of the Edward Levi-John Lindsay Wall Street Republican machine—the machine that brought you the New York City Waterfront Commission and the police-busting Knapp Commission—are running the DOJ. It was through the personal sponsorship of Schmultz and Giuliani that Puccio was ushered into Washington. That sponsorship dates back to no later than the Knapp Commission, when Puccio, fresh out of Fordham University Law School, was brought onto the Knapp investigative staff and given his first lessons in the art of machine-busting and frameups, lessons now intended to be applied against the CIA.

The centerpiece of the attack on the agency "old boys" is the media onslaught that has been directed for the past six months against former CIA Clandestine Services operatives Edmond Wilson and Frank Terpil. Wilson in particular has been accused by the *Times* and the *Post* of being at the center of a far-reaching network of retired spooks who are using their past experiences and contacts to foster terrorism and assorted criminal actions against the interests of the United States. The coordinated *Times-Post* attack is directed at creating the climate for a far-flung "fishing expedition"—to be coordinated through the Washington, D.C. U.S. attorney's office. The desired result of such a campaign is the final destruction of an independent U.S. intelligence capability, the jailing, bankrupting and defaming of some of America's most important "silent heroes" in the postwar intelligence wars, and the building of a climate for the imposition of a British-style Official Secrets Act placing paralyzing restrictions on both the activities of the intelligence community and the oversight of those actions.

While the full story behind the Terpil-Wilson affair has yet to come out publicly, it has been confirmed that the allegations against the pair constituted the principal wedge used by former CIA Director Stansfield Turner, an asset of the Trilateral Commission, to thoroughly wreck the agency through the biggest purge and internal witch-hunt since the Moscow Trials, a purge that saw nearly 1,000 agents with upwards of 30,000 years of cumulative field experience drummed out of the Company.

To the extent that President Reagan responds in the coming weeks to the mounting popular and international mandate for a head-on confrontation with Paul Volcker and the Federal Reserve Board, the President will find that the still-dormant Reagangate attack, which was first publicly floated at the December 1980 Socialist International conference in Washington, will be surfaced overnight. At the point that such an outfront war between the President and the Wall Street liberal establishment breaks out, it will be essential that the President can rely on his Justice Department to uphold the Constitution. If Thomas Puccio is occupying the U.S. attorney chair in Washington, that will be impossible.

CONSTITUTIONAL LAW

The philosophical problems with 'strict construction'

by Edward Spannaus, Law Editor

The following statement was presented to the Senate Judiciary Committee hearings concerning the nomination of Sandra Day O'Connor for Supreme Court Justice. The statement was made by EIR *Law Editor Edward Spannaus on behalf of the National Democratic Policy Committee.*

In our Aug. 4 memorandum to the committee and staff, we brought your attention to the fact that there are at present a number of individuals and organizations who are proposing that our Constitution is too outmoded to cope with today's crises, and that it should be revised or rewritten along parliamentary lines. We noted in particular statements by Lloyd Cutler, James McGregor Burns, and Rep. Henry Reuss. We stated that:

> Under these circumstances, the Senate has a special responsibility as it approaches the O'Connor confirmation hearings. Justices of the Supreme Court were called the "guardians of the Constitution" by Alexander Hamilton, and it is incumbent upon the Senate to ensure that any nominee for that position possesses the qualifications of such a "guardian." We therefore propose that the U.S. Senate use the opportunity of the O'Connor nomination to develop appropriate standards for Supreme Court Justices today.

From Judge O'Connor's testimony in her two days of questioning by the Committee, there is little doubt that she is qualified by *today's standards.* Despite initial doubts that we and many others entertained, she has shown herself to have an adequate grasp of current

federal and constitutional law. The most glaring *specific* problems shown are her suggestions of limiting access to the federal courts and her quixotic hope that the state courts are as competent to litigate civil rights and constitutional claims as are the federal courts. Senators Biden and Metzenbaum in particular demonstrated the fallacies of that approach.

Our problem is that *today's standards* are grossly inadequate. This was nowhere more clearly shown than in the discussions during these hearings counterposing "strict constructionism" and "judicial activism." Lacking any notion of the *purposes* of the creation of the republic, we lack any criteria for determining what are appropriate and inappropriate powers to be exercised by the federal government or upheld by the federal courts. The decades-long battle for federal supremacy was intimately related to the fight for a liberal construction of the powers granted by the Constitution—but this had nothing to do with what we today call liberalism! As any informed person knows, it was the "liberals" of the day—the Jeffersonian democrats—who were the strict constructionists, and it was the "conservatives" of the day—the Hamilton-Marshall Federalists and later Whigs—who were the liberal constructionists.

The moral purpose of the republic

The American Revolution was the culmination of a centuries-long battle on the part of the Neoplatonic republican faction in Europe—and especially the Commonwealth Party of John Milton—to establish a republic on the shores of North America. The United States was consciously founded as a republic dedicated to scientific and technological progress, as opposed to the European land-based oligarchical system, and particularly the British system, of enforced backwardness among her colonies and trading partners.

In America, the Hamiltonian system of encouraging the development of manufactures and commerce was the specific means developed for implementing the purposes of the republic. Funding the national debt to provide a sound credit basis for the new nation, the creation of a national bank, and internal improvements were its key components. The federal power of taxation and spending should include "the general interests of learning, of agriculture, of manufactures, and of commerce," wrote Hamilton.[1]

> The means by which national exigencies are to be provided for, national inconveniences obviated, national prosperity promoted, are of such variety, extent, and complexity, that there must of necessity be great latitude of discretion in the selection and applications of those means. Hence, consequently, the necessity and propriety of exercising the authorities entrusted to a government on principles of liberal construction.

John Marshall's 1819 decision in *McCulloch v. Maryland* was the most explicit statement of Hamiltonian principles, and in construing the "necessary and proper" clause, it became the classical argument for "liberal construction." It gave rise to the most strident attacks on the Supreme Court from the opponents of the American System, prompting Marshall to write:

> It must be difficult for those who believe the prosperity of the American people to be inseparable from the preservation of this government, to view with indifference the systematic efforts which restless politicians of Virginia have been for some time making to degrade the [judicial] department in the estimation of the public. It is not easy to resist the notion that those efforts must have other and more dangerous objects. . . .

The assault on the judiciary

Attacks on the judiciary reached a peak during that period. The bitterness of the battle was shown in the 1813 case *Hunter v. Fairfax,* in which Story held that a state (Virginia) could not override a federal treaty. But the courts in Virginia refused to enforce Story's ruling, arguing that the Supreme Court has no jurisdiction over the sovereign state of Virginia. The case then came back to the Supreme Court in 1816 as *Martin v. Hunter's Lessee;* here Story took the opportunity to strike a powerful blow on behalf of the necessity for the Supreme Court to bring the state courts into conformity with the Constitution. Insisting upon "the necessity of the *uniformity* of decisions throughout the whole of the United States, upon all subjects within the purview of the Constitution," Story warned of the chaos which must result if each state were to regard itself as the final arbiter of law within its borders.

The Supreme Court's appellate jurisdiction over state courts was not fully established until the 1821 ruling in *Cohens v. Virginia,* involving an appeal from a criminal conviction in state court. Marshall's decision provoked the Jefferson machine into open rebellion against the federal government, with widespread calls for the abolition of the Supreme Court! Marshall's comments in a letter to Story are pertinent today:

> A deep design to convert our government into a mere league of states has taken hold of a powerful and violent party in Virginia. The strong attack upon the judiciary is in fact an attack upon the union. The judicial department is well understood to be that through which the government may be attacked most successfully . . . it is equally well understood that every subtraction from its jurisdiction is a vital wound to the government itself.

The states-rights forces—who from this period on

were also the explicit opponents of the American System of protective tariffs and internal improvements—was the faction backed by Britain, which had not given up its hopes of breaking up the Union and re-establishing its domination. It is more than coincidental that today the strongest attacks on the federal judiciary are being orchestrated by the Heritage Foundation—a pro-British offshoot of the Fabian Society and the Mont Pelerin Society.

It is clear therefore that we face today two directions of threats to the Constitution. From the liberal side there are those like Lloyd Cutler or Henry Reuss who maintain that our constitutional system, and especially the separation of powers, is outmoded; they propose that the system be revised along lines of the parliamentary model, with Britain as the favored example. Included in such a "model" is the implied destruction of the independence of the judiciary.

In her answers to various questions, Judge O'Connor demonstrated that she is aware of the dangers of amendments which are not fully thought out, of a possible runaway Constitutional Convention, and of the threat to the independence of the federal courts.

The threat to the Constitution from the "right" (in particular the radical-conservative Heritage Foundation) is equally, if not more pernicious, for under the guise of defending the Constitution, the Heritage moles would strip the judiciary and the federal government itself of their constitutionally granted powers, posing precisely the kind of threat to the nation itself which Marshall foresaw. While showing herself sympathetic to proposals to limit access to the federal courts, Judge O'Connor by and large disassociated herself from the more radical court-stripping schemes put forward by the Heritage Foundation and others.

It is clear that such court-stripping schemes and Heritage-style radical "free enterprise" plans—which are admitted by Heritage leaders to converge with the "decentralization" schemes of the radical left—have made significant inroads among conservatives who are concerned about the failures of the liberal welfare state, or about the practices of certain liberal judges who are exacerbating racial tensions in our schools and neighborhoods, or who have given environmentalists a free hand to turn the federal courts into their private zero-growth playground.

It is only through a re-examination of the purposes and objectives of the Constitution itself that we can cut through the artificial right-left debates which are muddling up constitutional law today. Federal supremacy? Yes, but for what end? Our Federalist-Whig predecessors fought for federal supremacy for the purpose of fulfilling the objects of the republic and the Constitution, not for experimenting with every crackpot scheme dreamed up by a modern sociologist or a bug-loving environmentalist. President Eisenhower's sponsorship of the Atoms for Peace program, or President Kennedy's enthusiastic sponsorship of the NASA program and related research and development, are exemplary of the application of Hamiltonian principles in the modern era.

This is the only competent way to approach the interpretation of constitutional law. Consider, for example, the extensive discussion of *Brown v. Board of Education* which has taken place during these hearings. Judge O'Connor tried (rather unsuccessfully) to maintain that the basis for the decision was simply a re-interpretation of the intent of the 14th Amendment, while liberals such as Senator Biden argued that the decision was based on a consideration of changed social conditions, implying that changing social conditions constitute sound grounds for judicial decision. Neither view is sufficient.

If the Constitution, an expression of an evolving body of natural law, is understood as embodying a commitment to scientific and technological progress, then the role of education is properly understood as a necessary concomitant of this commitment. From this "higher law" understanding of constitutional law, the proper basis for a decision such as *Brown* becomes evident without resorting either to liberal sociology or to rigid reconstructions of the 14th Amendment.

Conclusion

A great deal of these hearings has been concerned with the subject of abortion. Despite certain philosophical and scientific differences over that issue, we can deeply sympathize with the concerns raised by Senator Denton and others regarding the moral decay of our nation. For Senator Denton, as he put it in his opening statement, the permanent legalization of abortion would be "a 'point of no return' in a recently accelerated, alarming trend away from the principles upon which our government was founded and by which this nation achieved greatness."

To us, the adoption of the genocidal "Global 2000" doctrine by the Carter and Reagan administrations, and its endorsement by over 100 senators and representatives, signals that "point of no return," posing the question of whether this nation is morally fit to survive. A return to sound principles of constitutional law, as that law was intended by the Framers to express our national purpose, is the prerequisite for turning this country back to decency and greatness. That understanding, as we have outlined it here, is what has been missing from these hearings.

1. *Report on Manufactures.* The Hamilton-Jefferson debate over the constitutionality of the national bank still provides te clearest frame of reference for the debate over the construction of the powers granted by the Constitution.