

Law and Order Note

It took the Federal government only a matter of hours to form a Federal Grand Jury to investigate the New York Times for its release of the Pentagon papers but somehow over a year after four young Americans were killed protesting the invasion of Cambodia we can't get an investigation by a similar jury.

—Senator McGovern commenting Oct. 15 on a petition signed by 10,380 Kent State students asking President Nixon to overrule Attorney General Mitchell and order a grand jury investigation of the Kent State massacre.

I. F. Stone's Bi-Weekly

VOL. XIX, No. 18

NOVEMBER 1, 1971.

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WASHINGTON, D. C.

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The Fastest Track To A Repressive Era

You cannot stem a declining respect for law by degrading the one legal institution in our society which is still respected. That is what Richard Nixon is doing to the Supreme Court. The last hope of holding our society together may well depend on maintaining the faith, which still survives even among the most disaffected, that in our highest court there is still equal justice under law. Destroy that confidence, and the cement of social cohesion crumbles. For law and order in the long run depend on a general agreement that authority is both legitimate and just. Nixon, who fought his election campaign largely on the issue of law and order, is himself undermining their foundations by the men and the methods of his Supreme Court appointments.

Any Joe Blow From Kokomo

Call the roll of Haynsworth, Carswell, Poff and Byrd and you have the distinct impression that Nixon is shopping around for racial bigots. Add the names of Herschel H. Friday (a buddy of Mitchell's in municipal bond law) and Judge Mildred L. Lillie, and you get the feeling that he's looking for Supreme Court Justices so mediocre, and in Judge Lillie's case so incompetent, that they can be trusted to rubber-stamp any measures Nixon cooks up, however contrary to traditional constitutional standards. In his campaign for the Presidency Nixon spoke of Brandeis and Frankfurter as his models of what a Supreme Court Justice should be. But it is clear that if they were alive he'd prefer any Joe Blow from Kokomo. His first choices have all been low in quality. Of the six names he sent to the American Bar Association, only one (Byrd, and only because he is a Senator) had even made Who's Who, though it is full of nonentities. Thirteen Catholic University law professors protested to the ABA that the Nixon six "contains few if any persons who should be considered seriously" for the Supreme Court. Dean Sacks and 34 members of the Harvard Law faculty declared the Nixon list "plainly unqualified persons." There are few Presidents who haven't occasionally put a dud on the Court. Nixon is the first who seems to seek them out—like a prosecutor trying to pick a hanging jury.

To put forward the names of Poff and Byrd in the wake of the Attica slayings was a provocation. It must have left a bitter taste in the mouth of every black and brown American. Both men have a record of being anti-

Next Order Of Business After The UN Vote

The United Nations vote to admit Peking was a major defeat but is not the end of the most costly counter-revolutionary crusade of all time. It may be years before we know the full cost in lives and money of our unwillingness to recognize realities in China. We have spent billions to prop up a satellite Nationalist regime so corrupt, that it could neither hold the mainland against more poorly equipped Communist armies nor win popular support even on a Taiwan rendered prosperous by huge infusions of U.S. aid. Our intervention in the Chinese civil war led step by step to our intervention in other Asian civil wars on China's borders, first in Korea and then and still in Vietnam, Laos and Cambodia. Until we withdraw from Indochina, negotiate a firm peace instead of the precarious truce in Korea, and facilitate a private accommodation between Peking and Taipéh, we are at the mercy of provocation and intransigent satellites. So long as we have not liquidated the remnants of the folly which led us into the effort to become the paramount power in East Asia, we remain in a trap.

black, anti-welfare and anti-poor. Poff had practiced law very little before his election to Congress and Byrd has never practiced at all. Poff is a shade below Haynsworth and Byrd is on a par with Carswell. Nixon really reveals himself in these first choices, as he did when he—the perfect square—used a four letter word about the ABA after it turned thumbs down on his next two choices, Friday and Judge Lillie. Billy Graham's foremost acolyte so shocked his normally discreet White House staff that the obscenity reverberated through Washington in 24 hours. All this should not be brushed under the rug as if accidental aberrations. They make up the self-portrait of a man passionately intent on dragging down the level of our highest court.

It is as if Nixon will name competent lawyers only as a last resort—Blackmun after Haynsworth and Carswell, and now Lewis Powell and William Rehnquist. It is as if he fears that men who are well-trained lawyers cannot be trusted once elevated to the Court. After all Harlan, a conservative, gave the death blow to the Smith Act though he had upheld it on the Court of Appeals. But it would be a mistake to throw our hats in the air because at the last minute Nixon picked two nominees who are at least

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constitutionally literate.

Nixon never runs out of tricks. In his TV address announcing the appointments, he said the two men were conservatives "but only in a judicial, not a political sense," as if innocently unaware that Rehnquist is a Goldwater Republican and Powell a Byrd Democrat! Powell and Rehnquist are only more polished specimens of the type Nixon has been seeking. Their greater legal ability may make them more effective instruments of Nixon's desire to undo the work of the Warren court.

No Hill-Billy Bigot But . . .

Powell is no hill-billy bigot like Byrd; white supremacy has been maintained in Virginia by more gentlemanly methods. But Powell will take to the high bench all the prejudices of the upper class and the standard model corporation lawyer. These are displayed in his article in the October issue of the *FBI Law Enforcement Bulletin*, "Civil Liberties Repression: Fact or Fiction?" He writes of "a mindless campaign against the FBI," and of "the outcry against wire-tapping" as "a tempest in a teapot." He sees (after the *Pentagon Papers*!) "no prior restraint of any publication, except possibly in flagrant breaches of national security." He declares there is "no significant threat to individual freedom in this country by law enforcement" and dismisses "the plot" against Black Panthers, the indictment of the Berrigans, the forthcoming trial of Angela Davis, and the mass arrests during the Mayday riots" as "examples ritually cited." (Will he disqualify himself in these cases if on the high bench?) He calls the charge of repression an attempt "to brainwash our youth" by Leftist elements working in close collaboration "with foreign Communist enemies." This is the cold war mentality Nixon himself is making obsolete.

Powell's record, as so far disclosed, shows not a single act of gallant nonconformity—of some witch hunt victim defended, or a poor black taken on as client in sheer passion for justice. As befits "Hunton and Gruntin," Richmond's foremost law firm, his clients and his directorships are in the top board rooms of the nation, from Ethyl Corp. to Commonwealth Natural Gas. He was on the "blue ribbon" committee appointed by Nixon in 1969 to study Pentagon procurement which Proxmire attacked as a sham

What U.S. Intervention and Almost A Billion In Aid Has Done to Poor Cambodia

A year and a half has elapsed since the military overthrow of Prince Sihanouk and the subsequent U.S. incursion into Cambodia. At the time, these events were hailed as quickening the end of the war in Vietnam. A year and a half later, the war still goes on and this obscure episode of the long tragedy of Indochina is all but forgotten.

It is not forgotten, however, by the families of more than 350 Americans who died in the Cambodian invasion. Nor is it forgotten by the hundreds of other Americans who were wounded in that brief campaign. Nor is it forgotten, I should think, in Cambodian villages which have since been bombed or burned, undoubtedly in order "to save them."

In retrospect, what was really achieved by the Cambodian gambit? Enemy Vietnamese forces—even the "high command"—were supposed to have been killed or captured in their "sanctuary" along the Vietnamese-Cambodian border by this essay. Well, to the extent that enemy forces

Institutionalized Insanity Dept.

Omaha—The FB-111 bomber, a descendant of the politically controversial and trouble-plagued TFX, has begun to take over some of the burden of the United States nuclear deterrent, the Strategic Air Command disclosed today. At least 12 of the swing-wing planes are now on constant ground alert at SAC bases in the Northeast. Each of the supersonic planes is armed with six nuclear bombs with a total yield of about five megatons, equal to the explosive force of five million tons of TNT. Four of the weapons are nestled in bomb bays and one is mounted on an external rack under each wing. The bombers are poised on alert pads at Pease Air Force Base at Portsmouth, N.H., and at Plattsburgh Air Force Base in Northern New York.

The command acknowledged today that a portion of the FB-111 force had been written into the nation's nuclear war plan, an integrated operations plan for all strategic forces of the United States and the North Atlantic Treaty Organization. But a spokesman at SAC headquarters here said he could not disclose the exact number of FB-111 that had been declared operational.

—Reuters, *New York Times*, Oct. 6.

because so many of the members, Powell among them, had major defense contractors as connections or clients. When installed as President of the American Bar Association in the racially tumultuous year of 1964, he thought that the nation's basic need was "a far deeper concern for ethical and moral values." This had all the smugness of the view from the well-padded pew.

There is, I believe and hope, a point beyond which Powell, as a conscientious and able lawyer, will not let his preconceptions sweep away constitutional guarantees. He is after all exactly the same type of conventional legal eminence which manned the ABA committee that has just turned thumbs down on Judge Lillie and Herschel Friday. But I do not have any such hope in the case of Rehnquist. After a year as law clerk with Mr. Justice Jackson in 1953, he first came to public attention when *U.S. News & World Report* (December 1957) published an interview in which he pictured the Justices of the Supreme Court as cat's-paws of Leftist law clerks. This pandered to the paranoid view of the Warren court. He entered the Justice Department under Nixon as a protégé of Deputy Attorney General Kleindienst, another Goldwater Republican from Phoenix, who marked his own debut in office by telling an interviewer

were there in the first place, they withdrew from the border and since then, about all of Cambodia has become the enemy "sanctuary." Cambodia has also emerged as another battlefield of the Indochina war over which Americans are fighting and dying. The indications are, moreover, that Cambodians are forming under the banner of Prince Sihanouk and, together with their Vietnamese allies, have already taken control of most of the countryside.

Before the government of Sihanouk was overthrown, nothing—zero—in the way of U.S. aid was going to Cambodia. Their country was an oasis of order in war-torn Indochina. In one and a half years of coup government in Phnom Penh, the picture has been completely reversed. Cambodia is being reduced to chaos and devastation even as it is now well on its way to receiving its first billion dollars in direct or indirect support from the United States.

—Mansfield in the Senate Oct. 13 (abr.).

(Elizabeth Drew in the *Atlantic Monthly*, May 1969), "If people demonstrate in a manner that interferes with others, they should be rounded up and put in a detention camp." Rehnquist soon matched this with a similar unwary but revealing statement, "law and order will be preserved at whatever cost to individual liberties and rights." These were the principles applied to the May Day demonstrators, when newsmen, doctors and nurses were swept up along with ordinary passersby, treated with indiscriminate brutality, and held incommunicado for hours in a makeshift stadium, detention camp style. Rehnquist later aroused Senator Kennedy's anger by describing this blandly as "modified martial law," a phrase which could serve to cover any kind of kind of high-handed police action.

A Fantastic Talent Indeed

Nixon in his TV address called Rehnquist "fantastic", "one of the finest legal minds in the whole nation." He is indeed. It took a fine legal mind to provide the kind of skilled draftsmanship and agile sophistry with which Rehnquist as head of the Justice Department's Office of Legal Counsel has been able to dress up as constitutional anything this Administration wanted to do. Neither Nixon nor Mitchell have the skill Rehnquist has shown in defending wiretapping without court order, widespread surveillance of peaceful demonstrations by Army intelligence and other snooper agencies, and the injunction obtained against the *New York Times* in the Pentagon Papers, the first prior restraint in American history. No pleading, however contrary to fact, is too difficult for his talents. They provoked Senator Bayh to anger when Rehnquist defended Haysworth's ethics and Carswell's judicial capacity, as he later did those of Judge Lillie. He drafted the Presidential order to revive the Subversive Activities Control Board and his draftsmanship put a gloss on the D.C. crime bill with its "no knock" entry and preventive detention provisions. If Nixon wants a Court to rewrite the Constitution, Rehnquist is preeminently the man for the job.

Nixon's own feeble capacity as a constitutional lawyer was on display in his TV address on the Powell and Rehnquist nominations. A first year student at law school would blush at such shallow and insipid presentation of what the court does in interpreting the Constitution. His vulgar description of the Court as "the fastest track" in town was

A Rare Challenge to the Economic Idiocy

The President requested repeal of the auto excise tax as a means to stimulate production and employment in the automobile and related industries. Repeal of the tax may provide this stimulus to some extent. Unfortunately, it would have the defect of concentrating benefits on one industry and one type of purchase—new cars. Also, it would encourage the production of a commodity which is not particularly high on our list of national priorities. The estimated cost of the proposal was \$2.2 billion for fiscal 1972 alone. Because the Committee has extended repeal of the tax to include purchases of small trucks, the cost has risen to more than \$2.5 billion for fiscal 1972.

There are now 10 million motor vehicles on our roads and highways. Particularly in our urban areas these cars and other vehicles present us with some significant social costs, including pollution, noise, traffic congestion, and land use for highways. In my own case, more cars on the road has meant an increase in my commuting time into Wash-

The Truth About Corporate Profits

In the last several years, giant steps have been taken to reduce corporate taxation. Since 1967 the percentage of corporate tax to total tax receipts has fallen from 36 to 25 percent. This [new tax] bill will further reduce corporate contributions to the cost of government. Some corporate-owned economists argue that the profitability of American corporations is lagging. For some enterprises this is true; but for most it is a false premise. Recent tax law changes have permitted more and more corporate earnings to be washed out by depreciation, tax credits, and a wide variety of accounting systems which confuse the tax collector and the public as well.

The investor measures corporate values by cash flow and tax-free income potential. The annual corporation financial report makes public the set-aside for income taxes. This misleading figure seldom bears any relationship to the actual Treasury payment. One of the urgent needs is a standardized truthful system of accounting. A "truth in annual statements" law is most urgently needed.

—Vanik (D-Ohio) in the House, Oct. 5 (abr.).

matched by the bad taste with which Nixon managed several times to pat himself on the back as a lawyer and Supreme Court pleader; he takes time out for his own commercials. The fallacies implicit in the Nixon address would make a good beginning for an introductory course in constitutional law. Nixon said we need Judges who will just strictly apply the Constitution and not "twist or bend" it to read their own views into the law. No President has read the Constitution less strictly. From the Cambodian invasion to the price-wage freeze, Nixon himself has twisted and bent the Constitution into a shape the Framers would have found unrecognizable. His attack on the Warren Court springs from its consistently strict interpretation of the First amendment in protecting civil liberties and of the Fourth, Fifth and Eighth amendments in protecting the rights of the accused against lawless conduct by the police. Nixon wants judges who will read the ancient safeguards as loosely as possible.

Nothing runs more contrary to the philosophy of the Framers than Nixon's effort to set up a dichotomy "between the rights of society and the rights of defendants accused of crimes against society." The Constitution is based upon

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Of Encouraging The Sale of More Cars

ington from 30 to 50 minutes, even though considerable Federal funds were spent to improve the roads I drive on.

We are making some progress in solving the problems caused by an overabundance of cars. However, there are good indications that we should be moving toward development of more adequate public transportation facilities rather than buying more cars. Finally, repeal of the auto excise tax would discriminate against those who don't need a new car or can't afford one. Some kind of general tax reduction for individuals or tax credit for consumer purchases would seem much more appropriate. Just as we not long ago used a ten percent surtax to reduce consumer buying power and combat inflation, we might now consider the use of a similar temporary tax reduction to increase disposable income.

—Gibbons, (D-Fla.) dissenting from the House Ways and Means report on the tax bill, Sept. 29.

Toward A Second Reconstruction On The Supreme Court

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the premise that society has a profound stake in protecting the individual and his rights against the government and its "peace forces." Totalitarian society, whether Fascist or Communist, in placing the supposed "rights of society" foremost, ends by putting the individual at the mercy of the police and the State. Nothing so undermines respect for law as a lawless police; this has been a prime provocation in the ghetto riots. The rights of a free society are endangered when the rights of any individual are trampled. Nixon would have us believe the Bill of Rights a cloak for subversives and criminals. It is the bedrock of everyone's freedom and security.

The Meaning of *Miranda*

The real issue and the real danger may be seen if we focus on the *Miranda* decision in 1966, the *bête noire* of the right-wingers, a target of Powell's hard-line dissent on the Presidential Crime Commission in 1967 and of Rehnquist in a recent speech. To see *Miranda* in perspective one must begin by noting that the South managed to win back in the Supreme Court after the Civil War much of what it had lost on the battlefield. Judges with white supremacy preconceptions turned the Fourteenth amendment into a bulwark of the great corporations rather than of the freed black man. In recent years the Supreme Court, largely under the inspiration of Mr. Justice Black, began to restore the Fourteenth amendment's original purpose by making the Bill of Rights applicable to the States as well as the Federal government. Warren's decision in *Miranda* brought that development to a climax, and it did so in the form of a decision which closed the door on "third degree" tactics by police in the States. The fight against *Miranda* is really a struggle for a second Reconstruction, and to allow the States to obtain confessions by "third degree" methods. As Warren noted, the FBI has long operated (as do the best police forces abroad) on the rule that when a suspect is taken into custody he must be apprised before interro-

In Memoriam: J. David Stern

Few people realize how few newspapers supported the New Deal. In the 30s, to back Franklin D. Roosevelt was to lay oneself open to suspicion and to advertising boycotts in the business world. J. David Stern was one of the handful who gave the backing of his papers to FDR and social reform. Under his direction, the *New York Post* was the President's only supporter in New York as his *Record* was in Philadelphia. I began to work for him as a boy of 15 in Haddonfield, N.J., when he owned the *Camden Courier-Post* and I worked for him off and on from 1923 to 1939, at first while I went to High School and college, later as an editorial writer for the *Record* and the *New York Post*. He had a warmth, a courage and an instinctive reaction against injustice that made me love him and love working for him. He was no rich-man-turned-publisher but an extraordinarily able all-round newspaperman. The way he ran his papers as a force for justice deserves to be studied by a new generation seeking a "committed" journalism in place of an anemic "objectivity" which only cloaks acquiescence in conventional sham.

tion of his right to keep silent and his right to have counsel. *Miranda* extended that rule to the States in order to end the practice of beating or frightening confessions out of the ignorant and the helpless before their arraignment. In doing so Warren construed the Fifth amendment strictly and applied it to State as well as Federal police. This is the heart of the ruling and the case. Its implications for racial justice and individual rights are obvious. Its reversal will be the primary aim of the Nixon court.

When Nixon in his 1968 campaign crassly accused the Supreme Court of "giving the green light" to crime, he had decisions like *Miranda* in mind. When he now tells us, as he did in the concluding passages of his TV address, that we must respect the Court he then defamed, it is because he sees within his grasp a new Court which will give the green light to repression.

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