TESTIMONY OF BARBARA HURST AND JONATHAN ROGERS, AD HOC COMMITTEE OF BROWN STUDENTS

Miss HURST. Senator Eastland, does the committee have copies of our statement? They were to be distributed.

My name is Barbara Hurst. I am a senior at Brown University. With me is Jonathan Rogers, who is a sophomore at Brown University.

We represent the Ad Hoc Committee of Brown Students, which is a small group of students who heard Mr. Rehnquist speak last March and felt that it was important for the committee to know what Mr. Rehnquist said and to hear general student reaction to him.

Our statement is brief. It is in two parts, one part which Mr. Rogers will cover, is what Mr. Rehnquist said at Brown. I believe the Brown speech has been referred to in the transcript and Mr. Rauh referred to it yesterday.

Mr. Rogers was on the panel with Mr. Rehnquist.

The latter part of the statement, which I would like to present, is a brief discussion of student opinion.

We do have with us a petition signed by a thousand members of the Brown community—students, faculty, and administrative officials—opposing the nomination of Mr. Rehnquist and we would ask that our statement and the petition be received by the committee for insertion into the record.

The CHAIRMAN. It will be received for the committee's files.

Miss HURST. Thank you.

Mr. ROGERS. Our testimony here today is relatively narrow, Mr. Chairman. We speak only of what we, ourselves, experienced, even on what Mr. Rehnquist said or of our reactions to the statement.

There are several other witnesses who preceded us who have ably, I think, delved into his past and shown to the members of the committee doubtful "abiding fidelity to the Constitution," in Senator McClellan's words. Again, we are not speaking as generally as some of the other witnesses but only of that in which we had a part.

On March 11, in the Providence Journal, Mr. John Tiffney stated as one of the goals of the four Justice Department officials, who went to Brown University to find out "what the students are concerned about"——

The CHAIRMAN. Do I have a copy of your statement? Have you got a written statement?

Mr. ROGERS. Yes, we do; but we have important additions to it that we would like to make, if it is all right with you.

The CHAIRMAN. That is all right.

Mr. ROGERS. I believe the written statement has been distributed to the members of the committee.

The CHAIRMAN. Proceed.

Senator HRUSKA. It will be included in the record, in full; will it not?

The CHAIRMAN. Yes.

Mr. ROGERS. Thank you.

To repeat briefly, one of the goals of the Justice Department officials was to "find out what the students are concerned about."

We are concerned about Mr. Rehnquist, deeply concerned, and upset at the possibility of his sitting on the Supreme Court of this country.

The positions defended by Mr. Rehnquist in informal discussion and also during a panel discussion centering on wiretapping and surveillance provoked great student concern and dismay. In light of these views and his subsequent nomination to the Court, Mr. Rehnquist has himself become a vital issue.

Our purpose in making this statement is not primarily to inform members of the Senate Judiciary Committee about Mr. Rehnquist's views. The positions he defended are by now familiar. He reiterated the claim made earlier to a Senate Judiciary subcommittee that there is absolutely no constitutional bar to governmental surveillance of individuals who "might" be engaging in "possible" criminal conduct.

At the time, Mr. Rehnquist expressed no worry about the chilling effect such surveillance has upon constitutionality protected speech and association. He stated that in cases of national security wiretapping of domestic groups without prior judicial approval is entirely justified, arguing that the Justice Department often does not have the evidence necessary for wiretap authorization.

I refer the committee again to the Providence Journal article of March 11 of this year. A local attorney questioned the Department's practice of not obtaining judicial permission before installing wire taps in cases of national security. Mr. Rehnquist said in these cases the Department must protest against foreign intelligence or subversive domestic elements, yet it often does not have the evidence of criminal activity which would be an answer to the wire tap arguments.

Again Mr. Rehnquist expressed little concern about the obvious threat to individual's rights to privacy inherent in this procedure. In reply to many objections that such wiretapping and surveillance practices threatened the very spirit of a free society, Mr. Rehnquist stated that the protection of citizens' constitutional rights would depend and actually could depend upon the self-restraint of governmental officials. He indicated little awareness that rule of law means at least this: that rights are not at the mercy of fragile governmental benevolence but are safeguarded by bringing government under the law.

I refer now to an article in the New York Times of March 10 of this year concerning a statement that Mr. Rehnquist made before the Subcommittee on Constitutional Rights of this committee. At that point, Mr. Rehnquist stated and repeated almost the same words to us at Brown "the Justice Department will vigorously oppose any legislation which, whether by opening the door to unnecessary and unmanageable judicial supervision of such activities or otherwise, would effectively impair this extraordinarily important function of the Federal Government," that function being wiretapping and surveillance of citizens.

I refer the committee to, I think, an important answer to that statement before a subcommittee of the Senate Judiciary Committee by a member, Senator Mathias. He said, and again referring to the New York Times:

"The primary checks"—this is Senator Mathias—"the primary checks against abuse have been bureaucratic self-restraint, and the energies of the press. We need far more reliable and consistent controls."

If I may paraphrase Senator Mathias, he indicated that the Justice Department abided not by laws but by men, and at Brown University

the following day, Mr. Rehnquist repeated this assertion that he had made, to which Senator Mathias replied, indicating that he would like to do his best to keep it that way within the Justice Department.

Our purpose in making this statement here is to bring to the attention of the Judiciary Committee our grave concern at the prospect of approval of a Court nominee with such radical views on the role of law—or perhaps lack of role—in guarding rights we hold precious. In the years to come many complex issues regarding electronic and other means of surveillance, and other invasions of privacy, will come before the High Court. We do not wish to see such matters settled by one whose answers are predicated upon a simplistic and dangerous philosophy of trust in the discretion of men rather than the greater absoluteness of law.

Miss HURST. With your permission, may I read the latter part of the statement?

The CHAIRMAN. Certainly.

Miss HURST. As a result of the most recently enacted constitutional amendment, several million young voters have been enfranchised. Across the country, 18-, 19-, and 20-year olds are registering to vote and preparing for the first time to enter the democratic processes which govern this Nation.

Many sociological and psychological studies have been made of this new electorate; it has been theorized that our first political memories—of an assassinated leader—have made us instinctively distrustful of these processes and unwilling to place our trust in a Government or in men which we conceive, rightly or wrongly, as having so tenuous a hold on life and reason.

It must be true that events of the last several years have done much to alienate today's youth. We have seen our fellows beaten on the streets of Chicago, killed on the campuses of Ohio and Mississippi, and arrested en masse on the streets of Washington, D.C.

Yet a number of us feel to give up on these millions of young people—to assume that the alienation and distrust which we feel is so deep as to be irreversible—would be a grave mistake. Lack of hope and distrust of our leaders are feelings which do not sit well with youth in general. Youth perhaps more than any other faction of society, wants so desperately to believe in the ideals of our system that we are willing to reverse the feelings we have come to hold at the slightest inclination that perhaps they are wrong, that perhaps there does exist in this society a way back to a brief decade ago when we were indeed one Nation, unified by the hope that the United States was indeed solving its problems and that the dream of a great and fair society could be reached.

The youth of this Nation are not so naive as you may think. We realize that ideals such as liberty, justice and due process for all peoples are difficult to obtain and that our seeming loss of these values could not be remedied overnight. However, we do demand that these goals be always pursued and that the direction to them be cleared. We believe as wholeheartedly as any that the tools to reach these goals are available to us. We believe in the Constitution and we believe equally in the foresightedness and ability of Congress to give us legislation which will encourage our way toward a society which firmly holds to the tenets of that great document.

What we see now is a threat to that prospect.

We see the U.S. Senate faced with the decision to confirm the nomination of one who we firmly believe does not see that the road to domestic peace lies in expanded civil liberties and protection of the laws.

Mr. Rehnquist has affirmed time and time again that governmental functions such as law enforcement must take precedence over justice to the individual. He is one who, in this area, has tried to convince us that we should place our trust in men rather than in the Constitution which we have always felt to be supreme. Mr. Rehnquist has told us that the Supreme Court—long held by us to be the ultimate preserver of human rights—should no longer be allowed to preserve those rights, at least in the area of Government surveillance and wiretapping. He tells us that the courts must bow to the administrative process of which he has been a prime member for the past several years.

We are taught in our universities that what makes America great is that our Government is of laws and not of men; that we are guaranteed certain rights which no man or group of men can take away. Among these rights we have always considered freedom of speech, the right to privacy, and the right to due process. Yet we see a man whose comments at least to us last spring seemed a before-the-fact justification of the techniques used in the arrests of thousands of our fellows under conditions which in no way could fall under the due process and equal protection of the laws implicit in the Constitution.

We have seen the Justice Department attempt many times to stifle that dissent which we have always thought was one of the finer traditions of this Nation, and we have heard Mr. Rehnquist in particular call dissenters "barbarians." We are not here to advocate some of the activity that went on in Washington last May. We concede that some of that activity was unjustified and in fact was against the law. However, we do affirm that illegality must not be met with illegality. That demonstrators do occasionally break the law—the exception and not by any means the rule—does not by any standard acceptable to us justify the ignoring of the law which we saw on the part of the police. As one demonstrator remarked after the whole agonizing mess was over: "This city has become Saigon West. We were willing to take the consequences under the law, but they threw out the law on us."

We assume that the actions of the Justice Department on this and other occasions are more a reflection of Mr. Rehnquist's own thought than not. In fact, he told this committee that had he strongly disagreed with Justice Department policy he would not have remained in its employ.

We are not only willing but are anxious to place our trust, our faith, and our hope in this Government. We are willing and anxious, as we demonstrated in the 1968 presidential campaigns, to enter the democratic process with open minds and with whole hearts. But we do demand that that system reaffirm for us and show a firm commitment to the values of civil liberties and human rights which are necessary for this Nation to survive.

We have all studied hard what we heard Mr. Rehnquist say to us last March 10, and we have come to the conclusion, that at least in one very large area of law he does not believe in ideals which we think are mandatory for the United States to pursue. We therefore urge this committee to commit itself to those ideals and to reject the nomination of William H. Rehnquist to the U.S. Supreme Court.

The CHAIRMAN. Thank you.

Miss HURST. The committee will accept our petitions into the record?

The CHAIRMAN. Yes. Of course, I have said it would go into the record.

Miss HURST. Fine.

Senator BAYH. May I ask just one question, Mr. Chairman?

The CHAIRMAN. One. [Laughter.]

Senator BAYH. I did not have the privilege of hearing your statement, but do you feel, Miss Hurst and Mr. Rogers, that you are capable of making a judgment that the statements and the colloquy involved surrounding the statements at Brown did indeed constitute Mr. Rehnquist's own personal views?

Miss HURST. We assumed at the time, and had made the naive assumption, that what people say, especially with the force of Mr. Rehnquist, they do believe, or if they do not believe in those statements they make it clear. Since that time, of course, we have read parts of the transcript, and since that time Mr. Rehnquist has justified some of the tactics used at the May Day Demonstration, and we have heard him say, or we read the transcript and he said to the committee that had he not believed in Justice Department policy he would have resigned. We, therefore, more strongly believe that these were a reflection of his personal sentiments.

Senator BAYH. Thank you.

The CHAIRMAN. Thank you.

Mr. Forer, National Lawyers Guild.

Do you have a prepared statement?

TESTIMONY OF CATHERINE G. RORABACK, PRESIDENT, NATIONAL LAWYERS GUILD

Miss RORABACK. Yes; we do, Mr. Chairman.

My name is Catherine Roraback. I am the president of the National Lawyers Guild, and I am here on behalf of the guild to present our views in connection with the proposed nomination of Mr. Rehnquist and Mr. Powell to the Supreme Court. I believe our statement was filed with the committee.

The National Lawyers Guild is an association of attorneys and legal workers national in scope, as its name indicates, and in our meetings of the national executive board a week ago we went on record at that time in opposition to the nomination of both of these gentlemen, and the board asked me to present this statement to this committee.

Although the qualifications of these men appear to be an improvement over previous nominees who were overwhelmingly rejected by the people of the country and the Senate——

The CHAIRMAN. You are testifying against both nominees?

Miss RORABACK. That is correct, Senator; yes—in fact, both of the nominees have revealed by their conduct and public expression of their political beliefs that they are incapable of taking the oath required by their office to support the Constitution.

The views expressed by both men make it clear that they would be incapable of dealing fairly and impartially with issues arising out of the most pressing problems of our times: the struggle of blacks, other third-world people, women and other oppresses groups for social, political and economic equality.