Perhaps what the Senator from Indiana seeks to do and which I seek to do and other members of the committee think can be done, is limited by our ingenuity and not by the subject matter. We can get at what we need to get at without applying to the President for any waiver. I agree with the Senator from Nebraska.

The CHAIRMAN. Judge Craig.

Identify yourself for the record.

STATEMENT OF HON. WALTER EARLY CRAIG, A U.S. DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

Judge CRAIG. Mr. Chairman, I am Walter Early Craig. I am currently U.S. district judge for the District of Arizona. I am a former president of the American Bar Association.

I am here, gentlemen of the committee, in support of the nomination of Mr. William H. Rehnquist to be an Associate Justice of the Supreme Court. In passing I might say that I would be less than honest if I did not also say that I endorse wholeheartedly the nomination of Mr. Lewis Powell. I have known him for 25 years. Mr. Powell has a number of witnesses, I understand, to come before this committee, and I endorse everything they say that is good about him. I know nothing but complimentary things about him.

I can say the same for Mr. Rehnquist. I have known Mr. Rehnquist since his admission to practice law in Arizona, both in a professional capacity and since I have been on the bench, which I ascended in 1964.

Mr. Rehnquist's academic achievements are already a matter of record. They are remarkable. The only reason I mention those high achievements is because it relates to his qualifications as a lawyer. In my experience, Mr. Rehnquist's professional skills and ability are outstanding.

I have prepared and submitted to you a written statement with respect to my observations and concern with Mr. Rehnquist's appointment. I am certain that in my experience, throughout the United States, and my acquaintanceship and knowledge of members of the profession, that I could find no one that I would recommend more highly than Mr. Rehnquist to occupy the office of Associate Justice of the Supreme Court of the United States.

He has demonstrated, I think, his patience and judicial temperament in appearing before this body. I have observed it for 19 years, so it does not come as a surprise to me that he has handled himself so magnificently here. I have seen only a relatively few minutes of his testimony, but I have kept in some touch with the progress of the hearings.

In his appearances before my court, Mr. Rehnquist conducted himself not only with outstanding professional skills but with dignity, intelligence, and integrity. I think he has conducted his life that way so long as I have known him.

I do not know, Mr. Chairman, if you care for anything further, but I might comment in one additional respect. I read someplace or heard something about Mr. Rehnquist probably not being the leader of the Phoenix bar or of the Arizona bar. If there is a "leader" of the Phoenix bar or the Arizona bar, I do not know who it is, with the possible exception that it may be my 97-year-old father who is still going to his office.

Obviously, today Mr. Rehnquist could not be the leader of the Phoenix bar or the Arizona bar because he is not in Phoenix. He has been in Washington serving in the Department of Justice since early 1969.

What I do want to say, however, is that if Mr. Rehnquist were currently practicing in Phoenix and in Arizona, I would say, if asked, that he is a leader of the Arizona bar. There may be others who qualify for that title, but certainly Mr. Rehnquist would be at the top.

The CHAIRMAN. Thank you, sir.

Senator Bayh, any questions?

Senator BAYH. Some of the press may have seen me shaking hands with Mr. Craig up here just before the hearings started, and if he has no reason for me not to disclose what I told him, I will disclose it, that I was faced with trying to find someone whom I had great respect for in the legal community that might be familiar with the thought processes and philosophy of the nominee, and this morning I had said to my staff I would really like to talk to Walter Craig, but I didn't think it was ethical for me to approach him because he now sits as a distinguished member of the Federal judiciary in Arizona.

I had the opportunity to come to know and respect the judge—perhaps I should be more official—Judge Craig, while he was the president of the American Bar Association, and he really is the kind of person whose opinion carries a great deal of weight. I think he would be the first one to suggest that no one Senator, even a friend, should automatically agree with his judgment, but the fact that he has taken the time from his busy court schedule to be here and endorse emphatically this nominee carries a great deal of weight with the Senator from Indiana. It really does.

Judge Craig, you are familiar with the consern that many of us have here, that at least the President has thought that the whole purpose for these nominations is to turn around the Court and thus turn around the series of interpretations that have been put on the laws over the past 20 years, are you not?

Judge CRAIG. Well, generally, yes, Senator.

Senator BAYH. And the concern that I have had, just as one Senator, and I don't think I am alone, is the fact that when we put on the Court a Justice who in one capacity or another prior to his nomination has taken positions that concern us in the area of right of free speech—the chilling effect or the lack of chilling effect, how should wiretaps be controlled, self-discipline is all that is necessary to keep Big Brother government in line, and this type of thing—in varying capacities these statements have been made, and that is what we have been trying to find out; and whether we will be able to reconcile that or not, I don't know, but as I said earlier, the fact that you have the kind of judgment about the nominee that you have means a great deal to me.

Judge CRAIG. Senator Bayh, I must confess in my own judgment that I do not know what the term "judicial conservative" means. I must confess that I am confused in this day and age as to what a liberal is. I am confused as to what a conservative is.

In 1928 when I belonged to the Al Smith for President Club on the Stanford University campus, I think some people thought I was a

radical because that was about as crazy a thing as you could possibly do with Mr. Hoover living on the campus. I didn't consider myself as being a radical. I didn't know what I was. I know I had a lot of fun with it. But I think the way the system of justice operates in the United States, no one man is so important as to singly change the law of the land.

I have not sat on the Supreme Court of the United States. I have sat on appellate courts with other judges, something I will do tomorrow morning if the plane gets me there. I know the way the appellate function works, and I know a little about the decisionmaking processes on those courts and on three-judge courts at the district court level.

I think the discussions around the conference table with each judge contributing his views to the ultimate result is really how the law is made. No one man makes it, as you well know. We worked together on the 25th amendment, that one didn't come out exactly the way you or I would have chosen to do it. The final result was a product of discussions, hard work, rewriting and compromise, and I think generally that is the way the law grows from the judicial side as distinguished from the legislative side.

Senator BAYH. May I, Mr. Chairman, ask Judge Craig, since he is in a unique position to answer some of the allegations that may be made next week, if he would permit me to ask him if he has personal knowledge of some of these things.

I have a resolution of the Southwest Area Conference of the NAACP, a resolution sent to the President of the United States, dated October 23. In it it makes certain allegations relevant to the nominee's insensitivity in the area of human rights.

Let me read from this resolution, and perhaps so it cannot be taken out of context and not thus give the wrong impression I ought to ask unanimous consent that it be put in the record in its entirety.

The CHAIRMAN. Right.

Senator BAYH (reading). "Whereas, Mr. Rehnquist in 1964, while serving in a high official capacity in the Arizona State government openly harassed and intimidated the immediate past president of the NAACP, Rev. George Brooks and members of the NAACP on the steps of the Arizona State Capitol during a peaceful attempt to reach the legislative bodies to present grievances from the minority community."

Judge Craig, do you have any personal information relative to that charge or allegation?

Judge CRAIG. No, I don't. I would say from my knowledge of Mr. Rehnquist that the descriptive adjectives used are unwarranted and probably, Senator, the man who can best answer that one sits to my right, Senator Fannin, who, as I recall, had some official function at that time in the State of Arizona.

Senator BAYH. You have no personal knowledge?

Judge CRAIG. No. I know there was a demonstration. I know that Mr. Rehnquist had some connection with the State government as an adviser to the attorney general or something of that nature.

Senator BAYH. May I go on to another whereas here.

"Whereas Mr. Rehnquist does not fully accept the rights of all citizens to exercise the franchise of voters rights, and our fears are based upon his harassment and intimidation of voters in 1968 during the presidential election in precincts heavily populated by the poor."

I cannot attest to the validity of this. This is one of the whereases. As I mentioned, we are going to be asked about this the first of the week.

Do you have any judgment about that or personal knowledge?

Judge CRAIG. I never heard a bit of it. I don't know upon what that charge is based.

Senator BAYH. May I allude to newspaper clippings from various Arizona newspapers in 1960, 1962, and 1964. Interestingly enough, this whereas relates to 1968. But apparently Mr. Rehnquist was cochairman of the group within his party called the Avowed Security Group Program.

Later, as I think it was mentioned earlier, he was head of a committee of lawyers formed and the assessment has been made, at least some places in the clippings, this was a pattern in which the purpose was to intimidate minority voters from voting.

Do you have any personal information about that type of practice being followed by the nominee?

Judge CRAIG. Well, I know that it was not that purpose. To my knowledge, Senator, and I was pretty active for a long time, I don't know anyplace in Arizona where there was concerted effort to intimidate any voter at any time at any polling place.

Senator BAYH. It seems to imply, Judge, in these newspaper clippings, that at least some of the Republican officials admitted, and this is not taking it out of the King James version to read from these clippings, that letters were sent to selective areas, not countywide, in Maricopa County, and then in the traditional fashion that is used in some of the inner city areas, some in my own State, I am painfully aware of this, that the names on the letters which were returned were axiomatically challenged and a slow-down of the voting took place.

You are not familiar with anything like that happening?

Judge CRAIG. No sir.

The CHAIRMAN. The testimony was that it didn't happen, wasn't it?

Senator BAYH. Sir?

The CHAIRMAN. The testimony was that nothing like that happened.

Judge CRAIG. No, I don't know if somebody wrote some letters, Mr. Chairman. I couldn't say categorically whether anyone did or did not. What I said was, to my knowledge, and I am pretty well versed on what happens in Arizona, to my knowledge there was never any concerted effort on the part of anyone to intimidate anybody in a polling place.

Senator BAYH. Do you know anything about the nominee that would lead you to have cause for concern about his insensitivity in the area of human rights if he were sitting on the Supreme Court of the United States?

Judge CRAIG. Senator Bayh, I want to say this in response to that inquiry: I believe this man has a humanity about him and a human warmth that would make him, if anything, more sensitive to the needs of people with respect to the necessity to improve their lives and their society. I don't think that he would be in any way insensitive to the philosophy of civil rights or the Bill of Rights, or any other rights.

Senator BAYH. You think he is the type of individual that, once he is on the Court, separates himself from the rather strong views that he has expressed while a Government employee?

Judge CRAIG. I think he is a gentleman of outstanding intellectual capacity.

I think every judge worth his salt attempts to do just that. How much creeps in from the back of your head nobody has been able to measure. But I am certain that this man would make every effort, if he did have any personal views, to disassociate those from the judicial decisionmaking process. I am confident of that.

Senator BAYH. Thank you very much.

Judge CRAIG Yes, sir.

Senator HRUSKA. Judge Craig, in regard to the first "Whereas" of the resolution of the Southwest Area Conference of the NAACP, I should like to read to you an excerpt from yesterday's Washington Post:

> When Rehnquist was nominated for the Supreme Court, a former Arizona President for the NAACP, the Reverend George Brooks, charged in 1965, Rehnquist confronted him outside the State Capitol and argued in abusive terms that a civil rights act, later passed by the State legislature, should be opposed.

The Arizona NAACP promptly passed a resolution and the text of the resolution and that "Whereas" was read by the Senator from Indiana a little bit ago.

Now, getting back to the story from the Washington Post:

> By the end of last week, Brooks was telling a different story. He now says that the discussion with Rehnquist was calm, "the tone was professional, constitutional, and philosophical," he said. He was neither harassed nor intimidated, Brooks added. But he said that in his opinion, Rehnquist is a philosophical racist.

It is the hope of this Senator that inasmuch as Mr. Brooks retracted one part of his accusation, maybe in due time he will get to that second part.

Do you recall anything of that nature in regard to this incident?

Judge CRAIG. No, not at all. I have never known Bill Rehnquist to be racist, and I know him pretty well, sir.

Senator HRUSKA. And you wouldn't have any personal knowledge as to what Mr. Brooks might have said or what he might have repudiated at a later time?

Judge CRAIG. I wouldn't. The only thing I would say is that according to Mr. Brooks' first statement, with respect to the abusive language, it would shock me to believe that my friend, Mr. Rehnquist, would use such language under those circumstances anyway, and, therefore, I would say it was undoubtedly inaccurate.

Mr. Brooks apparently understood that himself and tried to correct the record. I think he is just as wrong on the other point.

Senator HRUSKA. Thank you.

The CHAIRMAN. Any further questions?

(No response.)

The CHAIRMAN. The witness is excused.

Judge CRAIG. Thank you very much.

(The NAACP document referred to follows:)

RESOLUTION OF THE SOUTHWEST AREA CONFERENCE OF THE NAACP BRANCHES TO THE PRESIDENT OF THE UNITED STATES AND THE U.S. SENATE

Whereas, Richard Milhaus Nixon, the President of the United States has nominated his personal legal advisor, William H. Rehnquist in a sudden manner without consulting members of the Congress, or the American Bar Association; and

Whereas, Mr. Rehnquist has consistently fought the NAACP and others in the State of Arizona who champion the causes of civil rights and the poor; and

Whereas, Mr. Rehnquist in 1964, while serving in a high official capacity in the Arizona State Government openly harassed and intimidated the immediate past president of the NAACP, the Rev. George Brooks and members of the NAACP on the steps of the Arizona State Capitol during a peaceful attempt to reach the legislative bodies to present grievances from the minority community; and

Whereas, Mr. Rehnquist does not fully accept the rights of all citizens to exercise the franchise of voters rights, and our fears are based upon his harassment and intimidation of voters in 1968 during the Presidential election in precincts heavily populated by the poor; and

Whereas, the Maricopa County Branch of the NAACP opposed the naming of Mr. Rehnquist to the position of personal legal advisor to the President; and

Whereas, in 1957 Mr. Rehnquist espoused a strong belief with the John Birch Society's position and publicly castigated the U.S. Supreme court and individual members of the court; and

Whereas, Mr. Rehnquist has labelled the youth of Arizona and the nation who peacefully protest the status quo as "barbarians", and

Whereas, as President Nixon's personal legal advisor, Mr. Rehnquist acted as a primary moving force in the nominations of G. Harrold Carswell and Clement Haynsworth; and

Whereas, by his public statements and actions Mr. Rehnquist has shown himself to be a right wing extremist, a rational reactionary, and a sophisticated racist; Now therefore, be it

Resolved, That the Southwest Area Conference of the NAACP calls upon the President of the United States to withdraw the name of William Rehnquist forthwith: Further, be it

Resolved, That the U.S. Senate refuse to give its advice and consent to the nomination: and further, That the President of the United States by his nomination of Mr. Rehnquist will have nominated one who has proven himself to be inimical to the causes of Blacks, Poor, Civil Rights and Civil Liberties.

Senator TUNNEY. Thank you very much.

Mr. Chairman, I realize that the witness has been in the chair a long time, and I don't want to delay the proceedings of this committee.

Mr. REHNQUIST. Senator, could I get up and walk around the table once?

Senator TUNNEY. I will join hands and walk with you.

Senator MATHIAS. I can't help but observe that the nominee has just exercised or followed the prescription of Dr. Paul Dudley White who I saw urging that everybody who has been sitting for a long period of time to get up and at least jog in place. It is very good for the mind as well as for the heart. Maybe everyone in the room might want to do that.

The CHAIRMAN. Let us proceed.

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

As I indicated yesterday, and as we have heard so much today from other Senators, I feel very definitely that philosophy is a factor that should be considered. You have indicated in some of your earlier writings that you feel the same way, and I understand the reasons that you have felt that you could not get into this subject of philosophy, perhaps, as much as you would have desired.

You have indicated that you have an attorney-client relationship and you have indicated you are a nominee to the Supreme Court and you do not want to circumscribe your activity on the Court, judgment values on the Court.

You have also indicated that as a member of the administration, you have a certain privilege as a member of the administration not to divulge those communications that you had with administration personnel in such a way which could harm or violate the responsibilities that you have in relationship to the President.

Now, I understand all of those three areas of privilege, and I think you are entitled to the three areas of privilege.

On the other hand, I agree with other Senators, I think, that we are entitled to have some better idea of your attitude about fundamental liberties in our Constitution. I would like to read some quotations or statements you have made and get an expression of opinion from you as to whether you still subscribe to the point of view or not.

With regard to privacy and surveillance, you made a speech on March 19, 1971, "Privacy, Surveillance and the Law," in which you said:

> I do not believe, therefore, that there should be any judicial enforcement limitation on the gathering on this type of public information by the Executive Branch of Government. Must we then leave the Government to police itself? My answer would be that first such a result is not as bad as it may sound, and, secondly, that matters of oversight other than those afforded by judicial supervision are available. I have previously stated my belief that the first amendment does not prohibit even foolish or unauthorized information gathering by the Government. It is, of course, possible to extrapolate from the decided Supreme Court cases and conclude that the Court would further broaden the interpretation of the first amendment to include a prohibition for cirumscription of this type of activity. My own opinion is that such an expansion of existing doctrine is unlikely.

Do you still subscribe to that viewpoint, that you do not believe that there are any judicially enforceable limitations on the evidence gathered by the Government, that the Government can survey a person on its own initiative?

Mr. REHNQUIST. Put in context, Senator, I do.

The last sentence that you quoted was, as I am sure is apparent to you, a prediction on my part of what I thought the Court would do.

That does not represent my own personal opinion.

But put in the context of surveillance, not in the sense of wiretapping or invasion of premises or in terms of trying to use Government sanctions to extract information from people, but simply the observation of someone in a public place and qualified by the possibility that the result would be different where actual harrassment were shown, as I commented yesterday, my answer to your question is yes.

Senator TUNNEY. When you testified before Senator Ervin's committee earlier this year, I happened to be present at the time you testified, and Senator Ervin asked you a question: "Do you feel there are any serious constitutional problems with respect to collecting data or keeping it under surveillance for persons who are merely exercising their right of peaceful assembly or petition to redress a grievance," and you answered, "I do not believe that it raises a constitutional question."

Mr. REHNQUIST. That was my testimony at that time. I think that I am entitled to have borne in mind the fact that I was then a Justice Department spokesman, and that the Justice Department as a possible litigant in such action, is certainly required to take a reasonable position, but it is not required to take the one which would be most restrictive on its activities.

Senator TUNNEY. You also testified that if you didn't believe in what you said, you probably wouldn't be in the position that you are in now.

Mr. REHNQUIST. I didn't mean to say precisely that, Senator. I said that if I felt what I was saying was reprehensible or obnoxious to me, I would not be in the position I am in now. I would take that to leave open disagreements within what I consider to be reasonable bounds.

Senator TUNNEY. Senator Ervin then went on to question you, "Don't you agree with me any surveillance which would have the effect of stifling such activities, namely, the first amendment, those activities which are privileged under the first amendment, would violate those constitutional rights?" Your answer was, "No, I do not."

I assume that the answer——

Mr. REHNQUIST. Would you read that back again?

Senator TUNNEY. Yes. Senator Ervin's question:

Don't you agree with me that any surveillance which would have the effect of stifling such activities would violate those constitutional rights?

And your answer:

No, I do not.

Mr. REHNQUIST. I am not sure I do agree with that now. I am inclined to think that it is a fact question and I was perhaps resolving the fact question in my own mind on the basis of the line of inquiry that Senator Hart made yesterday, where thousands of people came, knowing there was going to be such surveillance, on the basis of Judge Austin's decision in Chicago, where he found as a fact that there was no stifling effect.

I do not think I would want to categorically say that such surveillance could not have a stifling effect. I think I would treat it as a question of fact.

Senator TUNNEY. I appreciate your answer.

Senator Ervin then went on to say, Question:

Don't you think a serious constitutional question arises where any government agency undertakes to place people under surveillance for exercising their first amendment rights?

Your answer: "When you go further and say, 'Isn't a serious constitutional question involved,' I am inclined to think not, as I said last week."

Mr. REHNQUIST. The question being whether surveillance——

Senator TUNNEY. Surveillance, yes.

"Don't you think a serious constitutional question arises where any government agency undertakes to place people under surveillance for exercising their first amendment rights?" and your answer was, "when you go further and say, 'Isn't a serious constitutional question involved,' I am inclined to think now, as I said last week."

Mr. REHNQUIST. Again, assuming that in fact the surveillance efforts have no chilling effect, I would stand by that answer, I think, again as a spokesman for the Department.

Senator TUNNEY. You don't think a serious constitutional question would arise putting people under surveillance for exercising their constitutional right of free speech?

Mr. REHNQUIST. In the absence of a causative connection between some sort of chilling effect and the surveillance itself, that was the position I took for the Department, and I believe it would be a reasonable one.

Senator TUNNEY. When you say in the absence of a chilling effect, I think you have eliminated the problem.

The question is wouldn't the surveillance have a chilling effect, and wouldn't that in effect raise the constitutional problems, and your answer was "I believe I am inclined to think not."

Mr. REHNQUIST. Well, I don't think the question was phrased that way.

Senator TUNNEY. Well——

Mr. REHNQUIST. Given the factual assumption of a chilling effect, then I would want to reserve judgment.

Senator TUNNEY. In other words, you think there could be a chilling effect?

Mr. REHNQUIST. Yes, sir; as in a Chicago type of case, I do.

Senator HRUSKA. Would the Senator yield?

Senator TUNNEY. Yes.

Senator HRUSKA. Yesterday you told us about a judge who thought that the force following those who were being under surveillance would have presumably a chilling effect if they were immediately behind those that were subject to the surveillance, but if there was an intervening force, that no longer would be true. Would that be a more specific fact upon which you could predicate your answer?

Mr. REHNQUIST. That is the type of fact situation I would want to know before attempting to answer yes or no on the existence of a chilling effect.

Senator TUNNEY. Senator Ervin went on to question you and said, "Is it your position the Government could take somebody and put somebody—I believe it is called a tail on me—and this man could walk around and follow me everywhere I went, and because he didn't compel me to go to those places and just observe me, that I would have no legal remedy?" And your answer, "As I have said yes before, I think it is a waste of the taxpayers' money, it is an inappropriate function of the executive branch, I don't think it raises a first amendment violation."

Mr. REHNQUIST. Subject to the qualification I gave to my previous answer to your question, I would stand by that statement.

Senator TUNNEY. You gave a speech, and I quote from it, of May 1, 1969, to the Newark Kiwanis Club, you stated, and I quote: "The deliberate lawbreaker does not fully atone for his disobedience when he serves his sentence for he has, by example, undermined respect for the legal system itself." The flavor of that is that in your mind that there can be no redemption ever for a lawbreaker?

Mr. REHNQUIST. No; I am not talking about the sense of redemption of the individual lawbreaker, although certainly I realize the word "atonement" can be used in that sense. I am thinking more of the idea which I also expressed in the same speech, that he who strikes at a law, strikes at the law, and that every time a law is violated there is a risk of a snowballing effect. Thus, individual sentences under the law, while all that are appropriate for the individual violator, may not be able to redress the necessary respect for law on the part of society as a whole.

Senator TUNNEY. So, in other words, as I understand your explanation, you didn't really mean that a deliberate lawbreaker cannot fully atone for his disobedience when he serves his sentence?

Mr. REHNQUIST. No; not in the sense that he shouldn't be restored to whatever civil rights and freedom the law authorizes in that situa-

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tion. All I meant was that a deliberate lawbreaker strikes a blow at the system, as well as committing a personal violation of the law.

Senator TUNNEY. And you go on to say in the same speech, "I do offer the suggestion in the area of public law that disobedience cannot be tolerated, whether it be violent or nonviolent disobedience." What did you mean by that, cannot be tolerated? Do we have to march them out into the ocean and drown them?

Mr. REHNQUIST. What I meant was that what has been occasionally characterized as nonviolent disobedience, lying down on railroad tacks in front of troop trains, and that sort of thing, to prevent the ordinary functions of government to be carried out, simply because it is not itself violent, is not therefore justifiable.

Senator TUNNEY. Then, to quote an article you wrote in the Civil Service Journal of January 1, 1971, "If Justice Holmes mistakenly failed to recognize that dismissal of a Government employee, because a public statement was a form of restraint on his free speech, it is equally a mistake to fail to recognize that potential dismissal from Government employment is by no means a complete negation of one's free speech." Would you care to elaborate on what you meant by Justice Holmes' mistaken beliefs regarding dismissal of employees?

Mr. REHNQUIST. Justice Holmes made the remark in a case he decided when he was a judge of the supreme judicial court of Massachusetts, that a man may have a right to free speech, but he has no right to be a policeman. He in effect held that whatever locality it was in Massachusetts had a perfect right to dismiss a policeman for exercising free speech because it wasn't violating the freedom of speech provisions.

I think the courts have since taken a broader view of the free speech provision and felt, quite properly, that the sanction of dismissal was itself an infringement on free speech, could be tolerated in some situations and not others, and I think the great view of history today is that Justice Holmes was mistaken in making that assertion.

Senator TUNNEY. And you feel that he was mistaken?

Mr. REHNQUIST. Yes, sir; I do.

Senator TUNNEY. Then a speech you made to the Air War College at Maxwell Field, Ala., on August 23, 1971. You said, and I quote, "The purpose of the guaranty of freedom of expression in our Constitution is not to assure everyone the same opportunity to influence public opinion. This would require not merely a prohibition of government interference with freedom of expression, but complete redistribution of wealth and of the means of communication but to assure that any conceivable view was advocated by someone."

I must say that statement concerns me because I don't see how you can say that giving freedom of speech to all would require a complete redistribution of wealth and of the means of communication. Could you explain what you meant by that?

Mr. REHNQUIST. Yes, sir, Senator. Senator Mathias asked me a somewhat similar question this morning, and I think I said in reply to him that the first amendment did not require that the Government equip everybody with a printing press or give them each a television station. It meant simply that those who had printing presses and those who had television stations should be able to say whatever they wanted to.

Senator TUNNEY. In other words, you weren't suggesting that the freedom of speech for some ought to be curtailed in society as opposed to the freedom of speech of others, that all have an equal right to express their viewpoint, some may enjoy different modes of communication, and as a result of having a television program available to them, communicate their ideas to more people, but you weren't suggesting, were you, that you would curtail the right of any one individual in society to express his opinion?

Mr. REHNQUIST. Not at all, and your statement is perhaps a better statement than I made on what the fact is, that the man with the television station has a better chance to express his views than the man who doesn't have it, but each has free speech within his own compass.

Senator TUNNEY. Would you care to express yourself on your attitude toward free legal services for the poor, as an example, giving the poor an opportunity to utilize the court system which in the past has been limited to the wealthy and the semiwealthy, middle class in society.

Mr. REHNQUIST. Well, putting aside any conceivable constitutional implications or statutory interpretations, I think it is a highly desirable result.

I was on the Board of Maricopa County Legal Aid Society at a time when funds were difficult to come by, and the services provided to the poor simply weren't adequate because of lack of funding. I think that the increased funding is now making legal services available to the poor as well as to the rich, and I heartily favor that.

Senator TUNNEY. I am very happy to hear you say that.

In answer to Senator Mathias' question regarding due process, which you discussed in general terms, you said it would be inappropriate to advance a definition of due process at this particular time, and yet in your Harvard Law Record article, that famous article that you wrote—it has become famous—you stated, "Given the state of things in March 1957, what could have been more important to the Senate than Mr. Justice Whittaker's views on equal protection and due process?" Have you changed your mind that the Senate ought to be interested in a nominee's attitude toward due process?

Mr. REHNQUIST. I haven't changed my mind that the Senate ought to be interested in a nominee's views. I have come to have an increasing sympathy for the problem of the nominee to respond to very legitimate questions from the Senators without in some way giving the appearance of prejudging issues that might come before him.

Certainly in the sense of formulating a definition of due process, when one thinks of all of the cases that have been decided under that clause, it strikes me as virtually impossible. One can advert to settled doctrines of due process, that a confession obtained by coercion is a violation of the due process of law. That doctrine strikes me as being so well settled a nominee need have no reservation about saying that that is a classical example of it.

The idea that a man is entitled to a hearing before he is deprived of substantial rights is another doctrine that strikes me as so well settled one need have no hesitancy in saying that.

There are much closer questions of due process, I am sure, pending now in the courts that I ought not to express a view on.

Senator TUNNEY. I agree with you on that. I frankly think that it would be wrong for you to express a view on a case that is before the court now which, if affirmed, would require a circumscription of your future judgment. I would be the last person who would want to see that happen.

However, let me ask another question in this area. We can all think of examples in which the Supreme Court is required to pass judgment in situations which are entirely unprecedented and which were clearly never envisioned by the framers of the Constitution.

One of the examples I am thinking of is the Billie Sol Estes case in which the question was whether or not television would be allowed in the courtroom, and there was a due process issue before the Supreme Court.

Now, how would you apply due process standards in a case like that?

What would be relevant to you besides judicial precedent, if there is any judicial precedent? Would you go back to your reading of history; would you rely on your personal philosophy; how would you decide such a totally unprecedented case—what standard would you utilize in deciding a totally unprecedented due process case?

Mr. REHNQUIST. Well, I would first, as is obvious, read the amendment, and you suggest that there are no precedents, yet certainly there would be cases that would be not too far off and I would be inclined to go back to the debates, the Bingham explanation of what he meant by the 14th amendment, other explanations on the floor, and I am sure you would come up with something that obviously would not have included a particular discussion of whether a trial could be televised or not.

All I can think of doing is by the very best and most faithful type of analysis to see if this sort of thing was within the broad prescription that the framers and ratifiers of that amendment had in mind.

Senator TUNNEY. And also wouldn't you apply a standard of what you think is fair under the existing circumstances?

Mr. REHNQUIST. No; I don't believe I would unless I found that to be one of the components of the due process clause.

I don't think it would be right for me to simply say, this doesn't seem fair to me, therefore, I am going to find it is a violation of due process.

Senator TUNNEY. I am talking about an unprecedented case, like the Billie Sol Estes case. I am not talking about a case in which there would be a question of stare decisis, because I think the Billie Sol Estes case was the first case in which the Supreme Court had to make a determination of the rights of the media to have television in a courtroom, and the right of the accused to keep television out of the courtroom.

Mr. REHNQUIST. To the extent that fairness is a component of due process, as a part of the debates and intent of the framers, certainly that would be taken into consideration.

I think it would be wrong for me to simply read in my own subjective notions of fairness.

Senator TUNNEY. The fairness standard that you would apply would be one, I would assume, based on some of your other statements,

a standard derived in context with what is going on in the modern world, and not necessarily what went on in 1789?

Mr. REHNQUIST. No; certainly the fact that the framers of the due process clause did not contemplate specifically that trials might be televised does not foreclose the issue under the due process clauses.

Senator TUNNEY. And so the fairness standard would be a standard applicable to the contents what is going on today rather than 1789?

Mr. REHNQUIST. Fairness in the context of the due process clause.

Senator TUNNEY. One last series of questions, which shouldn't take longer than 4 or 5 minutes, Mr. Chairman.

I realize I have gone over my time. Thank you. I didn't anticipate Mr. Rehnquist's walk around the table. [Laughter.]

Mr. Rehnquist, in a speech last May dealing with criminal procedure, you are quoted as having made a distinction between what you termed a "technical violation of the law" and a violation which was "not only illegal but also brutal or offensive."

Your statement is reported in this way, and I am quoting:

> If someone engaged in espionage against the United States, for the benefit of a foreign government, were to go free because of a technical violation of the law relating to unreasonable search and seizures, many would feel that the balance has swung too far in favor of the criminal defendant. If, on the other hand, evidence is not only illegal, brutally, offensively concealed from the defendant for the purpose of prosecuting the defendant for a minor offense, an individual indication of the violation of the constitutional right may serve society better than the conviction of the defendant, if that choice must be made.

How do you go about deciding whether a violation of a constitutional right is brutal or offensive?

Mr. REHNQUIST. I can tell you the general thought that was in my mind at that time, Senator. I am relying on recollection, and my recollection may be incorrect, as to cases or situations, but I think perhaps the thought will come across.

As I recall, in the case of *Mapp* v. *Ohio*, there was a breaking into a house under the most objectionable sort of circumstances, without any warrant, and a simple ransacking search of the whole place. That would strike me as the kind of violation I was referring to in the second context.

The technical violation I would put in terms of this case from Wyoming that came up to the Supreme Court last spring, where the sheriff in one of the Wyoming counties, on a tip from an informer, went before a magistrate to get a search warrant, rather than an arrest warrant, for two robbery defendants who were later apprehended in another part of Wyoming as a result of a statewide radio broadcast, and after the Supreme Court of Wyoming had ruled against the claim, and the district court in Wyoming and in the tenth circuit ruled against the habeas corpus cliam, the Supreme Court of the United States ultimately held that the search warrant was improperly issued because the information presented to the magistrate didn't meet the tests that it ought to meet for a search warrant.

I think that was the type of thing that I had in mind when I said a technical violation.

Senator TUNNEY. Discussing the civil disobedience, you said: "In the area of public law disobedience cannot be tolerated." Isn't there a fundamental conflict there? On the other hand, you say if the Government violates a constitutional right, we must decide whether it is

merely a technical violation, whereas in the case of an individual, it is the absolute test.

Mr. REHNQUIST. As far as the action of the Government agent is concerned, it is the absolute test there too. What I was referring to was not that the Government agents who may have committed a violation of law, however technical, be treated differently than some private citizen, but whether it was desirable, as a matter of policy, to apply the exclusionary rule which in effect excludes the evidence not as against the technical violator of the law, but against the person who was concededly guilty other than for the absence of the evidence to be excluded.

Senator TUNNEY. Finally, Mr. Rehnquist, if you care to answer it, which Supreme Court Justice in history do you admire the most?

Mr. REHNQUIST. I think John Marshall.

Senator TUNNEY. Do you care to elaborate?

Mr. REHNQUIST. He made the Supreme Court what it is today more than any other person.

I think it was Senator Fong who was commenting this morning that there are lots of countries with constitutions that have very fine charters of individual liberties and restraints on Government power, but somehow people get arrested all the time, and things just don't work out the way the constitution said they would.

I think it is largely the responsibility of John Marshall and his establishment of the doctrine of judicial review which has made our Constitution a living document.

Senator TUNNEY. I want to thank you very much, Mr. Rehnquist, for being to my mind more forthcoming today in answering the questions that I had for you.

I think that yesterday, for what reason I don't know, you felt inhibited in answering the questions that I personally put to you, and I think that today you have been very forthcoming in answering the questions that I personally put to you, and I want to thank you for that.

I would like, Mr. Chairman, to ask you if it would be possible, maybe, after we have a chance to read the transcript of the record, to put some questions to Mr. Rehnquist in writing, if possible.

The CHAIRMAN. What did you say?

Senator TUNNEY. I would like to, if possible, be able to put some questions to Mr. Rehnquist after reading the transcript of this hearing.

The CHAIRMAN. We will decide that when we come to it.

I will be fair about it.

Senator TUNNEY. But I don't want to add to Mr. Rehnquist's burden or the burden of this committee.

The CHAIRMAN. That is something that the committee itself will decide.

Senator TUNNEY. Thank you.

Senator MATHIAS. I would like to go back to the wiretapping question. Let me ask Mr. Rehnquist if he can tell us whether one of the arguments that was put forth in the Justice Department brief on the wiretapping question was that of inherent executive power and ask him to say whether the right to wiretap was an extension by the Justice Department of that doctrine?

Mr. REHNQUIST. I believe that position was taken, Senator Mathias, in the district court. I am not sure whether it was taken in the court of appeals or not.

In the brief in the Supreme Court, the Government does not take the position that there is some sort of inherent power in the Executive which makes it superior to the fourth amendment. The position the Government has taken is that the executive, like every other branch of the Government, is bound by the unreasonable search and seizure restrictions of the fourth amendment, and that the question is whether this particular overhearing was or was not an unreasonable search and seizure.

Senator MATHIAS. Can you describe for the committee your own personal role in the Justice Department's position?

Mr. REHNQUIST. Since I have described my participation in the brief, I feel I can say what my own contribution was and not any other opposing views. I felt it was a mistake for the Government to take the position that there was inherent power, and that the case could best be put forward both from the point of view of the Government in its more limited interests as an adversary and in the interests of the Government in the larger point of view by framing the case in terms of whether it was an unreasonable search and seizure under the fourth amendment, rather than some over-riding inherent power.

Senator MATHIAS. When Senator Fong went into this area this morning, he very carefully qualified himself as being one of four Members of the Senate who had voted against the Omnibus Crime bill passed in 1967. I ought to make the same qualification, although I was not in the Senate at the time, I was a Member of the House and I too was recorded against the bill.

I am concerned in this area, as Senator Fong is, and other Members of the Senate. I am wondering if you could tell us what, in your mind, you think the competing factors would be in this area of wiretapping and how persuasive you would feel that this element of inherent Executive power would be in this scale of interest?

Mr. REHNQUIST. You are referring now, Senator, to the national security wiretapping, or the wiretapping under the Omnibus Crime——

Senator MATHIAS. Under the Omnibus Crime.

Mr. REHNQUIST. Under the Omnibus Crime Act, without attempting to prejudge or express an opinion on any particular case, I would think that the competing factors to be weighed are the closeness of the analogy between the traditional warrant procedure for searching premises for tangible physical evidence and the court order authorized under the Omnibus Crime Act for intercepting a conversation for a limited period of time. And basically the competing interest between the right of the individual to privacy in his conversations, privacy in his home, as opposed to the necessity or the authority of the Government in circumscribing circumstances where prior court authorization has been obtained and reasonable cause is shown to believe that incriminating evidence will be obtained for the Government to obtain that evidence.

Senator MATHIAS. Would you feel substantially different about wiretapping in a national security case?

Mr. REHNQUIST. Well, there, of course, since the procedure is undertaken without a court authorization in advance, the question is

whether the exercise of the authority by the Attorney General and the President's designate offers a reasonably close approximation of the type of control that you get from presenting the matter to a neutral magistrate, or whether in view of the exigencies of that particular type of case, some lesser degree of neutral control can be accepted in the interest of preventing possible damage to the national security.

Senator MATHIAS. Moving on to another area, the area of speedy justice, I recall to you The Speedy Trial Act of 1971; the bill of which the principal sponsor is the Senator from North Carolina, Senator Ervin, and of which a number of us, including myself, are cosponsors. There are 51 cosponsors to this bill, I recall.

This is a bill which, you recall, provided that if one accused of a crime is not brought to trial within a specified period of time, it would result in a technical acquittal.

What was the position of the Department insofar as that legislation was concerned?

Mr. REHNQUIST. The position that the Department ultimately took was that it would not oppose mandatory dismissals as such if the bill were coupled with some reform in the practice of Federal habeas corpus, and were also designed to allow the system to reasonably adjust to these new time limitations in order that there wouldn't be a sudden wave of dismissals because of the inability of the system to shift to the new time schedule.

Senator MATHIAS. That wasn't the Department's position?

Mr. REHNQUIST. No, it wasn't, Senator, and since one of our leading newspapers in the Nation's Capital has presented an account from somewhere of what happened, I feel at liberty of speaking about it without the circumspection I might otherwise feel.

Several of us in the Department have been working on the program. Although I was not immediately responsible for it, I was one of those who discussed it, and I think all of us unanimously felt that the mandatory dismissals imposed on the prosecution by the bill, without any concomitant sanctions imposed on the defense, was an unfair way, so far as the prosecution was concerned, of implementing the speedy trial requirement.

I had occasion to be out on the road, so to speak, and be giving a speech down at Maxwell Field, and in the discussion there it became apparent to me that a number of people who were by no means softies, if one may use that oversimplified term in the area of law enforcement, were nonetheless concerned about the situation, where people simply languished in jail because they were unable to raise bond and weren't brought to trial within a short period of time.

Senator MATHIAS. I believe a high percentage of the people who are in jails all over the country today are in that position.

Mr. REHNQUIST. I suspect there is a good deal of truth to that.

At any rate, I became convinced, after hearing this discussion, that the Department ought to shift its position and not just the criminal defendant's situation would be improved, but that the whole system of criminal justice would be improved if we somehow got a guarantee of reasonably speedy administration of criminal justice primarily at the trial level but other places elsewhere, and that the values to be gained from such improvement clearly outweighed the probability

that there would be some mandatory dismissals of people who were guilty and simply weren't able to be tried in that time.

Senator MATHIAS. So it is a matter of philosophy, if we could use that term, that that approach has some personal relevance for you?

Mr. REHNQUIST. Yes sir.

Senator MATHIAS. At the risk of repetition, going back to the questions that I asked this morning on excessive bail, reasonable search and seizure, due process, and so on, perhaps I can now rephrase those question with the hope of probing a little further your views in this area.

Looking at the eighth amendment, at the question of excessive bail, without asking you to define with any kind of particularity that would either retrospectively or prospectively be embarrassing, could you tell the committee what you think are the competing interests—the various factors—that you would consider in determining in a particular case what is excessive bail within the context of the Constitution?

Mr. REHNQUIST. If you will forgive me for being general, I will certainly try.

Senator MATHIAS. Maybe by being general you could still tell us what you think is the more important and the less important factors in this kind of judgment.

Mr. REHNQUIST. Well, certainly one factor is the strong public policy in favor of assuring the presence of a defendant at his trial. Once he has been indicted and arraigned.

Congress has, in the Bail Reform Act of 1966, provided for a number of other less severe sanctions than the actual requirement of bail, but under the Constitution bail is nonetheless permissible.

Whether or not it is excessive, I would take it, would depend on whether the amount fixed with an eye to actually assuring the defendant's presence at the trial.

I would suppose that bail would quite arguably be excessive if it were fixed with an eye to simply keeping the man in jail rather than an amount sufficient to reasonably assure his presence at the trial.

Senator MATHIAS. Would you mind developing a classification of categories of defendants in dealing with this?

Mr. REHNQUIST. Well, of course, in many States my recollection is that capital offenses simply aren't baliable, and I take it the philosophy behind that is that a man who may be convicted of a capital crime has absolvtely no incentive to show up for his trial, and that, therefore, there you do not even run the risk of any sort of bail; but I think going down the scale of graduation of offenses, certainly the lighter the offense, the smaller the bail would be, is the customary way one would balance that.

Senator MATHIAS. In your colloquy with Senator Tunney, I think you covered the question of due process under the 14th amendment.

Could you comment very briefly on due process under the fifth amendment? Again, in this context of competing factors.

Mr. REHNQUIST. Unless you can prod me with some statement of fact, I am not sure anything comes to mind as due process under the fifth amendment.

Senator MATHIAS. The whole philosophy of the Bill of Rights, it seems to me, is to provide certain restraints on Government. I am

wondering how you would view the fifth amendment due process requirement as a restraint on Government?

The apparent balance is the interest of the Government against the guarantees of the individual.

Mr. REHNQUIST. Yes, no person shall be deprived of life, liberty, or property without due process of law. I suppose that means at the very least a person to be deprived of his liberty is entitled to a hearing before a fairly constituted tribunal, to be apprised of the charges against him, to have an opportunity to present witnesses on his behalf, to have an opportunity to cross-examine witnesses—again assuming this is a full-fledged criminal trial.

I think if I got more particular than that I would be roaming into areas where I probably ought not to.

Senator MATHIAS. Once again, thinking not of a final definition but only the weighting factors. what do you think is reasonable in the area of search and seizure?

Mr. REHNQUIST. Well, I think the Court has held that the general rule is that a search without a warrant is unreasonable and that ordinarily in order to search, there must be a warrant issued by a neutral magistrate upon a showing of probable cause.

On the other hand, there are recognized exceptions to that doctrine, as the doctrine of exigent circumstances set forth in Kerr against California.

I think the classic example is that of the automobile which is very likely to be moved by the time that the police could go and apply to a magistrate for a search warrant. There I believe the courts have said that because of that necessity, a warrant is not required, and I think that is the sort of balance the courts have tried to strike; that where a warrant is obtainable, the general rule is that a warrant is required, that it is up to the Government to justify those exceptional situations in which a warrant is not required.

Senator MATHIAS. And that is what you would believe?

Mr. REHNQUIST. As general propositions, I have no quarrel with those at all.

Senator MATHIAS. Finally, what about the power of the Government to put into abeyance due process under emergency or extraordinary circumstances?

Mr. REHNQUIST. Well, I commented in response to some question—I don't recall whether it was yours or whether you were present, the doctrine of qualified martial law which has been recognized in many courts, in fact by the Supreme Court of the United States, where the force mounted against the peace authorities in a particular place at a particular time is such that they simply can't cope with it in the normal process of individual arrests, bookings, and that sort of thing, and there it is my understanding that the Government has the authority, for a limited period during the duration of this type of emergency, to arrest people without the usual formalities so long as the period of arrest is kept to the very minimum time required by the emergency.

Senator MATHIAS. Thank you. Thank you again, Mr. Rehnquist.

The CHAIRMAN. You are excused.

Senator BAYH. May I make one observation?

I appreciate the fact that as I sat here the last several minutes, Mr. Rehnquist has answered in greater detail, in my judgment, some of the difficult questions that he had appeared to be more reluctant to answer earlier.

I am anxious to have a chance to study them because I think most of this information is the type of information we are looking for, and I personally appreciate that.

The CHAIRMAN. John Bingham Hurlbut, law professor; Martin F. Richman, former law clerk to Chief Justice Warren, former Deputy Assistant Attorney General; Howard Karman, president of the Arizona Bar Association. Will you gentlemen stand.

You are here to testify in behalf of Mr. Rehnquist. We will give you the opportunity to put your statements in the record, please.

(The material referred to follows:)

STATEMENT OF JOHN BINGHAM HURLBUT

By way of identifying myself, which I understand is appropriate, I am John Bingham Hurlbut, Jackson Eli Reynolds Professor of Law, Emeritus as of 31 August 1972, Stanford University.

My remarks in support of the nomination of William Rehnquist will be brief, adding perhaps only a small addendum of footnote to the testimony already before the committee. I speak as one of his law school instructors of two dedades ago and more, of my observation of him at that time, of my estimate of him at that time and of my estimate of him at the present time.

Mr. Rehnquist is the product of the Stanford Law School, a member of one of those remarkable and very competent post-war classes, composed largely of veterans, eager to exploit what the law school had to offer in the pursuit of a solid foundation for a professional career in private practice and in public service, and for satisfying those heavy obligations of a lawyer citizen. And on the other side of the platform a strong, demanding, dedicated faculty including such names as Phil Neal (now law dean at Chicago), Sam Thurman (now law dean at Utah), Harold Shepherd (former dean at Duke), and Paul Freund (visiting professor from Harvard for a term). In this setting he was graduated first in his class—and as one of my former colleagues at Stanford has put it, "He was the outstanding student of his law school generation."

I can, I think, speak with some authority on William Rehnquist the student. He was a member of my classes in criminal law in his first year and evidence in his third year. For a while he was my research assistant. We had a common interest in intercollegiate athletics as well as the law. So I saw a great deal of him in the classroom, in my office, and in my home.

As a student he was nothing short of brilliant, determined to achieve excellence, and persistent in his expectation of excellence on the other side of the podium. In the give and take of the classroom he was sharp, forthright, courageous, and objective—precise and deep in his analysis of difficult problems—insistent that a problem be turned over and over to expose all of its facets before its solution—and always a gentleman.

Since 1952 we have kept in touch with each other. While our association has been more casual and less frequent than I would have liked, I have followed his career enough to be quite sure that the hallmark of excellence which characterized him as a student has characterized his professional life.

In my opinion he is highly qualified to be a Justice of the Supreme Court. He combines great intellectual power with complete intellectual and personal integrity and with wisdom and common sense. And he has that all important capacity for steady continual growth which he demonstrated as a student and has demonstrated in his professional life. In my opinion he has those ingredients which guarantee that he will have a distinguished career as he goes about fullfilling the responsibilities of a Justice of the United States Supreme Court. Thank you for this opportunity to appear before you.

STATEMENT OF MARTIN F. RICHMAN

As a former colleague of Mr. Rehnquist in Government service, I am pleased to testify in support of his confirmation. He is well qualified to be an Associate Justice of the Supreme Court, in my view, on the basis of his strong legal and intellectual abilities, character and judicial outlook.

To put my opinion of him in perspective, it is necessary to digress a moment to tell the Committee a few things about myself. First, near the beginning of my career I served as law clerk to Chief Justice Warren, and thus gained some insight into the processes of the Court and the qualities that are important to the work of the Justices. More recently, I served three years as Deputy Assistant Attorney General in the Office of Legal Counsel, most of that time during Ramsey Clark's tenure as leader of the Justice Department. I am a supporter of the main thrust of the work of the Warren Court, and an admirer of Attorney General Clark's approach to law enforcement and the exercise of governmental power.

When Mr. Rehnquist arrived at Justice a few days prior to the Inauguration, I had already set in motion plans for returning to my firm in New York after completing the transition in the Office of Legal Counsel. As it turned out, the period of transition, during which I served as Mr. Rehnquist's Deputy, continued for about four months.

We had a close, informal relationship, with frequent and often extended discussions of the numerous legal issues, large and small, that made up the business of OLC during those early months of the new Administration. We also talked, more casually, of other matters of political and general interest. We made no bones about our divergent political views, but we shared a common professional approach to the work at hand. In this way, through the daily give-and-take of a candid relationship, my opinions of Mr. Rehnquist's mind and character were formed.

I need not dwell on Mr. Rehnquist's legal abilities. He has an incisive grasp for the key issues in a complex problem, the ability to learn a new subject quickly and an exceptional gift for expressing legal matters clearly and forcefully in writing. Though long out of the academic atmosphere, he has a fine scholarly bent, with an inquiring mind on subjects ranging beyond legal matters.

In terms of character, he is strong, honorable, straightforward in his actions and positions. I thought he showed exceptional sensitivity and decency in his decisions on administrative and personnel matters within the Office. While these traits do not necessarily bear on legal ability, they speak deeply of the character of a man.

Finally, there is judicial outlook, perhaps the most important criterion in your scrutiny of a nominee for the Court. The Committee is well aware that Mr. Rehnquist has a deeply held body of views on the political and social issues of our time. They are, in general, very conservative views. The key question for inquiry here, in my opinion, is whether as a Justice Mr. Rehnquist will bring to the decision of the cases not only his own views, however long held and well thought out, but an open mind. Will he approach each case on the basis of the facts in the record, the briefings by counsel, the arguments of his Brethren in conference, and his best judgment of all the available legal materials? In short, will he act like a Judge?

Based on my experience with him, my own answer is in the affirmative. Mr. Rehnquist approaches legal problems thoughtfully, with careful personal study. He is responsive to persuasive argument, and contributes to it by the articulate presentation of his own views. He brings his considerable legal ability to bear when the issues are broad questions of constitutional law, as well as on more technical matters.

I fully expect that I shall disagree with many of his decisions on closely-contested constitutional issues. But I am confident that his votes will be cast on the merits of the cases, that his opinions will illuminate the issues, and that he will make a constructive contribution to the ongoing work of the Court in the development of our law.

STATEMENT OF HOWARD KARMAN, PRESIDENT, ARIZONA STATE BAR ASSOCIATION

Mr. Chairman, my name is Howard H. Karman, President of the Arizona State Bar. I am here at the behest of the Board of Governors of my state bar to support the nomination of a fellow Arizona lawyer, William H. Rehnquist, as an Associate Justice of the Supreme Court of the United States.

Mr. Rehnquist has been a member of that State Bar of Arizona since early in 1954, when he was admitted to practice before the Arizona Supreme Court.

Our Bar is integrated—which is another way of saying that all persons admitted to the practice of law in Arizona courts by our Supreme Court are required by law to be members of the State Bar of Arizona.

As you already know, Mr. Rehnquist engaged in the general practice of law in Phoenix, Arizona from 1954 until 1969 when he came here as one of Mr. Mitchell's top people in the Justice Department.

During his practice in Phoenix, he found time to devote himself to the betterment of the profession in numerous ways.

Phoenix, in addition to being the capital of Arizona, is also the county seat of Maricopa County. The lawyers of Maricopa County have for many years been organized into a voluntary county bar association. Mr. Rehnquist became active in the administrative affairs of the Maricopa County Bar Association when in 1959, he was elected to its Board of Directors, and during the year 1959-60, served as Chairman of both the Program Committee and the Committee on Continuing Legal Education.

During 1961 and 1961 he served as Secretary of the Board of Directors, and in 1961 he was elected vice-president of the Association.

The following year he was accorded the honor of being elected President of the Maricopa County Bar Association, which post he filled with honor. At that time, the county bar association had a membership of approximately 1200.

After completing his year as president, he continued to serve the county bar both as a member of the Board of Directors and as immediate past president.

Since 1959 Mr. Rehnquist has been very active in various activities with the State Bar of Arizona:

He was a member of a committee formed to study proposed amendments to the Constitution of the United States during 1959, 1960 and 1961.

From 1959 to 1964 he served on the Committee for Continuing Legal Education to the Bar, and was chairman of that committee for two years during that time.

One of the functions of the State Bar of Arizona is to provide continuing legal education, which is accomplished through the committee I have mentioned, and through the Arizona Law Institute, an arm of the organized bar, directed by Charles Marshall Smith, a professor of law at the University of Arizona at Tucson. Mr. Rehnquist was always in great demand as a lecturer at courses and programs presented by the Arizona Law Institute, and, according to many, had an unusual facility for understanding even the most obscure and involved legal problem, and the ability to translate such problems into language clearly understandable by those of us not possessed of similar capacities.

Mr. Eldon Husted, the Executive Director of our bar, has reported to me that attendance at seminars and programs presented by the Institute always increased when Mr. Rehnquist was lecturing, and that Mr. Rehnquist, even though he has not been a resident of our state for the last two years, still leads Arizona lawyers in number of lectures given for, and hours devoted to, continuing legal education to the bar, excepting only the director of the Institute.

Mr. Rehnquist was a member of the Committee on Economics of Law Practice during 1963 and 1964; the Memorial Resolutions Committee for the 1962 Annual Convention of the State Bar of Arizona; a council member of the Trial Practice Section from 1960 to 1964; and a member of the Committee on Uniform Laws from 1964 to 1968. During a portion of that time, and until he resigned to join the Justice Department in 1969, he served ably as one of Arizona's three Uniform Laws Commissioners.

Basic discipline of the State Bar of Arizona is under the direction of our Supreme Court, and the factfinding agencies in connection with grievances against lawyers in our state are called Local Administrative Committees. Mr. Rehnquist was appointed by the Arizona Supreme Court to membership on one of the three committees operating in this area in Maricopa County, and served in such capacity for five years, and until his resignation to accept his present position.

I have known Bill Rehnquist professionally for a number of years. After his nomination by President Nixon, I talked to a great many people in Arizona, Republicans and Democrats, liberals and conservatives. To a man they had nothing but praise for Bill Rehnquist. I was surprised that no lawyer I spoke with had an unfavorable comment to make, even those who find themselves at the opposite end of the political spectrum.

I talked to the former counsel of the Arizona NAACP, who also happened to be Chairman of the Arizona Democratic State Central Committee. He spoke favorably of Bill's intellect and experience. I also spoke to Robert H. Allen, former Chairman of the Arizona Democratic State Central Committee, who has

known Bill both professionally and personally since he came to Arizona in 1953. He said that Bill has no personal animosity for anyone, no matter of what race or religion, nationality or sex. He commented that Bill is a lawyer through and through and that foremost in Bill's mind is an adherence to the doctrine of *stare decisis*.

Willard H. Pedrick, Dean of the Arizona State University Law School, supports Bill Rehnquist and said that all of the other members of his faculty likewise support him. In fact, Dean Pedrick informs me that he tried to get Bill Rehnquist to join his faculty several years ago.

In conclusion, Mr. Chairman, I believe that Mr. Rehnquist is admirably qualified by virtue of intellect, temperament, education, training and experience to be confirmed as an Associate Justice of the United States Supreme Court, and I urge your committee to favorably report to the United States Senate in connection therewith. Should you or any of the other distinguished members of your committee have any questions, I will be pleased to try to answer them.

The CHAIRMAN. We are going to recess now until 10:30 Monday morning, at which time Mr. Powell will be the witness.

Senator MATHIAS. Before you recess, can I say 30 seconds' worth?

The CHAIRMAN. Yes.

Senator MATHIAS. I welcome our colleague, Senator Tydings, back to the committee, and also a distinguished Marylander who has deserted us and gone to Virginia, Mr. Carlisle Humelsine. I give great weight to their statements and testimony.

(Whereupon at 3:20 p.m. the hearing recessed and will reconvene on Monday, November 8, at 10:30 a.m.)