

## The Right Time for the "Wrong Kind" of Conservative

Marshall Jay

(WASHINGTON)—The latest news out of Washington touching the pending appointments to the Supreme Court is that the liberals are by-passing Lewis Powell and loading up for William Rehnquist. This strategy of selective indignation will, it is widely predicted, come to nought, but not before the good name of William Rehnquist is dragged through the mud. Indeed, the vicious, open and notorious campaign of character assassination now being directed against Rehnquist is the surest proof one might adduce of the desperation which now hovers like a brooding omnipresence over the liberal camp. The liberal strategy requires not only that Rehnquist be attacked on grounds that do not also apply to Powell — a difficult task inasmuch as their views on almost every issue are virtually indistinguishable; it requires also that the attack appear to be motivated by principle rather than by ideology — an equally difficult task inasmuch as Rehnquist has made it abundantly clear that his allegiance as a Justice will begin and end at the Constitution. So formidable are the obstacles confronting the liberal strategy that merely to describe them is tantamount to admitting their insurmountability.

It must be said that the liberals did not happen upon their strategy wholly by choice. Their original battle-plan, formed in response to the prospect of Richard Poff and, subsequently, in response to the prospect of the "ABA Six," committed them to a position of "balancing" — one seat for the conservatives, one seat for the liberals. Here, it is necessary to do some backtracking and, in turn, to comment on the role played by the *New York Times* within the liberal establishment.

Although it may not be apparent in the outlands, in the East the *New York Times* is Holy Writ. It is First Revelation and Last Gospel and in between, as every schoolboy used to know, is contained a multitude of sins. The *Times* contains everything that any self-respecting liberal needs to know in order to attain terrestrial salvation — which is, since the day when the *Times* obituary page took note of the demise of God, the only kind of salvation one can get these days. The *Times* not only tells the liberals what to think, it tells them how and when to think it. Indeed, the greatest of joys known to the liberal heart is to have arrived more or less independently at an opinion that is subsequently certified by a *Times* editorial as The Word. When, therefore, the *Times* announced in reaction to Poff and the ABA Six that it was not opposing them because they were conservatives but rather because they were the "wrong kind" of conservatives, its rhetorical generosity committed the entire liberal establishment to a position that subsequent events proved to be exceedingly vulnerable. Event Number One was Lewis Powell and Event Number Two was William Rehnquist.

Opposition to Powell was doomed from the outset. His introductory appearance before the Senate Judiciary Committee provides a glimpse of what the liberals were up against. Powell was accompanied by the entire Virginia congressional delegation (two Senators and ten Representatives, including five Democrats), the Attorney General of Virginia, the President of Washington-and-Lee University, a brace of law school deans, four former Presidents of the American Bar Association, and a

partridge in a pear tree. (Powell himself had been President of both the ABA and the American College of Trial Lawyers.) To cap it all off, Powell had served for nearly three years as a combat intelligence officer in World War II, receiving the Legion of Merit, the Bronze Star and the Croix de Guerre (with Palm). It is not recorded whether a choir of angels actually made an appearance on Powell's behalf, but one seasoned Senator was heard to mumble under his breath, "Hell, he don't wanna be confirmed, he wants to be canonized."

Rehnquist, while perhaps not so formidable on paper, had nonetheless managed to graduate first in his law school class at Stanford (having picked up a Phi Beta Kappa key beforehand), following that with a clerkship for Mr. Justice Robert Jackson. He proved to be even more formidable in person. The liberals on the Judiciary Committee (chiefly Bayh, Kennedy, Tunney and Hart) tried every trick in the book to wrest from Rehnquist some indication of partisan or ideological commitment that would exclude him from sitting on the high court. First they tried to establish that opinions expressed by Rehnquist in his capacity as head of the Office of Legal Counsel were also his personal opinions, seeking to draw him into an ideological debate — to which Rehnquist replied either a) that he would not want to prejudge certain matters on which he may be called to render an opinion as a member of the Court or b) that too detailed an inquiry might cause him to violate the sanctity of the attorney-client privilege, which must surely apply no less, he said, to his relationship with the Attorney General and the President than to other lawyers' relationships with private clients.

The liberals then sought to smear him as an extremist, implying (without actually saying so themselves) that he was a member of the John Birch Society — an allegation that Rehnquist categorically denied. They undertook to suggest that he was anti-black, citing his opposition to public accommodations laws in the early sixties and floating rumors that he had interfered with blacks at polling places — to which Rehnquist replied that he had changed his mind with respect to public accommodations laws, now regarding them as both beneficial and constitutional; and, with respect to his alleged harrassment of black voters, he produced affidavits from unimpeachable sources which demonstrated beyond the peradventure of a doubt that the allegations were totally false and very likely malicious. Asked whether he was a "judicial conservative," he stated that he would say what HE thought he was, leaving it to the Committee to decide if that was the same thing as judicial conservatism.

In short, Rehnquist's was a virtuoso performance, one that left the liberals reeling. At one point, Senator Kennedy was so perplexed that he asked the nominee what kinds of questions they ought to be asking — to which Rehnquist replied, naturally, that it was hardly his place to suggest what the Senate ought to be doing. Indeed, even the ordeal-by-slander got to be a little too much for Kennedy, who publicly chastized

Joseph Rauh, the A-Number-One Blue-Ribbon Fully Certified Liberal of all time, for seeking to create a "poisonous atmosphere." In the end, after the smoke had cleared, the liberal banner was a thing of shreds and patches. Rehnquist was not only unbloodied and unbowed, but virtually untouched.

And now, as the battle switches to the

Senate floor, the liberals are hard-pressed. They are stuck with a battle-plan which proved useless in Committee but which cannot now be abandoned without revealing partisan or ideological motivation. The prospects are good-to-excellent that *both* Powell and Rehnquist will be confirmed.

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## Another Modest Proposal

Johnathan Quick

**A**lmost every thinker on the subject agrees that the greatest problem facing the world today is the population explosion, which is more than apparent now and promises to be an ever increasing difficulty in the future. The predictions are for more wars, famines, social unrest, crime, poverty and the total destruction of the ecology of this planet. Clearly the world must take issue with the problem of overpopulation and do so now before it is too late. All this is accepted and the facts are well documented but still in dispute are the methods of controlling this population growth.

One of the methods for population control that would seem to hold the greatest promise is, of course, birth control. Newer methods, notably the pill and other contraceptive devices, have proven to be quite effective. Many of us would place our faith in them as the hope for the future, but more and more we are hearing that we must do more, namely legalize abortion at the will or whim of any pregnant girl or woman. They argue that contraception takes forethought, a characteristic rather lacking in today's society where one buys now and pays later, indulges tonight and takes headache pills tomorrow. Abortion, they correctly point out is tomorrow's remedy for today's mistakes, and eliminates the need for prudence and self-discipline. They say this is desirable and realistic.

There are, however, obstacles and objections to the dependence of our societies on abortion as the answer to the population explosion. For one, it isn't cheap; even with government sponsored free abortion clinics, the cost per operation and for the proper preoperative and post-operative care would, it is estimated, be at least two hundred dollars. Taxes levied on the self-supporting to care for the indigent would be high indeed. For another thing, abortion is distasteful to the conservative elements of society and it is unlikely that the Catholic Church will ever agree to it. In fact, a great many doctors abhor the idea and will refuse to perform abortions. It is a grisly, messy business at best. Therefore, before all legal restraints be discarded, ought we not to consider all other forms of population control? We should review what other societies in other times have done to curb their population problems.

Let us consider the ancient Greeks who exposed their defective and unwanted infants on the mountain tops. This method certainly had its merits, but in today's world it would have to be rejected without serious consideration. The sanitation officials would never put up with it, and in an ecologically minded world such littering of the countryside would be intolerable. Besides there are no convenient mountains near our great population centers such as New York, Chicago and Houston.

In the past, India always maintained a controllable population. Whenever things began to get out of hand they would manage to have a great cholera epidemic or similar catastrophe. The poor and unwanted generally got the worst of it, thus eliminating much hunger and poverty. We must regretfully dismiss this method too; the American Medical Association would be against it and would successfully oppose it with their powerful lobby in Washington.

The Chinese used to have splendid epidemics too, but they also worked out a convenient plan that could be applied on an individual family basis according to need. They sold their daughters into slavery, at once providing for their offsprings' futures while relieving the economic problem at home. This plan is so appealing to some of today's parents that it should get some prompt attention in Congress. However, Senator Walter Stich has already warned me that it would likely be opposed by the Women's Liberation movement. It does seem a shame.

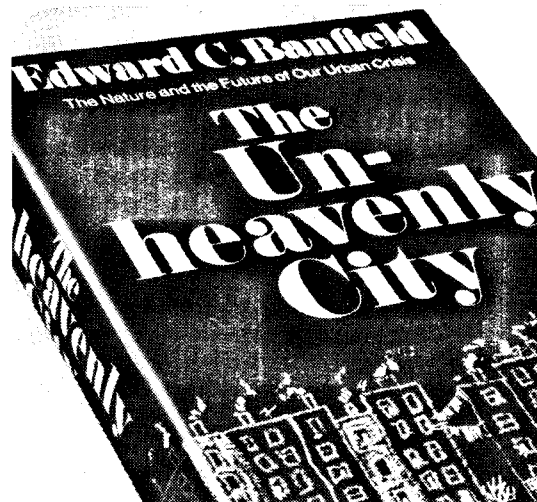
Many societies of the past, most notably the Romans, kept population growth in line by the expedience of

frequent wars. This became less effective, however, when in later years most of the fighting was done by the foreign mercenaries and allies. As a result, the population of Rome increased to unmanageable proportions, and you know what happened to Rome. Furthermore, war today has lost its general appeal and color. We no longer charge into battle on horses with banners flying, and seldom have the opportunities of directly hacking down our enemies with battle axes. The satisfaction is all gone. And I am afraid that this ancient and honorable method of population control would be effectively blocked by our vocal pacifistic organizations.

Some of the less well known civilizations of the past have even tried chastity and continence as a means to prevent unwanted children. I mention them only for the sake of historical completeness; such old-fashioned ideas would be laughed at by our sophisticated leaders today.

There is one ancient custom, however, which to my knowledge has not been discussed by any of our sociologists, theologians or welfare experts, and before abandoning our search for a better way, we should look into it. It is the method discovered and practiced by an eminently successful civilization which lived and prospered for fifteen hundred years, a lot longer than the Roman. These people, the Phoenicians, solved the problem by sacrificing all of their first-born children to their deity, Moloch. I humbly propose that we consider their remarkable example.

Before dismissing this proposal out of hand, let us analyze its benefits. First, the method is democratic. The rich, as well as the poor, would make their contribution to the well-being of society; the alternative of abortion would fall more heavily upon the poor or disadvantaged. Secondly, sacrificing the first-born would largely solve the problems of the pregnant unmarried girl; there would be no question about adoption, and no difficulty about a forced marriage to give the child a name. Thirdly, the plan would enable young married couples to get off to a better start in life. With the first baby out of the way, the mother could work. In or out of wedlock, young people could indulge themselves sexually with all the freedom that is encouraged and



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