THE WHITE HOUSE

WASHINGTON

June 3, 1982

Dear Howie:

Mrs. Dole asked me to respond to your letter of May 17.

She has met with Ed and is doing his best to help. She has repeatedly asked me to update her.

I see the Soviets have released one of the strikers. Perhaps there is hope.

Cordially,

Morton C. Blackwell
Special Assistant to the President
for Public Liaison

Mr. Howard Phillips
National Director
The Conservative Caucus, Inc.
450 Maple Avenue East,
Vienna, VA. 22180

The Conservative Caucus, Inc.

National Headquarters 450 Maple Avenue East, Vienna, Virginia 22180 (703) 893-1550

MAY 20 REC'D
MB

May 17, 1982

079414

Hon. Elizabeth H. Dole
Assistant to the President
for Public Liaison
The White House
Washington, D.C. 20500

Dear Elizabeth:

The enclosed letter by Karen McKay concerning the plight of Dr. Ed Lozansky reflects my sentiments as well as those of many others in the conservative movement.

Anything which you can do to encourage President Reagan to help would, I am sure, evoke a positive response.

With personal best wishes, I am

Sincerely,

Howard Phillips
National Director

HP:kas

Enclosure

FORWARD IN FAITH

The radio and television voice of the Church of God, America's first Pentecostal church.

Carl Richardson, Director

March 8, 1982

Mr. Morton C. Blackwell
Special Assistant to the President
The White House
Washington, DC 20500

Dear Mr. Blackwell:

Again, I warmly thank you for receiving our petitions and letters regarding the plight of the six Russian Christians now living in the U.S. Embassy in Moscow.

For your information, I am enclosing a copy of a letter I have written to President Reagan personally commending his intervention and the intervention of Secretary of State Haig into the situation.

Thank you again, Mr. Blackwell.

Warmly and respectfully,

Carl Richardson

Carl Richardson

CHR:vg

Enc.

KEITH AT 25TH N.W. CLEVELAND, TENNESSEE 37311 U.S.A. PRAYER CHAPEL (615) 472-7414

March 2, 1982

President Ronald Reagan
The White House
Washington, DC 20500

Good morning, Mr. President!

The Church of God, America's oldest Pentecostal church, warmly commends you for your personal interest in the six Russian Pentecostals who are presently in our U.S. Embassy in Moscow.

When I first had the privilege of talking with you in person, Mr. President, prior to the election in the Presidential Suite in the Washington Hilton Hotel along with other religious broadcasters, you were very articulate and seemed deeply concerned about the plight of the group which has come to be known as the "Siberian Seven." As you know, one of the seven was hospitalized and has since returned to her home in Siberia, giving up her more than three years' efforts in seeking religious freedom.

I also want to thank you, Mr. President, on behalf of the one million constituents of our denomination, the Church of God, for your efforts at improving the living conditions of these Russian Christians.

As a religious broadcaster on more than 400 radio stations for the past ten years, I also want to go on record as supporting the nomination of Mr. Stephen Sharp as a new member of the F.C.C. Commission. His background and experience in broadcasting, as well as his own personal credentials and integrity, make him a candidate which I strongly support on behalf of my denomination.

Be assured that it was a very special privilege to have you speak in our recent Convention of National Religious Broadcasters at the Sheraton Washington Hotel.

Our personal prayers are with you that God may grant to you sufficient strength and grace in your important duties.

Warmly and respectfully,

Carl Richardson

CHR:vg

file USSR

THE WHITE HOUSE

WASHINGTON

July 28, 1982

MEMORANDUM FOR MORTON C. BLACKWELL

FROM: DOUGLAS F. MARTIN DFM

SUBJECT: Update on the Balovlenkov Case

I called the Young Republican National Federation offices today to ask Kathy Royce for an update on the Balovlenkov Case. Kathy was not there, but Elena Balovlenkov called me later in the day, and gave me the following update.

The hunger strike that her husband resumed on July 5, 1982 has been maintained by her husband to this day. Yuri Balovlenkov has lost over 1/3 of his body weight and must lie on pillows to maintain his breathing. He has very serious medical problems, and in the words of Elena, she feels her husband is dying.

Elena Balovlenkov went to the Soviet Union on July 17 and returned to the United States on July 26, 1982.

During her stay in the Soviet Union, she had six meetings with Soviet officials. The following is a summary of the places/officials she attempted to meet with.

a) Moscow OVIR (equivalent of our State Dept.) on local level.

b) All-Union OVIR (equivalent of our State Dept.) on their national level.

c) Ministry of Internal Affairs.

d) CCCSP Headquarters in Moscow.

e) Presidium of the Soviet Union.

f) President Brezhnev.

Elena Balovlenkov was informed when she was in the Soviet Union that her husband would be allowed to emmigrate in 1985, and not before.

Following is a summary of some of the U.S. officials who have been involved or briefed on the Balovlenkov Case, according to Elena Balovlenkov.

a) Walter J. Stoessel, Jr., Under Secretary for Political Affairs.

b) Alexander M. Haig, Jr., Secretary of State

c) William P. Clark, Assistant to the President for National Security Affairs.

Elena Balovlenkov informed me that there have been no official U.S. actions except representations made by the U.S. Embassy in Moscow to the Ministry of Foreign Affairs in Moscow.

There is supposedly another resolution being introduced in the U.S. House to call on the Soviets to release Yuri Balovlenkov.

Elena Balovlenkov informs me that she has appeared or been interviewed, or been the subject of articles in the following media.

a) ABC Nightline with Ted Koeppel in May 1982.

b) ABC Good Morning America.

c) Channels 4,7, and 9 in Washington.

d) Channels 2,11, and 13 in Baltimore.

e) Washington Post

f) New York Times

g) Chicago Tribune

h) Baltimore Sun

Elena Balovlenkov is presently appealing to the U.S. public to send personal appeals to Brezhnev to release her husband.

I have been unable to establish contact with Kathy Royce at the YRs as of yet to obtain information on the Petrov Case.

I have not verified the above information, but it may give you some indication of some of the events that have taken place, and where you may want me to investigate or verify further.

OMB 7/12

7/19 M-CL Status

Young Republican National Federation

July 10, 1982

310 First Street, S.E.
Washington, D.C. 20003
(202) 484-6680

Memorandum

To: Charlotte Ellis

From: Kathy Royce /Ca

Re: Petrov and Balovlenkov Divided Families Cases

Attached is a briefing paper on the cases of Yuri Balovlenkov, and Sergei Petrov, who are both on hunger strikes to protest Soviet denials of exit visas allowing them to rejoin their wives in America.

Yesterday, the Soviet visa authority held a press conference to announce that the two would not be freed. The Soviets directly attacked the US Embassy in Moscow as having fomented the hunger strikes. Balovlenkov had been told ~~May~~ June 21 that he would be getting a visa. The reasons for the reversal in the Soviets decision may be as follows:

1. Last weekend several new hunger strikes were announced by Soviet Pentacostalite dissidents and the head of the Soviet Peace and Disarmament group now under house arrest. Soviet authorities may see these as having been inspired by the success of the divided family hunger strike (four people in addition to Balovlenkov had been told they would get visas). In order to prevent a rash of hunger strikes, the Soviets may feel they need to make an example of someone.

2. Worsening US/Soviet relations -- especially in light of recent developments in Lebanon and the press rumor that Haig was asked to leave because of his support for the gas pipeline. While a "get tough" attitude as expressed by the President is the best course for the world, it often hurts individual cases such as these because the Soviets feel backed into a corner.

At this point, the only way to save these people may be through the private intercession of individuals respected by the Soviet Union. The Reverend Billy Graham is one such individual. His recent statements in Moscow gave the USSR a much needed aura of credibility. I am sure that his intercession would have an effect. If Mrs. Dole could call him and ask that he do this, it may just save the lives of Yuri Balovlenkov and Sergei Petrov.

Briefing Materials on Petrov and Balovlenkov Divided Family Cases

General Background

On May 10 a group of seven Soviet citizens began a hunger strike to protest the USSR's repeated denials of exit visas for them to rejoin spouses in America, West Germany and France. The 1975 Helsinki Accords guantee family reunification. Of the original group, one has already arrived in the U.S., and three others have been told they will get visas any day. Two abandoned the strike when threatened with arrest by the KGB.

Balovlenkov

Yuri Balovlenkov, 33, married Elena Kuzmentko, 29, a nurse from Baltimore, Md., in 1978. They met when she was a tourist in the USSR. They have a 2 year old daughter, Katya, whom he has never seen. After being refused permission on five occasions, he began the strike. On May 21, he ended the fast when Soviet visa authorities (OVIR) promised him an exit visa. When he returned July 1 to collect his papers, he was told that they had not made a decision in his case. He began a new hunger strike July 5, and is still weak from the first strike.

Petrov

Sergei Petrov, 29, married Virginia Johnson, 24, Roanoke, Va., one year ago. They met when she was an exchange student. She is now in law school at Duke University. He joined the hunger strike June 2, and has fasted 39 days.

Recent Soviet Actions

Yesterday, OVIR, the Soviet visa authority, held an unprecedented press conference, stating that Balovlenkov and Petrov would not get visas because they had talked to foreign press and diplomats about their cases. OVIR accused the US embassy of encouraging hunger strikes. When US officials protested this statement and made another plea for Balovlenkov and Petrov yesterday, the Soviet foreign ministry replied that it would not accept the US protest because the Helsinki Accords "didn't touch on these cases", and chided the US saying they had no business even getting involved in Divided Family cases even when US citizens were involved.

U.S. Government Action

Senator Dole and Rep. Kemp held a press conference May 10, announcing that they were introducing a resolution to urge the Soviets to let the group go. The American spouses met with Vice President Bush May 27 who pledged his personal support. The State Department has issued several protests to the USSR urging their release, the most recent being yesterday. Senator Moynihan and eleven other Senators sent a letter to Ambassador Dobrynin urging the release of the group, and Senators Warner and Mathias and Representatives Butler and Mikulski have made additional personal appeals in writing to Dobryinin on behalf of their constituents, Mrs. Balovlenkov and Mrs. Petrov.

Conclusion

While U.S. government action is important, it may not be enough to save the lives of Balovlenkov and Petrov. Generally worsened US-Soviet relations have weakened the impact of US protests. Recent events in Lebanon and the perception in the press that Haig was fired because of his support for the

only a brief w/ refreshers.
whom we should request &
what topic - possibly State

United States Senate

MEMORANDUM

Morton: how many people?

We need to request some type of White House location for a short reception for Christian business leaders. CREED will be hosting this event sometime the week of September 13th or 19th. Monday or Tuesday would be preferable.

DJ

Dina Bessey

If answer not given by

MEMORANDUM

July 17, 1981

TO: Maizelle

FROM: Gina Bessey

RE: Meeting of National Christian leaders to honor Alexander Ginzburg

Per our conversation yesterday, I wanted to follow up with some of the specifics of the reception to be held at the White House the week of September 13 through 19. The Jepsens wanted to include the time and place for the reception at the White House, if it were possible, when the invitations went out to the national religious leaders telling them about the week long conference on the Christian dissident movement.

It is anticipated that there could be between 150 and 100 individuals in attendance.

If it would be possible to arrange for an afternoon or evening reception, please let me know at your earliest convenience. We can work on the menu as soon as a room has been secured.

Mrs. Jepsen also mentioned that the Senator would probably be asking the Vice President to be in attendance.

Thanks for your help.

224-3257

United States Senate

COMMITTEE ON ARMED SERVICES
WASHINGTON, D.C. 20510

file
O'Connor
also call
Gina + say
we'll be
happy to help
set up
meeting
re
Ginzburg

July 16, 1981

Mr. Morton C. Blackwell
Special Assistant to the
President
Office of Public Liaison
Room 128 OEOB
Washington, D. C. 20500

Dear Morton:

Per your request, I wanted to share with you Judge Rehnquist's opinion in Laird v Tatum. Also, I have enclosed a statement by constitutional lawyer, William Ball.

Mrs. Jepsen, as a follow up to her recent note to you, asked if your office would work with us in setting up a meeting in honor of Alexander Ginzburg for Christian leaders.

I will be back in touch with you and Cathy regarding this matter.

Sincerely,

Gina

(Miss) Gina Bessey with
Roger W. Jepsen
United States Senator
I O W A

RWJ:vb

Enclosure

No. 71-288. LAIRD, SECRETARY OF DEFENSE, ET AL. *v.* TATUM ET AL., 408 U. S. 1. Motion to withdraw opinion of this Court denied. Motion to recuse, *nunc pro tunc*, presented to MR. JUSTICE REHNQUIST, by him denied.*

Memorandum of MR. JUSTICE REHNQUIST.

Respondents in this case have moved that I disqualify myself from participation. While neither the Court nor any Justice individually appears ever to have done so, I have determined that it would be appropriate for me to state the reasons which have led to my decision with respect to respondents' motion. In so doing, I do not wish to suggest that I believe such a course would be desirable or even appropriate in any but the peculiar circumstances present here.[1]

Respondents contend that because of testimony that I gave on behalf of the Department of Justice before the Subcommittee on Constitutional Rights of the Judiciary Committee of the United States Senate at its hearings during the 92d Cong., 1st Sess., on Federal Data Banks, Computers and the Bill of Rights (hereinafter Hearings), and because of other statements I made in speeches related to this general subject, I should have

*[REPORTER'S NOTE: See also *post*, p. 901.]

[1] In a motion of this kind, there is not apt to be anything akin to the "record" that supplies the factual basis for adjudication in most litigated matters. The judge will presumably know more about the factual background of his involvement in matters that form the basis of the motion than do the movants, but with the passage of any time at all his recollection will fade except to the extent it is refreshed by transcripts such as those available here. If the motion before me turned only on disputed factual inferences, no purpose would be served by my detailing my own recollection of the relevant facts. Since, however, the main thrust of respondents' motion is based on what seems to me an incorrect interpretation of the applicable statute, I believe that this is the exceptional case where an opinion is warranted.

disqualified myself from participating in the Court's consideration or decision of this case. The governing statute is 28 U. S. C. § 455, which provides:

> "Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein."

Respondents also cite various draft provisions of Standards of Judicial Conduct prepared by a distinguished committee of the American Bar Association, and adopted by that body at its recent annual meeting. Since I do not read these particular provisions as being materially different from the standards enunciated in the statute, there is no occasion for me to give them separate consideration.[2]

Respondents in their motion summarize their factual contentions as follows:

> "Under the circumstances of the instant case, MR. JUSTICE REHNQUIST'S impartiality is clearly questionable because of his appearance as an expert witness for the Justice Department in Senate hearings inquiring into the subject matter of the case, because of his intimate knowledge of the evidence underlying the respondents' allegations, and because of his public statements about the lack of merit in respondents' claims."

Respondents are substantially correct in characterizing my appearance before the Ervin Subcommittee as an "expert witness for the Justice Department" on the sub-

[2] See S. Exec. Rep. No. 91-12, Nomination of Clement worth, Jr., 10-11.

ject of statutory and constitutional law dealing with the authority of the Executive Branch to gather information. They are also correct in stating that during the course of my testimony at that hearing, and on other occasions, I expressed an understanding of the law, as established by decided cases of this Court and of other courts, which was contrary to the contentions of respondents in this case.

Respondents' reference, however, to my "intimate knowledge of the evidence underlying the respondents' allegations" seems to me to make a great deal of very little. When one of the Cabinet departments of the Executive Branch is requested to supply a witness for the congressional committee hearing devoted to a particular subject, it is generally confronted with a minor dilemma. If it is to send a witness with personal knowledge of every phase of the inquiry, there will be not one spokesman but a dozen. If it is to send one spokesman to testify as to the department's position with respect to the matter under inquiry, that spokesman will frequently be called upon to deal not only with matters within his own particular bailiwick in the department, but with those in other areas of the department with respect to which his familiarity may be slight. I commented on this fact in my testimony before Senator Ervin's Subcommittee:

> "As you might imagine, the Justice Department, in selecting a witness to respond to your inquiries, had to pick someone who did not have personal knowledge in every field. So I can simply give you my understanding . . . ." Hearings 619.

There is one reference to the case of *Tatum* v. *Laird* in my prepared statement to the Subcommittee, and one reference to it in my subsequent appearance during a

colloquy with Senator Ervin. The former appears as follows in the reported hearings:

> "However, in connection with the case of *Tatum* v. *Laird*, now pending in the U. S. Court of Appeals for the District of Columbia Circuit, one printout from the Army computer has been retained for the inspection of the court. It will thereafter be destroyed." Hearings 601.

The second comment respecting the case was in a discussion of the applicable law with Senator Ervin, the chairman of the Subcommittee, during my second appearance.

My recollection is that the first time I learned of the existence of the case of *Laird* v. *Tatum*, other than having probably seen press accounts of it, was at the time I was preparing to testify as a witness before the Subcommittee in March 1971. I believe the case was then being appealed to the Court of Appeals by respondents. The Office of the Deputy Attorney General, which is customarily responsible for collecting material from the various divisions to be used in preparing the Department's statement, advised me or one of my staff as to the arrangement with respect to the computer print-out from the Army Data Bank, and it was incorporated into the prepared statement that I read to the Subcommittee. I had then and have now no personal knowledge of the arrangement, nor so far as I know have I ever seen or been apprised of the contents of this particular print-out. Since the print-out had been lodged with the Justice Department by the Department of the Army, I later authorized its transmittal to the staff of the Subcommittee at the request of the latter.

At the request of Senator Hruska, one of the members of the Subcommittee, I supervised the preparation of a memorandum of law, which the record of the hearings indicates was filed on September 20, 1971. Respondents refer to it in their petition, but no copy is attached, and the hearing records do not contain a copy. I would expect such a memorandum to have commented on the decision of the Court of Appeals in *Laird* v. *Tatum*, treating it along with other applicable precedents in attempting to state what the Department thought the law to be in this general area.

Finally, I never participated, either of record or in any advisory capacity, in the District Court, in the Court of Appeals, or in this Court, in the Government's conduct of the case of *Laird* v. *Tatum*.

Respondents in their motion do not explicitly relate their factual contentions to the applicable provisions of 28 U. S. C. § 455. The so-called "mandatory" provisions of that section require disqualification of a Justice or judge "in any case in which he has a substantial interest, has been of counsel, is or has been a material witness . . . ."

Since I have neither been of counsel nor have I been a material witness in *Laird* v. *Tatum*, these provisions are not applicable. Respondents refer to a memorandum prepared in the Office of Legal Counsel for the benefit of MR. JUSTICE WHITE shortly before he came on the Court, relating to disqualification. I reviewed it at the time of my confirmation hearings and found myself in substantial agreement with it. Its principal thrust is that a Justice Department official is disqualified if he either signs a pleading or brief or "if he actively participated in any case even though he did not sign a pleading or brief." I agree. In both *United States* v. *United States District Court*, 407 U. S. 297 (1972), for which I was not officially responsible in the Department

but with respect to which I assisted in drafting the brief, and in *S&E Contractors* v. *United States*, 406 U. S. 1 (1972), in which I had only an advisory role which terminated immediately prior to the commencement of the litigation, I disqualified myself. Since I did not have even an advisory role in the conduct of the case of *Laird* v. *Tatum*, the application of such a rule would not require or authorize disqualification here.

This leaves remaining the so-called discretionary portion of the section, requiring disqualification where the judge "is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein." The interpretation and application of this section by the various Justices who have sat on this Court seem to have varied widely. The leading commentator on the subject is John P. Frank, whose two articles, Disqualification of Judges, 56 Yale L. J. 605 (1947), and Disqualification of Judges: In Support of the Bayh Bill, 35 Law & Contemp. Prob. 43 (1970), contain the principal commentary on the subject. For a Justice of this Court who has come from the Justice Department, Mr. Frank explains disqualification practices as follows:

> "Other relationships between the Court and the Department of Justice, however, might well be different. The Department's problem is special because it is the largest law office in the world and has cases by the hundreds of thousands and lawyers by the thousands. For the most part, the relationship of the Attorney General to most of those matters is purely formal. As between the Assistant Attorneys General for the various Departmental divisions, there is almost no connection." *Supra*, 35 Law & Contemp. Prob., at 47.

Indeed, different Justices who have come from the Department of Justice have treated the same or very

similar situations differently. In *Schneiderman* v. *United States*, 320 U. S. 118 (1943), a case brought and tried during the time Mr. Justice Murphy was Attorney General, but defended on appeal during the time that Mr. Justice Jackson was Attorney General, the latter disqualified himself but the former did not. 320 U. S., at 207.

I have no hesitation in concluding that my total lack of connection while in the Department of Justice with the defense of the case of *Laird* v. *Tatum* does not suggest discretionary disqualification here because of my previous relationship with the Justice Department.

However, respondents also contend that I should disqualify myself because I have previously expressed in public an understanding of the law on the question of the constitutionality of governmental surveillance. While no provision of the statute sets out such a provision for disqualification in so many words, it could conceivably be embraced within the general language of the discretionary clause. Such a contention raises rather squarely the question of whether a member of this Court, who prior to his taking that office has expressed a public view as to what the law is or ought to be, should later sit as a judge in a case raising that particular question. The present disqualification statute applying to Justices of the Supreme Court has been on the books only since 1948, but its predecessor, applying by its terms only to district court judges, was enacted in 1911. Mr. Chief Justice Stone, testifying before the Judiciary Committee in 1943, stated:

> "And it has always seemed to the Court that when a district judge could not sit in a case because of his previous association with it, or a circuit court of appeals judge, it was our manifest duty to take the same position." Hearings Before Committee on the Judiciary on H. R. 2808, 78th Cong., 1st Sess., 24 (1943), quoted in Frank, *supra*, 56 Yale L. J., at 612 n. 26.

My impression is that none of the former Justices of this Court since 1911 have followed a practice of disqualifying themselves in cases involving points of law with respect to which they had expressed an opinion or formulated policy prior to ascending to the bench.

Mr. Justice Black while in the Senate was one of the principal authors of the Fair Labor Standards Act; indeed, it is cited in the popular-name index of the 1970 edition of the United States Code as the "Black-Connery Fair Labor Standards Act." Not only did he introduce one of the early versions of the Act, but as Chairman of the Senate Labor and Education Committee he presided over lengthy hearings on the subject of the bill and presented the favorable report of that Committee to the Senate. See S. Rep. No. 884, 75th Cong., 1st Sess. (1937). Nonetheless, he sat in the case that upheld the constitutionality of that Act, *United States* v. *Darby*, 312 U. S. 100 (1941), and in later cases construing it, including *Jewell Ridge Coal Corp.* v. *Local 6167, UMW*, 325 U. S. 161 (1945). In the latter case, a petition for rehearing requested that he disqualify himself because one of his former law partners argued the case, and Justices Jackson and Frankfurter may be said to have implicitly criticized him for failing to do so.[3] But to my knowledge his Senate role with respect to the Act was never a source of criticism for his participation in the above cases.

Mr. Justice Frankfurter had, prior to coming to this Court, written extensively in the field of labor law. The Labor Injunction which he and Nathan Green wrote was considered a classic critique of the abuses by the fed-

[3] See denial of petition for rehearing in *Jewell Ridge Coal Corp.* v. *Local 6167, UMW*, 325 U. S. 897 (1945) (Jackson, J., concurring).

eral courts of their equitable jurisdiction in the area of labor relations. Professor Sanford H. Kadish has stated:

> "The book was in no sense a disinterested inquiry. Its authors' commitment to the judgment that the labor injunction should be neutralized as a legal weapon against unions gives the book its energy and direction. It is, then, a brief, even a 'downright brief' as a critical reviewer would have it." Labor and the Law, in Felix Frankfurter The Judge 153, 165 (W. Mendelson ed. 1964).

Justice Frankfurter had not only publicly expressed his views, but had when a law professor played an important, perhaps dominant, part in the drafting of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. §§ 101–115. This Act was designed by its proponents to correct the abusive use by the federal courts of their injunctive powers in labor disputes. Yet, in addition to sitting in one of the leading cases interpreting the scope of the Act, *United States* v. *Hutcheson*, 312 U. S. 219 (1941), Justice Frankfurter wrote the Court's opinion.

Mr. Justice Jackson in *McGrath* v. *Kristensen*, 340 U. S. 162 (1950), participated in a case raising exactly the same issue that he had decided as Attorney General (in a way opposite to that in which the Court decided it). 340 U. S., at 176. Mr. Frank notes that Mr. Chief Justice Vinson, who had been active in drafting and preparing tax legislation while a member of the House of Representatives, never hesitated to sit in cases involving that legislation when he was Chief Justice.

Two years before he was appointed Chief Justice of this Court, Charles Evans Hughes wrote a book entitled The Supreme Court of the United States (Columbia University Press, 1928). In a chapter entitled Liberty, Property, and Social Justice he discussed at some length the doctrine expounded in the case of *Adkins* v. *Children's Hospital*, 261 U. S. 525 (1923). I think that one

would be warranted in saying that he implied some reservations about the holding of that case. See pp. 205, 209–211. Nine years later, Mr. Chief Justice Hughes wrote the Court's opinion in *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379 (1937), in which a closely divided Court overruled *Adkins*. I have never heard any suggestion that because of his discussion of the subject in his book he should have recused himself.

Mr. Frank summarizes his view of Supreme Court practice as to disqualification in the following words:

> "In short, Supreme Court Justices disqualify when they have a dollar interest; when they are related to a party and, more recently, when they are related to counsel; and when the particular matter was in one of their former law offices during their association; or, when in the government, they dealt with the precise matter and particularly with the precise case; otherwise, generally no." *Supra*, 35 Law & Contemp. Prob., at 50.

Not only is the sort of public-statement disqualification upon which respondents rely not covered by the terms of the applicable statute, then, but it does not appear to me to be supported by the practice of previous Justices of this Court. Since there is little controlling authority on the subject, and since under the existing practice of the Court disqualification has been a matter of individual decision, I suppose that one who felt very strongly that public-statement disqualification is a highly desirable thing might find a way to read it into the discretionary portion of the statute by implication. I find little to commend the concept on its merits however, and I am, therefore, not disposed to construe the statutory language to embrace it.

I do not doubt that a litigant in th[illegible]n of respondents would much prefer to argue

fore a Court none of whose members had expressed the views that I expressed about the relationship between surveillance and First Amendment rights while serving as an Assistant Attorney General. I would think it likewise true that counsel for Darby would have preferred not to have to argue before Mr. Justice Black; that counsel for Kristensen would have preferred not to argue before Mr. Justice Jackson;* that counsel for the United States would have preferred not to argue before Mr. Justice Frankfurter; and that counsel for West Coast Hotel Co. would have preferred a Court which did not include Mr. Chief Justice Hughes.

The Term of this Court just past bears eloquent witness to the fact that the Justices of this Court, each seeking to resolve close and difficult questions of constitutional interpretation, do not reach identical results. The differences must be at least in some part due to differing jurisprudential or philosophical propensities.

Mr. Justice Douglas' statement about federal district judges in his dissenting opinion in *Chandler* v. *Judicial Council*, 398 U. S. 74, 137 (1970), strikes me as being equally true of the Justices of this Court:

> "Judges are not fungible; they cover the constitutional spectrum; and a particular judge's emphasis may make a world of difference when it comes to rulings on evidence, the temper of the courtroom, the tolerance for the proffered defense, and the like. Lawyers recognize this when they talk about 'shopping' for a judge; Senators recognize this when they are asked to give their 'advice and consent' to judicial appointments; laymen recognize this when they appraise the quality and image of the judiciary in their own community."

Since most Justices come to this bench no earlier than their middle years, it would be unusual if they had not by that time formulated at least some tentative notions that would influence them in their interpretation of the sweeping clauses of the Constitution and their interaction with one another. It would be not merely unusual, but extraordinary, if they had not at least given opinions as to constitutional issues in their previous legal careers. Proof that a Justice's mind at the time he joined the Court was a complete *tabula rasa* in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias.

Yet whether these opinions have become at all widely known may depend entirely on happenstance. With respect to those who come here directly from private life, such comments or opinions may never have been publicly uttered. But it would be unusual if those coming from policymaking divisions in the Executive Branch, from the Senate or House of Representatives, or from positions in state government had not divulged at least some hint of their general approach to public affairs, if not as to particular issues of law. Indeed, the clearest case of all is that of a Justice who comes to this Court from a lower court, and has, while sitting as a judge of the lower court, had occasion to pass on an issue that later comes before this Court. No more compelling example could be found of a situation in which a Justice had previously committed himself. Yet it is not and could not rationally be suggested that, so long as the cases be different, a Justice of this Court should disqualify himself for that reason. See, *e. g.*, the statement of Mr. Justice Harlan, joining in *Lewis* v. *Manufacturers National Bank*, 364 U. S. 603, 610 (1961). Indeed, there is weighty authority for this proposition even when the [illegible]

*The fact that Mr. Justice Jackson reversed his earlier opinion after sitting in *Kristensen* does not seem to me to bear on the disqualification issue. A judge will usually be required to make any decision as to disqualification before reaching any determination as to how he will vote if he does sit.

the same. Mr. Justice Holmes, after his appointment to this Court, sat in several cases which reviewed decisions of the Supreme Judicial Court of Massachusetts rendered, with his participation, while he was Chief Justice of that court. See *Worcester* v. *Street R. Co.*, 196 U. S. 539 (1905), reviewing 182 Mass. 49 (1902); *Dunbar* v. *Dunbar*, 190 U. S. 340 (1903), reviewing 180 Mass. 170 (1901); *Glidden* v. *Harrington*, 189 U. S. 255 (1903), reviewing 179 Mass. 486 (1901); and *Williams* v. *Parker*, 188 U. S. 491 (1903), reviewing 174 Mass. 476 (1899).

Mr. Frank sums the matter up this way:

> "Supreme Court Justices are strong-minded men, and on the general subject matters which come before them, they do have propensities; the course of decision cannot be accounted for in any other way." *Supra*, 35 Law & Contemp. Prob., at 48.

The fact that some aspect of these propensities may have been publicly articulated prior to coming to this Court cannot, in my opinion, be regarded as anything more than a random circumstance that should not by itself form a basis for disqualification.[6]

Based upon the foregoing analysis, I conclude that the applicable statute does not warrant my disqualification in this case. Having so said, I would certainly concede that fair-minded judges might disagree about the matter. If all doubts were to be resolved in favor of disqualification, it may be that I should disqualify myself

[6] In terms of propriety, rather than disqualification, I would distinguish quite sharply between a public statement made prior to nomination for the bench, on the one hand, and a public statement made by a nominee to the bench. For the latter to express any but the most general observation about the law would suggest that, in order to obtain favorable consideration of his nomination, he deliberately was announcing in advance, without benefit of judicial oath, briefs, or argument, how he would decide a particular question that might come before him as a judge.

simply because I do regard the question as a fairly debatable one, even though upon analysis I would resolve it in favor of sitting.

Here again, one's course of action may well depend upon the view he takes of the process of disqualification. Those federal courts of appeals that have considered the matter have unanimously concluded that a federal judge has a duty to *sit* where *not disqualified* which is equally as strong as the duty to *not sit* where *disqualified*. *Edwards* v. *United States*, 334 F. 2d 360, 362 n. 2 (CA5 1964); *Tynan* v. *United States*, 126 U. S. App. D. C. 206, 376 F. 2d 761 (1967); *In re Union Leader Corp.*, 292 F. 2d 381 (CA1 1961); *Wolfson* v. *Palmieri*, 396 F. 2d 121 (CA2 1968); *Simmons* v. *United States*, 302 F. 2d 71 (CA3 1962); *United States* v. *Hoffa*, 382 F. 2d 856 (CA6 1967); *Tucker* v. *Kerner*, 186 F. 2d 79 (CA7 1950); *Walker* v. *Bishop*, 408 F. 2d 1378 (CA8 1969). These cases dealt with disqualification on the part of judges of the district courts and of the courts of appeals. I think that the policy in favor of the "equal duty" concept is even stronger in the case of a Justice of the Supreme Court of the United States. There is no way of substituting Justices on this Court as one judge may be substituted for another in the district courts. There is no higher court of appeal that may review an equally divided decision of this Court and thereby establish the law for our jurisdiction. See, *e. g.*, *Tinker* v. *Des Moines School District*, 258 F. Supp. 971 (SD Iowa 1966), affirmed by an equally divided court, 383 F. 2d 988 (CA8 1967), certiorari granted and judgment reversed, 393 U. S. 503 (1969). While it can seldom be predicted with confidence at the time that a Justice addresses himself to the issue of disqualification whether or not the Court in a particular case will be closely divided, the disqualification of one Justice of this Court raises the possibility of an affirmance of the judgment below by an

equally divided Court. The consequence attending such a result is, of course, that the principle of law presented by the case is left unsettled. The undesirability of such a disposition is obviously not a reason for refusing to disqualify oneself where in fact one deems himself disqualified, but I believe it is a reason for not "bending over backwards" in order to deem oneself disqualified.

The prospect of affirmance by an equally divided Court, unsatisfactory enough in a single case, presents even more serious problems where companion cases reaching opposite results are heard together here. During the six months in which I have sat as a Justice of this Court, there were at least three such instances.* Since one of the stated reasons for granting certiorari is to resolve a conflict between federal courts of appeals, the frequency of such instances is not surprising. Yet affirmance of each of such conflicting results by an equally divided Court would lay down "one rule in Athens, and another rule in Rome" with a vengeance. And since the notion of "public statement" disqualification that I understand respondents to advance appears to have no ascertainable time limit, it is questionable when or if such an unsettled state of the law could be resolved.

The oath prescribed by 28 U. S. C. § 453 that is taken by each person upon becoming a member of the federal judiciary requires that he "administer justice without respect to persons, and do equal right to the poor and to the rich," that he "faithfully and impartially discharge and perform all the duties incumbent upon [him] . . . agreeably to the Constitution and laws of the United States." Every litigant is entitled to have his case heard by a judge mindful of this oath. But neither the oath, the disqualification statute, nor the

* *Branzburg* v. *Hayes*, 408 U. S. 665 (1972); *Gelbard* v. *United States*, 408 U. S. 41 (1972); *Evansville Airport* v. *Delta Airlines Inc.*, 405 U. S. 707 (1972).

practice of the former Justices of this Court guarantees a litigant that each judge will start off from dead center in his willingness or ability to reconcile the opposing arguments of counsel with his understanding of the Constitution and the law. That being the case, it is not a ground for disqualification that a judge has prior to his nomination expressed his then understanding of the meaning of some particular provision of the Constitution.

Based on the foregoing considerations, I conclude that respondents' motion that I disqualify myself in this case should be, and it hereby is, denied.†

Probable Jurisdiction Noted or Postponed

No. 71-1476. GAFFNEY *v.* CUMMINGS ET AL. Appeal from D. C. Conn. Probable jurisdiction noted. Reported below: 341 F. Supp. 139.

No. 72-77. NORWOOD ET AL. *v.* HARRISON ET AL. Appeal from D. C. N. D. Miss. Probable jurisdiction noted. Reported below: 340 F. Supp. 1003.

† Petitioners in *Gravel* v. *United States*, 408 U. S. 606 (1972), have filed a petition for rehearing which asserts as one of the grounds that I should have disqualified myself in that case.* Because respondents' motion in *Laird* was addressed to me, and because it seemed to me to be seriously and responsibly urged, I have dealt with my reasons for denying it at some length. Because I believe that the petition for rehearing in *Gravel*, insofar as it deals with disqualification, possesses none of these characteristics, there is no occasion for me to treat it in a similar manner. Since such motions have in the past been treated by the Court as being addressed to the individual Justice involved, however, I do venture the observation that in my opinion the petition insofar as it relates to disqualification verges on the frivolous. While my peripheral advisory role in *New York Times Co.* v. *United States*, 403 U. S. 713 (1971), would have warranted disqualification had I been on the Court when that case was heard, it could not conceivably warrant disqualification in *Gravel*, a different case raising entirely different constitutional issues.

*[REPORTER'S NOTE: See *post*, p. 902.]

THE O'CONNOR SUPREME COURT NOMINATION: A CONSTITUTIONAL LAWYER COMMENTS

by William Bentley Ball*

As one whose practice is in the field of constitutional law, one thing stands out supremely when a vacancy on the Supreme Court occurs: the replacement should be deliberate, not impulsive. The public interest is not served by a fait accompli, however politically brilliant. The most careful probing and the most measured deliberation are what are called for. Confirm in haste, and we may repent at leisure.

Unhappily, the atmosphere surrounding the nomination of Sandra Day O'Connor to the Supreme Court is one almost of panic. Considering that the liberties of the American people can ride on a single vote in the Supreme Court, any politically or ideologically motivated impatience should be thrust aside and time taken to do the job right. Plainly, there is no need for instanteous confirmation hearings, and the most painstaking effort should be made to fully learn the qualifications - including philosophy - of the candidate. My first plea would be, therefore: Don't rush this nomination through.

My second relates indeed to the matter of "philosophy". Some zealous supporters of the O'Connor nomination (who themselves have notoriety as ideologues) have made the astonishing statement that, on the Supreme Court of the United States, ideology doesn't count. They say, in other words, that it should be of no significance that

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* Former Chairman, Federal Bar Association Committee on Constitutional Law.

a candidate would have an actual and proved record of having voted or acted on behalf of racism or anti-Semitism or any other philosophic point of view profoundly opposed by millions of Americans. These concerns are not dispelled by a recital that the candidate is "personally" opposed to such a point of view. Why the qualifying adverb? Does that not imply that, while the candidate may harbor private disgust over certain practices, he or she does not intend to forego support of those practices?

"Philosophy is everything in dealing with the spacious provisions of the First Amendment, the Due Process Clauses, equal protection and much else in the Constitution. It is perfect nonsense to praise a candidate as a "strict constructionist" when, in these vital areas of the Constitution, there is really very little language to "strictly" construe. As to other areas of the Constitution (e.g., Article I, Sect. 4 - "The Congress shall assemble at least once in every year. . ."), to speak of "strict construction" is also absurd, since everything is already "constructed".

It is likewise meaningless to advance a given candidate as a "[illegible]" [illegible] a "liberal". In the matter of Mrs. O'Connor, the label "conservative" has unfortunately been so employed as to obfuscate a very real issue. The scenario goes like this:

> Comment: "Mrs. O'Connor is said to be pro-abortion."
>
> Response: "Really? But she is a staunch conservative."

Just as meaningful would be:

Comment: "John Smith is said to be a mathematician."

Response: "Really? But he is from Chicago."

Whether Mrs. O'Connor is labeled a "conservative" is irrelevant to the question respecting her views on abortion. So would it be on many another subject.

The New York Times editorialized July 12 on "What To Ask Judge O'Connor". The four questions it posed (all "philosophical", by the way) were good. To these many another question need be added. For example:

What are the candidate's views on

- the proper role of administrative agencies and the assumption by them of powers not clearly delegated?
- the use by IRS of the tax power in order to mold social views and practices?
- the allowable reach of governmental control respecting family life?
- busing for desegregation?
- the proper role of government with respect to [illegible] schools?
- sex differentiation in private employments?
- freedom of religion and church-state separation?

Broad and bland answers could of course be given to each of these questions, but lack of knowledge or lack of specificity in answers would obviously be useful indices of the capabilities or candor of the candidate. Fair, too -

and important - would be questions to the candidate calling for agreement with, disagreement with, and discussion of, major prior decisions of the Supreme Court. Not the slightest impropriety would be involved in, and much could be gained by, public exposition of the candidate's fund of information on these cases, interest in the problems they have posed, and reaction to the judgments made.

Even these few considerations make it clear that the Senate's next job is not to confirm Mrs. O'Connor but instead to find out who she really is - that is, what convictions she possesses on great issues. I thus return to my theme that deliberativeness, not haste, should be the watchword respecting the confirmation inquiry. The fact that a woman is the present candidate must not (as Justice Stewart indicated) be dispositive of choice. It should certainly not jackknife basic and normal processes of selection. At this point, no prejudgment - either way - is thinkable.

Other vacancies may soon arise. The precedent of lightning-fast decisions in the matter of choosing our Supreme Court Justices would be a bad precedent indeed.

Human Events
THE NATIONAL CONSERVATIVE WEEKLY

Reprinted from the January 3, 1981 issue of Human Events.

Campaign Builds to Aid Russian Christians

By BENTLY T. ELLIOTT

You probably didn't hear much about it. No one is doing any bragging. And it wasn't played up as the lead story on the network evening news or featured on the front pages of the Washington *Post* and the New York *Times*. But on November 24 the U.S. Senate unanimously passed a long-awaited resolution of enormous importance to the Christian community—one that officially sanctions and thereby strengthens a key element of its campaign for religious human rights.

What the Senate finally did was to call on the President to condemn—in the strongest possible terms—the persecution of all religious believers inside the Soviet Union—even Christians. Superficially, such a resolution would not seem of earth-shattering importance. The Senate, after all, has spoken out often in the past in support of Soviet Jews and specific dissidents of various other faiths. But rarely, if ever, has it gone on record to convey U.S. concern for the entire family of Russian Christians.

This seems strange, even incomprehensible, when you realize that in the Soviet Union a dissident is considered to be anyone who believes in the Bible. Indeed, the Soviet policy of uncompromising atheism is the only one authentically based on the Marxist principle of equality—all denominations are persecuted equally.

It matters not if one is Russian Orthodox, Catholic, Baptist, Lutheran, Pentecostal or a member of any of the countless unregistered Christian sects. If a person is caught possessing a Bible, or receiving literature, teaching his children about God, or publicly professing his faith, he risks truly terrible punishment: public humiliation, social ostracism and, in some cases, torture by starvation, druggings, beatings and solitary confinement inside the hated concentration camps and so-called "psychiatric hospitals." The explanation for this relentless brutality is really quite simple—to destroy a man's body and break his spirit. The method works.

Credit for the Senate's formal condemnation of these unspeakable crimes goes largely to one man, Sen. Roger Jepsen (R.-Iowa), and to one organization, CREED—Christian Rescue Effort for the Emancipation of Dissidents*—which Jepsen himself helped to create. Together with his wife, Jepsen has long been active in campaigns to support Russian Jews. But those efforts only convinced them both that the Christian community was not doing enough to help its persecuted brethren and that Christians and Jews could gain much more by one day working together.

Sen. Roger Jepsen (right), together with Rep. Jack Kemp (left), are among the members of CREED, a newly formed organization which plans to make the plight of Soviet religious dissidents a major theme of the incoming Reagan Administration.

So, during the past year, Jepsen began moving on two fronts. First, he personally conducted a mini-lobbying and educational campaign in the Senate to outline the severity of Soviet persecution and build support for his resolution. Concurrently, he joined with Rep. Jack Kemp (R.-N.Y.) to form CREED, a nonprofit organization dedicated to conducting a similar educational effort nationwide, and establishing lines of communication to assist Christians within the Soviet empire.

Jepsen is convinced there is only one way Soviet repression will ultimately be eased. The American public must be persuaded to discard its attitude of passive neglect and bring real pressure on Washington to insist the Soviets live up to the human rights provisions of the Helsinki Accords.

Such a campaign will not be easy and, at best, could require years of struggle. Nevertheless, this is why Senate passage of resolution S 60 is viewed as the all-important first step. Next, the advent of the new Administration is being eagerly awaited to help add new momentum to the drive. President-elect Reagan has let it be known that he is "very interested and very supportive" of the campaign to assist persecuted Christians.

This, unfortunately, was not the case under President Carter. In fact, despite all its rhetoric about promoting human rights, the Carter Administration largely turned a blind eye and a deaf ear to the plight of persecuted believers. Letters to the White House often went unanswered. At times they were simply carted to the State Department and dumped on an office floor. The U.S. Mission to the United Nations never introduced a resolution to chastise Soviet religious persecution, or sought to confront them in debate in any meaningful way.

If Jepsen and Kemp have their way, all this will now change. Rather than constantly seeking to appease the Soviets while trying to cater to their every economic need, the two men want the new Administration to go on the offensive and challenge the Soviets' massive violations of human rights.

Asked if this was not dangerously confrontational, Jepsen disagreed and

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* CREED, P.O. Box 8007, Washington, D.C. 20024.

says: "We must all realize that the greatest threat to peace is a world in which totalitarian repression is allowed to increase unchallenged. And besides," he adds, "I agree 100 per cent with the brilliant Christian essayist, Malcolm Muggeridge, who has written that the most important happening in the world today is the resurgence of Christianity in the Soviet Union, demonstrating that the whole effort, sustained over 60 years, to brainwash the Russian people into accepting materialism has been a fiasco. It's precisely because compulsory atheism has failed so totally that the Soviets are now cracking down with such vengeance.

"So I believe it's time," Jepsen concludes, "that we Americans live up to our own ideals, for the Soviets obviously fear them every bit as much if not more than all our military might."

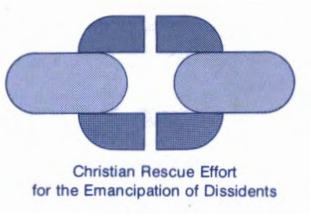
During the coming year, Jepsen plans to campaign actively to make the plight of all religious dissidents in Soviet bloc countries a major theme of the Administration's foreign policy.

For its part, CREED recently received a big boost when Dr. Ernest Gordon, dean of the chapel at Princeton University, agreed to serve as its president. It has also attracted some high-powered help for its advisory board, including Soviet dissident Alexander Ginzberg; Lt. Col. Paul Roush, former assistant naval attache at the American Embassy in Moscow and his wife, Annette; and Father Victor Potapov of the Russian Orthodox Church, who also heads the Committee for the Defense of Persecuted Orthodox Christians and works as a broadcaster at Voice of America.

CREED is now in the midst of sending, and having broadcast, letters of support written in 17 native languages of Christian dissidents living throughout the Soviet bloc. Nancy Shettel, CREED's executive director, says that in the past year her organization has grown from nothing more than an idea to a tangible force working effectively for a magnificent cause. She believes CREED's unique political contacts will enable it someday soon to become the overall coordinator of help and support for persecuted Christians.

This would certainly be good news during this Christmas season for those whose lonely voices have cried out so long in pain and despair.

CREED
P.O. Box 8007
Washington, DC 20024



OBJECTIVES:

EDUCATE AND INVOLVE

The primary objective of CREED is to educate the American public and then to involve the public in the plight and struggle of dissidents all over the world. This will be done through seminars, various publications, personal contacts, and through enlisting the help of strategic individuals.

RESCUE AND RE-LOCATE

CREED hopes to stand firmly with those Christians who are presently jailed or endangered through unusually painful persecutions by enlisting the help of any and every source of power possible to bring pressure on the oppressive government involved. For those dissidents who are released, CREED plans to be involved in helping them to re-locate.

CIVIC ACTION AND LEADERS

CREED hopes to involve as many elected officials as possible in a planned effort to affect change on oppressive countries through various civic actions.

COORDINATION AND SUPPORT

CREED hopes to multiply the world-wide dissident movement by acting to coordinate and cooperate with the over 40 human rights organizations currently in existence. However, there are only a handful who are specifically concerned for Christians. CREED has received great support from these groups and all have expressed the need for CREED and an enthusiasm to cooperate with us.

SECURITY AND CONCERN

CREED plans to make every possible effort to protect and demonstrate real concern for the individuals we are trying to help. Tight security will be maintained.

CREED
P.O. Box 8007
Washington, DC 20024

Christian Rescue Effort
for the Emancipation of Dissidents

POLITICAL CONTACTS

To assist in addressing the needs of Christian dissidents in foreign lands, a certain amount of measured and consistent political pressure by the United States Government upon the governments of offending nations is necessary. The uniqueness of CREED as an activist group is rooted in the support it receives from members of the U.S. Congress who are also committed to religious freedom and human rights. An example of this, is seen in the passage by the Senate of Resolution 60 on November 24, 1980 through the efforts of Senator Roger Jepsen and his colleagues. Senator Jepsen and Congressman Jack Kemp are the founders of CREED and are currently involved in gaining support and interest from their colleagues in the Senate and the House of Representatives in the area of religious persecution.

Subsequent work with the foreign relations committees of the House and Senate has produced commitments for future hearings to address religious persecution in the world. Meanwhile, CREED contacts have provided already an important access to Administration foreign policy-making machinery. The results thus far have been encouraging.

CREED is not a political organization, not "conservative" or "liberal", but rather consists of men and women who are committed to working together to effect our nations' attitude, awareness and action towards those believers who are not as free as we are to express their personal faith in a living God. Fortunately, there are members of Congress who are willing to maximize their positions in order to effect these goals.

CREED
P.O. Box 8007
Washington, DC 20024

Christian Rescue Effort
for the Emancipation of Dissidents

PROGRAM: ONGOING AND PLANNED

Beyond the political activity that CREED has initiated, direct assistance and educational efforts are being conducted as voluntary resources have allowed.

Dr. Ernest Gordon, Dean of the Chapel at Princeton University from 1955-1981 and a former prisoner of war of the Japanese at the River Kwai, is CREED's distinguished President. Dr. Gordon has returned to the lecture circuit speaking at numerous colleges and universities during the last several months on behalf of CREED. Both he and Senator and Mrs. Jepsen have made separate appearances on the nationally syndicated "700 Club" television show. Dr. Gordon has further utilized his expertise and contacts within international Christian circles to begin in assembling a network of concerned Christians from Sydney, Australia to Keston College, England with strong regional centers of support being cultivated in various U.S. cities.

CREED's broadcasts of support to Christians have been heard over the Voice of America, the B.B.C. and Radio Free Europe as well as having been passed from person-to-person amongst ethnic families who still have family in other countries. Meanwhile at the 1980 Madrid Conference on Human Rights, CREED sent letters translated into 17 langueages to be passed among the representatives of dissident groups to let them know of our concern and our willingness to cooperate with them.

A further example of direct assistance offered by CREED to dissidents who have been able to emigrate to the United States is offered in the person of Radu-Eugen Ivan, a former Romanian dissident. CREED, upon learning of Mr. Ivan's arrival, provided assistance in settlement, housing and job placement.

Also, recently, CREED worked with over 28 Senators (through Senator Jepsen's office) to send letters of inquiry to Romanian officials. There is reported that several Christian leaders have been imprisoned, fined and even killed as the result of transporting Bibles to their people. These letters have raised other questions and CREED is committed to helping the Romanian Christians in their plight by following through with these Senators and others. As well, Congressman Kemp has begun a similar campaign for the Romanians in the House of Representatives.

It must be emphasized that the above efforts are only a partial listing of ongoing efforts that have been conducted at the personal expense and time of the many people who have supported CREED as a concept and as an organization. These activities best serve to illustrate the potential of a fully-funded CREED with a salaried staff, permanent offic and secure financial future.

96TH CONGRESS
1ST SESSION

S. CON. RES. 60

Expressing the sense of the Congress with respect to the treatment of Christians by the Union of Soviet Socialist Republics, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 10 (legislative day, NOVEMBER 29), 1979

Mr. JEPSEN (for himself and Mr. BOREN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations

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CONCURRENT RESOLUTION

Expressing the sense of the Congress with respect to the treatment of Christians by the Union of Soviet Socialist Republics, and for other purposes.

Whereas the Union of Soviet Socialist Republics and the United States were the principal signatories of the Final Act of the Conference on Security and Cooperation in Europe (also known as the Helsinki Accords); and

Whereas in signing the Helsinki Accords the Union of Soviet Socialist Republics promised to recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or beliefs, in accordance with the dictates of his own conscience; and

Whereas despite the Helsinki Accords millions of Americans have had to work together to relieve the suffering and

secure the emigration of an untold number of Russian Jews; and

Whereas these efforts on behalf of the Russian Jews must continue as they have produced some success; and

Whereas the suffering of Russian Christians has been equally great and their needs remain equally desperate; and

Whereas for Christians of conviction, simple but persistent public declarations of faith have provoked harsh retaliation, including public humiliation, social ostracism, and isolation inside concentration camps and so-called psychiatric hospitals; and

Whereas the United States authorities are aware of this problem and know that some twenty thousand Russian Christians have decided to risk the worst by sending their names to the Supreme Soviet, asking for permission to emigrate; and

Whereas the current attitude of the United States Government has been one of virtual silence; and

Whereas freedom-loving people all over the world look to the United States as the leader of the free world to take up their cause of basic human rights: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the President, acting through the Secretary of State or any other appropriate officer of the executive branch, should—

(1) reaffirm the commitment of the United States to the Final Act of the Conference on Security and Cooperation in Europe (also known as the Helsinki Accords);

(2) communicate to the Government of the Union of Soviet Socialist Republics in the strongest terms the disapproval of the United States of religious harassment of Christians in the Union of Soviet Socialist Republics and of the restrictions on the freedom of such Christians to emigrate; and

(3) advise the Government of the Union of Soviet Socialist Republics that the United States expects the Union of Soviet Socialist Republics to honor its commitments under the Helsinki Accords and other international law, including its commitments regarding the rights of Christians to practice their religion and to emigrate without government interference.

SEC. 2. The Secretry of the Senate shall transmit a copy of this resolution to the President.

○

Siberian Seven

NEWS

CONGRESSMAN CHRIS SMITH

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FOR IMMEDIATE RELEASE February 10, 1982 CONTACT: KATHY O'CONNELL

SMITH LEGISLATION ADVANCES HOPE

FOR SIBERIAN SEVEN AND KOSHAROVSKY

WASHINGTON, D.C. --- The House Foreign Affairs Subcommittee on Human Rights today unanimously adopted two human rights resolutions proposed by Congressman Chris Smith (R-NJ).

Following Smith's testimony, the committee moved for the immediate adoption of House Concurrent Resolution 100, a combined Smith-Frank resolution sponsored on behalf of the Vashchenko and Chmykhalov families (the "Siberian Seven" who have been living in the U.S. Embassy in Moscow), to assist their efforts to emigrate to the United States.

Also adopted by the committee was H.R. 269, Smith's resolution calling on the Soviet Union to permit the emigration of Yuli Kosharovsky and his family to Israel.

In his testimony, Smith told the committee that "this is a timely matter of great concern to all of us, and the House must act quickly as the situations of the Vashchenko and Chmykhalov families and of Yuli Kosharovsky grow worse every day."

While in the Soviet Union in January, Smith was able to meet with the Siberian Seven families at the U.S. Embassy in Moscow.

"For twenty years now," Smith told the committee, "the seven Pentacostals from Chernogorsk, a small mining town 2,000 east of Moscow, have tried to emigrate from the Soviet Union. Their efforts have been unsuccessful."

Members of the Vashchenko and Chmykhalov families have suffered job discriminations, beatings, forced abduction of their children for re-education in state orphanages, terms in labor camps and psychiatric hospitals, and mysterious deaths of family members -- all in an effort to secure the religious freedoms they justly deserve.

"These two families have been living in virtual captivity in the U.S. Embassy in Moscow for the past three and a half years," Smith continued. "Since Christmas of 1981, Augustina and Lida Vashchenko have been on a hunger strike to protest their treatment by Soviet officials. Just a little over a week ago, Lida was taken to Botkin Hospital in Moscow, where she is undergoing treatment for ailments resulting from her hunger strike. She is now away from her family, and away from American protection

While visiting the two families in their small embassy quarters, Lida Vashchenko gave Congressman Smith a carbon copy of a letter which she and her mother sent to Brezhnev and Gromyko. "I would like to quote a part of her message," Smith said, "which she gave to me to bring out of the Soviet Union,":

> "You already know that we are a Christian family and our Christian ideas cannot be combined with communism. On the Christian basis we have been asking for permission to leave this country.
>
> We consider the hunger strike not a suicide of ourselves, but the last attempt to achieve the emigration of our whole family.
>
> You can, if you wish, resolve the problem before our death, but if you will not want to pay attention to this, people of the whole world will consider this case as a murder commited by you."

During his stay in the Soviet Union last month, Smith was also able to meet with Yuli Kosharovsky -- the subject of Smith's House Resolution 269.

"Yuli Kosharovsky," Smith explained, "is one of the leading and most well-known figures in the large Jewish community in the Soviet Union. As a teacher of Hebrew and Jewish culture in Moscow, he has been

(MORE)

the constant target of harassment by the KGB and other Soviet officials."

Since 1971, when Yuli applied for permission to emigrate to Israel (a right which is his constitutionally), he and his family have been harassed, jobless and outcast.

"The terror of KGB interrogations have become an accepted norm in his lifestyle," Smith said. "He lost his job as a radio electronics engineer, and has been forced to take on odd jobs to support his family. His wife and children have been subjected to mockery in the community and numerous searches of their home. Yuli has been placed under 'House Arrest'," Smith continued, "spent time in jail on trumped-up charges, and taken away from his family without being given any type of explanation."

"I first became involved with Yuli's case," Smith said, "when a constituent of mine, Mrs. Ernestine Urken of Trenton, New Jersey, wrote me and requested my assistance to aid Yuli. Through the help of the National Conference on Soviet Jewry and their Washington staff, I was able to meet Yuli personally in the Soviet Union last month. Now I can speak of Yuli as a friend."

"It is imperative that we let the Soviet government know that we know about Yuli and others like him, and that we care about them," Smith said.

Concluding his testimony to the committee, Smith said, "we in the United States can help Yuli Kosharovsky and the Siberian Seven families gain the freedom they deserve, and which is theirs by constitutional right. I hope we do so."

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United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 97th CONGRESS, SECOND SESSION

Vol. 128 WASHINGTON, WEDNESDAY, JANUARY 27, 1982 No. 3

House of Representatives

SIBERIAN SEVEN

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 27, 1982

Mr. SMITH of New Jersey. Mr. Speaker, during the recess I had the privilege of meeting with the Siberian Seven in the U.S. Embassy in Moscow, where they have been living in virtual capitivity for the past 3½ years, as they actively pursue emigration to the United States in order to pursue their religious beliefs.

The Siberian Seven are Peter and Augustina Vashchenko; three of their daughters: Lida, 30, Lyubam, 29, and Lila, 24; and Maria Chmykhalov and her son, Timothy, 19. They are from Chernogorsk, a small mining town located 2,000 miles east of Moscow. Both families are members of the Russian Pentacostal faith, a fundamentalist group that Soviet authorities have tried unsuccessfully to exterminate since the Stalin era.

Members of the Vashchenko and Chmykhalov families have suffered job discrimination, firings, beatings, forced abduction of their children for reeducation in state orphanages, terms in labor camps and psychiatric hospitals, and mysterious deaths in their never-ending efforts to practice their religious beliefs—a right granted to them under the Soviet constitution.

The Vaschenko family have tried to emigrate since 1963, but have not succeeded. In 1978, they received an invitation to emigrate from a Presbyterian Church in Selma, Ala., but again the Vashchenko family were refused exist visas.

Later, Peter Vashchenko returned to the U.S. Embassy with a letter of invitation issued by the State Department. When the Soviet guards who were posted outside the gates of the Embassy refused to allow the family admittance, they rushed through the gates and into the American compound. The Vashchenko's 17-year-old son, John, was wrestled to the ground by the Soviets and taken away. Nine days later, it was learned that John had been beaten close to death and returned to Chernogorsk.

Mr. Speaker, since July 27, 1978, the Siberian Seven have remained in a small room within the U.S. Embassy. Peter and Augustina Vashchenko have not seen their son John since they witnessed him being taken away by the Soviets. Nor have they seen their nine other children and countless relatives who remain in Chernogorsk today under constant pressure and harassment.

Since Christmas, Augustina and Lida Vashchenko have been on a hunger strike, and reports from Moscow this weekend have said that they have stopped taking liquids that are necessary to keep them alive.

Augustina and Lida Vashchenko, Mr. Speaker, may not live through the week. Immediate action must be taken to secure the basic human rights that the Siberian Seven so righteously deserve. I urge my colleagues in the House to telephone Secretary Haig's office and Washington and voice your concern, and urge him to make the Siberian Seven, as well as those of all faiths who are persecuted because of their religion, a major focal point in his dealings this week with Minister Gromyko in Geneva.

Soviet Letting a Hunger-Striker Emigrate

By SERGE SCHMEMANN
Special to The New York Times

MOSCOW, May 31 — One of a group of Soviet citizens on a hunger strike to press for permission to join spouses in the West was advised today that he would be allowed to emigrate.

Andrei Frolov, a 51-year-old journalist, was notified by telephone during a meeting of the hunger-strikers with foreign reporters 22 days into the fast. Other members of the group, looking haggard, burst into applause.

Mr. Frolov married Lois Sidney Becker of Chicago in May 1981, while she was a student at Moscow University. He said his application to emigrate had been denied, first because of the low state of Soviet-American relations and then because his departure "would not be in the interests of the state."

The hunger-strikers began their fast on May 10 after a campaign of appeals had proved futile. They say they intend to "fast to the death if need be."

22 to 30 Pounds Lost in Fast

They say that they have lost 22 to 30 pounds, taking only water. The women live together at the home of one of them, while the men have remained at their own homes, gathering during the day.

After the news of Mr. Frolov's visa, the others said they would persevere. Tomorrow they plan to demonstrate at Communist Party headquarters.

The group includes Tatyana Lozansky, a 29-year-old chemist who has been trying since 1976 to rejoin Eduard D. Lozansky in the United States. Mrs. Lozansky says that they were divorced six years ago to enable him to emigrate and that the authorities had indicated she and her daughter could follow later.

But she has been refused emigration on the ground that Mr. Lozansky was no longer her husband. The major obstacle to her emigration is believed to be her father, a military officer with whom she says she has broken off relations.

Mr. Lozansky, now 41, is a physicist at the University of Rochester. At the outset of the hunger strike, he was remarried by proxy to Mrs. Lozansky at a ceremony in Washington.

Their case has generated appeals from American scientists and other groups, so far to no avail.

Other Hunger-Strikers Identified

The other hunger-strikers are:

¶Tatyana Azuré, 30, a physicist from Vladimir, who married Armand Azuré, a Frenchman, in 1979. She said her applications for emigration had been denied for "reasons of security" on the ground that she once lived in Arzamas, a city closed to foreigners. She said she has not lived in that city since 1972.

¶Yuri Balovlenkov, 32, a computer programmer who is married to Yelena Kusmenko, a nurse at the Baltimore City Hospital. They met when she came to the Soviet Union as a tourist in 1977 and were married in December 1978. Miss Kusmenko has a daughter, Katerina, born in the summer of 1980.

¶Iosif Kiblitsky, 36, an artist married to a West German schoolteacher, Renata Zobel, of Düsseldorf. Mr. Kiblitsky, who was denied permission to go to Israel in 1971, married her in 1978 while she was a teacher at the West German Embassy school here. They have a son, Mark Leonard, born in 1980.

The hunger strikers have been joined in their fast by a Lithuanian woman, Marija Jurgutis, who is trying to rejoin her husband, who defected seven years ago and lives in Chicago.

Mr. Frolov is the second member of the group to emigrate. Boris Aleiner, a resident of Leningrad who had been trying for three years to rejoin his wife in the West, was allowed to leave in early April, shortly before the group held a 10-day fast.

When that fast failed to produce action for the others, they announced the total hunger strike.

In general there is no free emigration for Soviet citizens. Exceptions have been made for divided families, and Jews have been the principal group to benefit on the ground that many of them have relatives in Israel. Members of other groups who have been allowed to leave for similar reasons include ethnic Germans and Armenians.

The latest hunger strike recalls a fast last November by Andrei D. Sakharov, the physicist and rights advocate, and his wife, Yelena Bonner, in an effort to win permission for Yelizaveta Alekseyeva to emigrate to the United States to join her husband, Alexey Semyonov, who is Mrs. Bonner's son by a previous marriage. The authorities relented and allowed Miss Alekseyeva to leave.

JUN 11 1982

THE WHITE HOUSE

WASHINGTON

June 10, 1982

MEMORANDUM FOR ELIZABETH H. DOLE

THRU: DIANA LOZANO

FROM: MORTON C. BLACKWELL

SUBJECT: Edward and Tatyana Lozansky

This morning Edward Lozansky called to say he had spoken with his father-in-law in Moscow for almost an hour yesterday. General Yershov did not actually commit himself on agreeing to his daughter's emigration to join her husband, but he did indicate he would be willing to do so if Tatyana's mother would agree.

Edward feels that since your husband was best man at his proxy remarriage to his wife recently, it would be most appropriate if you would send a cablegram to his mother-in-law urging her to agree to her daughter's release before her long fast does irreparable damage to her health.

Tatyana's mother's name and address are:

Mrs. Margarita Yershov
Ryleeva St. 6, Apt. 47
Moscow. U.S.S.R.

✓ We are told by Commerce 102.

Rabbi Stanton

→ Speech and/or other ongoing celebration

- Media event