I stated earlier at one time this was not true; and I know President Meany himself has been before the Senate Labor Committee admitting pointblank there had been prejudice and we wanted to weed it out, and we think we are doing it.

I repeat, though, anybody who has a flagrant case of discrimination and brings it to the attention of the AFL-CIO, we take action to remedy it in any way that we possibly can.

Senator HRUSKA. You have been at this since 1964. Has the great bulk of activity occurred since the Philadelphia plan was instituted? What fruit do we see from that by way of percentage of membership in the craft unions in the apprentice ranks?

Mr. BIEMILLER. I want to doublecheck this figure, but I will be glad to do it for the record; my offhand recollection is that the Department of Labor records on apprenticeship show between 12 and 13 percent blacks in the apprenticeship program today.

Senator HRUSKA. Did you object to Mr. Rehnquist's participation in the formulation and the structuring and the organization of the Philadelphia plan?

Mr. BIEMILLER. No; because at the time we didn't even know that he was participating in it; but we objected to the Philadelphia plan. That certainly is on the record; there is no argument about that.

Senator HRUSKA. Would you be inclined to believe that that was an effort on his part to bring the Bill of Rights close to a lot of people who haven't been able to find employment in the rank and file of the shopcraft unions?

Mr. BIEMILLER. We don't believe the Philadelphia plan was a very intelligent way of approaching the problem. That is the situation. We don't regard any of the architects of that plan as having successfully coped with the problem of discrimination in the building trades.

Senator HRUSKA. Do you give this administration any credit for good faith or do you think they were just trying to confuse the situation and make things worse?

Mr. BIEMILLER. No; we have said we think they were mistaken in their views and did not understand the structure of the building and construction trade industry.

Senator HRUSKA. Thank you very much.

The CHAIRMAN. Senator Bayh?

Senator BAYH. Mr. Chairman, could I ask one additional question?

The CHAIRMAN. Sure; that is all right. Go ahead.

Senator BAYH. Mr. Biemiller, there have been some thoughts raised here that concern me a bit about motives. I suppose, is the best way to describe it. Most of us can have honest differences of opinion without questioning the motivation of the individual who differs with us. The inferences of the statement just made is that you supported certain previously named nominees because you thought they would get in and get all they could for organized labor. Thus the inference is that you might oppose Mr. Rehnquist because he wouldn't follow that particular criterion. Does that criterion have any relevance in your support or your opposition to the nominee?

Mr. BIEMILLER. It has no relevance whatsoever. As Senator Hruska himself pointed out, not only when Mr. Goldberg became a Justice, but when he became Secretary of Labor, he pretty well severed his connections with the labor movement. We did not name Mr. Goldberg as Secretary of Labor. President Kennedy named Mr. Goldberg. We didn't object to his being named. I am deferring that for the moment. We don't have candidates for these particular jobs. We don't have candidates for anything. But we do feel, as responsible American citizens, we have a right to come in and oppose people, particularly for the Supreme Court of the United States, a lifetime job, whose views we do not think are in the best interests of the American people. It is that simple. It has nothing to do with the question of the organized labor movement per se.

Senator BAYH. You mentioned that you did not oppose Chief Justice Burger?

Mr. BIEMILLER. Right.

Senator BAYH. In determining whether you should take a position, would you care to give the committee the benefit of your thoughts whether at that time you thought Justice Burger would vote with you on most of these issues?

Mr. BIEMILLER. No; we——

Senator BAYH. Has he, since he has been on the Court, been totally satisfactory to you?

Mr. BIEMILLER. I am trying to recall; I think on some of his votes we would be critical but we weren't making any——

Senator BAYH. In other words, you really weren't looking for total agreements in making this determination?

Mr. BIEMILLER. Not at all.

Senator BAYH. How about Justice Blackmun?

Mr. BIEMILLER. The same thing; Justice Blackmun's record, as I recall it, was what we would call spotty as a circuit court judge on labor cases; but nothing that we found offensive.

Senator BAYH. I noticed you have not testified in opposition to the nominee Powell?

Mr. BIEMILLER. That is corect.

Senator BAYH. Do you believe that this nominee, if he gets on the Court, is going to agree with labor's position on most issues?

Mr. BIEMILLER. We haven't any idea whether he will agree with us or not, but we see nothing in his overall record that justifies opposition to him.

Senator BAYH. The way I understand your concern is that there are certain basic things that transcend labor-management or regional differences, that there are certain basic problems in statements the nominee has made about integration, like the letter that he addressed to the Phoenix newspaper saying that he would deny black people the opportunity to go into the drug stores of Phoenix, which trouble you not only because you are a representative of organized labor but go to something more basic; is that it?

Mr. BIEMILLER. Completely. We are simply acting as American citizens.

Senator BAYH. Now you know I have been concerned about the fact that there are some unions that have not had the kind of open access over the years that we would like them to have because we have talked about this. There have been several laws in the Senate addressed to the problem of making accessible schools, public places, business places, transportation, voting booths to minority citizens. What position have you taken? I know that you have been before this committee on a number of occasions addressing yourself to the various civil rights laws we have had over the past 10 years.

Mr. BIEMILLER. We have enthusiastically supported all the laws that have been passed by the Congress. We would have, in a few instances, preferred them to be a little stronger than they were, such as the EEOC matter which we are now moving heaven and earth to try to straighten out and give the EEOC more power.

Senator BAYH. Let me ask that question so we can be as definitive as we can.

What is your present position about the merits of cease and desist powers for the EEOC, in order to remedy some of the injustices that have existed in the various unions?

Mr. BIEMILLER. We think it is a power that ought to be given to the EEOC. I repeat we have held that position now for nearly 20 years. We tried to effect it in 1964. We were rebuffed in that by the compromise that was worked out; and we are enthusiastically supporting the bill that has recently been reported, the Williams bill, recently reported by the Senate Committee on Labor and Public Welfare which does provide for cease and desist powers for the EEOC.

Senator BAYH. How did Mr. Rehnquist testify when he was asked his opinion on the cease and desist power of the EEOC?

Mr. BIEMILLER. There you have me; I don't know.

Senator BAYH. Well, he opposed it.

Mr. BIEMILLER. He may have; I am not sure.

Senator BAYH. I found myself differing with you about the Philadelphia plan when it went before the Senate. I thought this was an effort we ought to make and, at the time, was hoping that you and your organization would support it. I must say in retrospect I have to make the same judgment that you have made, that the Philadelphia plan has not really worked the miracle that some thought it would work. We thought it would be a step in the right direction, certainly the cease and desist powers would.

You mentioned the percentage of minority members in the apprentice programs. I think you said 12 or 13 percent?

Mr. BIEMILLER. My recollection is 12 to 13; I will check the figure and if it wrong I will give the committee the correct figure.

(Subsequently Mr. Biemiller advised the committee that the figure was correct.)

Senator BAYH. How would that compare to the same apprentice programs 10 years ago?

Mr. BIEMILLER. The figures then were quite low in certain trades; in certain trades a decade ago there were hardly any Negroes.

Senator BAYH. You feel there has been significant progress?

Mr. BIEMILLER. There has been significant progress made in this; we have been working at this in every way we know how.

Senator BAYH. Now, one last general question, and I will not belabor you further.

My friend, the Senator from Nebraska, said we were asking one basic question. I concur in his judgment that the basic question we are trying to have answered is: "Will you be fair?"

The concern that some of us have does not relate to the intellectual honesty or dishonesty of the various nominees. Certainly, I must say, although I am deeply concerned about some of the things that the present nominee has said and some of the thoughts that I fear he possesses, I must say I think he is a man of integrity. I think one can suggest that when we ask a question, "Will you be fair?" that then there is an ancillary question that is very pertinent, "Using what criteria?" "Using what criteria?"

When you have a nominee who talks about self-discipline being sufficient to guarantee individuals from big brotherism, that all we need is self-discipline on the part of the executive branch, and when he is asked a question as to whether surveillance poses a constitutional question and he says no, then some of us are concerned about his basic philosophy. And I don't believe we ought to get involved in all this business of classifying liberals, conservatives, strict constructionists. Instead we should look for something about his basic philosophy which would lead him to make an honest and fair interpretation of the Constitution based on a criterion that really understands the significance of the Bill of Rights. If self-discipline was all that was necessary, if surveillance posed no constitutional question, then there wouldn't be any need for those 10 amendments that constitute the basic Bill of Rights. Do you have any comment on that?

Mr. BIEMILLER. Well, I certainly think, and I immodestly think I know something about the history of America during that period, hav-

ing once been an historian by profession, that one of the greatest things that ever happened in American history was the adoption of the Bill of Rights and it was done for the specific purpose that you are talking about. There was a fear that without those firm protections that the Government would get too powerful. The whole thrust of our position on Mr. Rehnquist comes back to exactly that point, that we doubt that he is of the frame of mind that completely understands the thrust of the Bill of Rights or that he would interpret the Bill of Rights in the way we think it has been correctly interpreted by the Supreme Court to date.

Senator BAYH. Thank you.

The CHAIRMAN. Mr. Biemiller, you certainly are entitled to your opinions, which you have expressed in a very forceful way.

They are conclusions. I do not think they are borne out by the facts. Now, I could understand your opposition to Mr. Rehnquist.

I think that Mr. Rehnquist is an honorable man. I think he is an outstanding lawyer and I think he is going to make an outstanding Justice of the Supreme Court.

I also think he is a badly persecuted man. I think he is being persecuted without cause by those who are opposed to him; and I hope before the day is over that I will be able to place in the record the falsehoods, the number that were uttered against him yesterday.

Now, that does not apply to your statement.

Mr. BIEMILLER. I was going to say, sir, I don't think there was anything in my statement——

The CHAIRMAN. No; I said it was not in your statement.

Mr. BIEMILLER. We were just raising——

The CHAIRMAN. I know what you are raising; I just think you have come here with conclusions that are not based on facts.

Mr. BIEMILLER. That is an honest difference of opinion between you and me.

The CHAIRMAN. Well, certainly. You know when a lawyer is trying a case, if he hasn't got the facts with him, he argues the laws as vigorously as hell, and he gets just as specific as he can and I don't think you have the facts with you; therefore you are making some very strong statements which you are entitled to make.

Senator MATHIAS. Mr. Chairman, pursuing the line of the Chairman's last remark, there is a statement that concerns me on page 5.

Mr. BIEMILLER. Five?

Senator MATHIAS. Five. You say this: "In short, we oppose Mr. Rehnquist on the ground that he does not know what the Constitution is all about."

Now, I assume, you are not going to his competency as a lawyer?

Mr. BIEMILLER. Not referring to his competency for a moment.

Senator MATHIAS. I would suspect you and I agree that what the Constitution is all about is a chain of government; this is the great glory of the American system.

Mr. BIEMILLER. Right.

Senator MATHIAS. And opposed to practically any other governmental system in the world, the Constitution describes what the Government cannot do?

Mr. BIEMILLER. We agree.

Senator MATHIAS. It guarantees freedom to individual citizens from interference by government?

Mr. BIEMILLER. That is the glory of the American system of government.

Senator MATHIAS. Even in Britain and its House of Commons, an order could be issued that every redhead be murdered tomorrow.

Mr. BIEMILLER. Right.

Senator MATHIAS. And there would be no restraint against the power of government to do it?

Mr. BIEMILLER. No restraint.

Senator MATHIAS. But in this country government does not have that power?

Mr. BIEMILLER. Thank the Lord.

Senator MATHIAS. And I think we understand that.

Is this the ground of your objection that you feel Mr. Rehnquist does not share that concept with us?

Mr. BIEMILLER. Yes, precisely. We don't understand some of his views that have been brought out both in our statement and in the colloquies here regarding what we consider the protections of the Bill of Rights. There is a very interesting colloquy that undoubtedly has been called to your attention before, between Senator Ervin and Mr. Rehnquist on the whole question of the surveillance of government employees, for example.

Senator MATHIAS. Have you got—have you in the course of your observation, either as a member of Congress or as a representative and spokesman for labor, have you ever had an opportunity to observe the track record of justices after they reach the bench?

Take Justice Goldberg, for example. Do you have any observations on his track record as to the kind of decisions in which he participated and opinions that he wrote as to whether or not they displayed a tendency to favor or to prejudice any particular group in our economy or our society?

Mr. BIEMILLER. I am not as familiar with the voting records of justices as I am of members of the Congress.

Senator MATHIAS. I am very well aware of that.

(Laughter.)

Mr. BIEMILLER. But certainly I saw nothing in what I am aware of in Justice Goldberg's record that he showed any particular bent in any direction. But he came on the bench, in our opinion, with a full understanding of what the American system of government is all about.

Senator MATHIAS. Of course we are in the position of where we do have some track records of which the American people are generally familiar. Would you say that Justice Frankfurter, for example, had changed from the time of his appointment by President Franklin Roosevelt or did the American scene shift under him? In other words, who changed who?

Mr. BIEMILLER. Well, I have never seen any exhaustive study. I presume they exist. But there is nothing that I have come across on Justice Frankfurter's overall record. I have discussed Justice Frankfurter at times with some of my legal friends, many of whom insist that he did not change his views at all, and that practically, you may be right that it was the question of the changing of the general social and economic conditions that seemed to brand Justice Frankfurter as a conservative in his later years on the Court. But I am frankly not competent to pass judgment on that.

Senator MATHIAS. That does happen.

Mr. BIEMILLER. Of course it can happen.

Senator MATHIAS. I am wondering this: You have raised some questions about Mr. Rehnquist's positions which give you these doubts about his ideological foundation. These are largely related to administration positions, administration statements in which he has either been the spokesman for the administration or has participated at some level of either enunciating or perhaps formulating administration policy. In many cases the record is clear. I have shared your concern.

Mr. BIEMILLER. Right.

Senator MATHIAS. But is it fair to equate what Mr. Rehnquist has said as an advocate of positions with which you and I may not necessarily agree, and base a judgment of his competency and his fitness purely on our disagreement with the positions of his clients?

Mr. BIEMILLER. Well, I don't see, Senator, why we aren't entitled to say that a man who has expressed the points of view that we have been referring to is not automatically clear of any responsibility for those points of view. I recognize that he, in part, is hiding beyond that lawyer-client relationship, but I don't think that this should be a protection for a person who is being considered for a lifetime position on the U.S. Supreme Court; and, very frankly, as we say in this statement, we are disturbed with the whole thrust of the current administration, which we think is moving toward more executive power.

I am reminded just as another example of a concern I share with my good friend Senator Ervin. Those pocket vetoes of a couple of years ago that were not really, in our opinion, legitimate pocket vetoes, are the kind of things that bother us and if this is the kind of attitude we are going to be up against, I don't like it.

Now, I also remember that at one time President Nixon said he wasn't ever going to appoint a Cabinet member to the Supreme Court. I know Mr. Rehnquist is not in the Cabinet per se, but he is in what generally is referred to as the Little Cabinet; and I don't see where there is any difference in this situation. A member of the Cabinet or the Little Cabinet is, I think, absolutely responsible and has to stand with the position of that administration, or he resigns or occasionally he gets fired as in the case of Mr. Hickel; but this is a situation where I think we have a proper right to assume that these are the positions that Mr. Rehnquist has taken.

Senator HRUSKA. Will the Senator yield at that point?

Senator MATHIAS. I will be happy to yield.

Senator HRUSKA. We have witnessed many, many appointments from either the kitchen cabinet or cabinet or subcabinet or innercabinet—my mind just goes back—and I am sure others with a more retentive memory could probably supplement the list in a hurry. But every one of the following names fall in that category in recent history: Clark, Murphy, Jackson, White, Fortas, Marshall, Goldberg, Byrnes—all of them were in the administration or close to the administration and transferred therefrom immediately to the Supreme Court. If there was any charge of Executive dominance made at that time, I have no recollection of it. It goes back to President Roosevelt's attempt to legislatively pack the Supreme Court. He didn't have to do it because Father Time took care of the problem he was able to do it in another way.

Now, here are these people—I have named only eight—but all within the last 30 years.

Mr. BIEMILLER. Senator, the only point I was making was that President Nixon said he was not going to appoint any member of his Cabinet to the Supreme Court. I didn't say that members of the Cabinet haven't been appointed to the Supreme Court, but President Nixon did once make that statement. That was the only point I was making.

Senator HRUSKA. Maybe he has been a little more candid than some of his predecessors regarding Supreme Court appointments because they were possessed of even a more firm conviction that it was their mission in life to impress their type of philosophy on the Supreme Court, but they weren't candid enough to say so and President Nixon did say so. He said so before the campaign, during the campaign and since.

Mr. BIEMILLER. Absolutely.

Senator HRUSKA. He said, "There must be some sense of balance; there must be some change in the philosophy on the Court and I intend to try to do something about it." He was probably more candid. Isn't that a fair appraisal?

Mr. BIEMILLER. He has been very candid about it. That is one of the things that bothers us in this whole situation.

Senator HRUSKA. And Meany agreed with the President in that regard because he said that the appointment of these two men is an attempt by President Nixon to appoint to the Supreme Court—I am now paraphrasing him—men who will reflect the type of judicial philosophy that Mr. Nixon believes in and wants to have extended. Isn't that just about what Mr. Meany says?

Mr. BIEMILLER. I have repeated that in the statement this morning.

Senator HRUSKA. So you agree with him, too; that makes it almost unanimous, doesn't it?

Mr. BIEMILLER. Yes.

Senator HRUSKA. Thank you very much.

Senator MATHIAS. Thank you.

Mr. BIEMILLER. Thank you.

Senator HART. I know the chairman and all of us want to move on. I think it is not out of order to note that while we generally describe the great constitutional rights as restraint on government—and it is a proper description—there also are a set of affirmative obligations on the part of government. We ought not to forget that as we analyze any nominee.

There is an affirmative obligation to do something about racial imbalance in schools; there is an affirmative obligation to do something about getting service in drugstores; there are a lot of affirmative obligations. Now, when you ask whether a nominee can be fair, you are, admittedly, shopping for a crystal ball nobody can buy. But fairness to one person is the application of affirmative action by government; fairness to another person is to regard that as an intrusion on private rights, whether it is a drugstore or a local school district, and it is critically important that we try to identify which is the tendency of any nominee. That is what this is all about.

Mr. BIEMILLER. We hope you will continue to pursue that investigation.

Senator HRUSKA. If the Senator will yield, I don't think the record should be allowed to stop at a point where there is only a single note,

to wit: Fairness. If my statement would be recalled, it will be: "Will you be fair in deciding this case on the basis of the law, the evidence, and the Constitution?" And if that does not include the Bill of Rights then I am afraid we are not talking about the same document. But fairness has to do with the discarding of certain loyalties and certain strongly held notions by a man in another capacity, whether he is a labor lawyer or whether he is a minority group's lawyer or NAACP lawyer and the ability to shed himself of those proclivities, those tendencies, those predilections, and go on from there in an effort to be fair, but always judging the case and making decisions on the basis of the Constitution, the law, and the facts.

Senator HART. I think it may not be in appropriate to personalize this. It is a question of "will a man be fair" and "will a substantial segment of society believe that he is fair." Let me personalize it. I have not read and have no intention of reading the too many speeches I have made in the time I have been in politics, but I can think of significant and responsible and balanced segments of our society who would think it unlikely that I would be fair. They might not question—they probably would, too—but they might not question my intellectual capacity or my desire to be fair, my desire to read equal protection of the law and due process in a fair fashion. But if I were a pharmaceutical manufacturer, I would wonder whether Hart could be fair because of things I have said, or auto manufacturers, good friends, personally. You know we have all got a track record here and neither the auto manufacturers nor the pharmaceutical industry is deprived or weak. But is there in a man's track record positions or statements or attitudes which would suggest to the weakest among us, those who most desperately need the protection, affirmative and negative, of the Bill of Rights, that that man can be fair no matter how smart or how sincerely he tries; and that is part of our responsibility here and it is all I am suggesting.

Senator MATHIAS. Mr. Biemiller——

Senator HART. I should add I think when Clarence Mitchell counsels us about this, an I know how hurtful it is these days for a white man to speak well of a black man, but I think when he voices concern and suggests a likely attitude of that group for whom he speaks, we do have to give it very careful consideration.

Mr. BIEMILLER. We concur.

Senator MATHIAS. Following on the remarks of the Senator from Michigan, Mr. Biemiller, and I think he said what he felt was the glory of the Constitution and that is, the liberty that it guaranteed to every individual, a personal human liberty which is assured to us Americans. The strength of the Constitution prevents changes by government from totally encompassing any individual and binding him as had been the unhappy experience of other people in the past.

But, maintaining the climate of liberty and maintaining the guarantee is, of course, the affirmative duty of government—what this union is all about and what the union is.

Within the guarantees of the Constitution and within this individual liberty there is implied a wide and diverse spectrum of views and I think that is, of course, what's troubling here to this committee whenever it considers the question of an executive nomination. I think this was a very useful discussion for us to have.

Mr. BIEMILLER. I have been very happy to have it.

Thank you again, Mr. Chairman.

The CHAIRMAN. Now there is a representative of the UAW present. Will he come forward and identify yourself for the record, please, sir?

TESTIMONY OF WILLIAM DODDS, POLITICAL ACTION DIRECTOR, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, ON BEHALF OF LEONARD WOODCOCK, PRESIDENT

Mr. DODDS. Yes, sir. My name is William Dodds. Mr. Woodcock would not be here and asked that I read his testimony.

The CHAIRMAN. What is your connection?

Mr. DODDS. I am the political action director of the United Auto Workers.

The CHAIRMAN. You may proceed.

Mr. DODDS. We appreciate the opportunity to present our views on behalf of the international union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW. We urge the Senate, through its Judiciary Committee, to decline consent to the nomination of William H. Rehnquist to the Supreme Court of the United States.

The UAW represents about a million and a half members and their families. In the crises of recent years, the UAW has had no choice but to respond not only to the direct needs and problems of those whom we directly represent, but also to the challenges we all face in today's world.

We join with others to recognize the pressing need to preserve the Supreme Court as the last refuge and the great hope of the poor, the oppressed, and the powerless. Every nomination to the Court should be scrutinized with great care because of the tremendous potential of the Court for long-range good or evil. It is with these criteria in mind that we express our opposition and not for any special, parochial interest.

Garry Wills, the syndicated columnist, wrote in his piece printed in the Detroit Free Press of October 29, 1971:

> Indeed, he called Rehnquist "The President's lawyer's lawyer," which is a cruel charge when we remember who the President's lawyer is and the strange views he takes of the law.
>
> Ability to function compatibly with this Justice Department might in itself be considered a disqualification for the Court. It means that Rehnquist has worked with officials bringing wild conspiracy charges, using Federal grand juries as fishing expenditions, introducing illegal evidence in Chicago, illegally arresting Leslie Bacon, illegally detaining thousands last May, making flimsy charges against Daniel Berrigan—only to drop them, using bail and parole laws to bring about de facto preventive detention while asking for de jure preventive detention, along with extensions to bugging and tapping.
>
> Quite a record this Department has made, and if Rehnquist is proud of it, he does not belong on the Court. Too close a working relationship with this Department of Justice could make a man permanently insensitive to justice.

We believe, based on our study of Mr. Rehnquist's speeches and other writings, that he possesses neither the breadth of vision nor the humanity which is required of a Supreme Court Justice. Certainly he demonstrated neither of those qualities when he opposed a law forbidding racial discrimination at lunch counters. His opposition to a