

RIPON FORUM

SPECIAL
FORD
EDITION

JUNE 1, 1976

VOL. XII, No. 11

50 CENTS

EDITORIAL

AN ENDORSEMENT: FORD

The Ripon Society calls upon all Republicans to close ranks behind President Ford as the only available candidate who can unite the Republican Party and lead it to victory in November.

President Ford is the overwhelming choice (60 percent) of Republicans across the nation, according to recent public opinion polls. He consistently runs better in these polls than Ronald Reagan when matched against leading Democrats. He has won more primaries (12 of 19) among a wider variety of voters and by a much larger margin than has his opponent.

Most importantly, however, by virtue of his record in office, he has earned the nomination of his party. While Ripon has occasionally disagreed with some of the President's actions, we have praised his success in pursuing a domestic economic recovery and his strong leadership in the field of foreign affairs. Ford's constructive, internationalist foreign policy and his general, calm, and responsible approach to the issues of our time contrast sharply with his opponent's reckless, simplistic and jingoist rhetoric. In our view, Gov. Reagan's irresponsible appeals disqualify him for high national office.

We predict that President Ford will be nominated despite the fact that Republican convention rules "stack the deck" in Reagan's favor: Reagan's convention delegate strength vastly exaggerates his true support within the Republican Party and the national electorate. This illusory strength stems largely from the fact that the Reagan states are significantly overrepresented at the Republican National Convention while the Ford states are underrepresented by virtue of the convention delegate allocation formula. For example, one delegate from Massachusetts represents 132,000 citizens, but one delegate from Wyoming represents 20,000 citizens. If the del-

egates were fairly apportioned, the threat posed by Reagan to Ford's first-ballot nomination would be much less substantial.

We earnestly believe Gov. Reagan is wrong when he says the party will rally behind either candidate for we feel that Reagan's nomination would divide our party more deeply and more disastrously than ever before in its history.

Moreover, it is highly unlikely that some new, third candidate will emerge with the nomination. Moderate Republicans learned in 1964 that a last-minute candidate, no matter how able, faces special handicaps in seeking the nomination. It would be foolish to throw away the unique advantages that our incumbent President will bring to the Convention contest.

The clear lesson of the last two decades is that neither party can hold the allegiance of its followers if it fails to nominate a representative leader. This was true for the Democrats in 1972 and the Republicans in 1964. The best way for Republicans to prevent a re-occurrence of such a catastrophe in 1976 is to rally behind the incumbent President. We therefore endorse President Ford. ■

ABOLISH THE GOVERNMENT;

CHOOSE YOUR FAVORITE AGENCY;

SEND SUGGESTIONS TO:

Ripon FORUM
Box 226
Charlestown, Massachusetts
02129

EDITORIAL

REAGAN'S NOMINATION WOULD MCGOVERNIZE GOP

The nomination of Ronald Reagan would McGovernize the Republican Party. Although the potential nomination of the former California governor has been repeatedly compared with the 1964 nomination of Sen. Barry Goldwater, a more apt comparison may be made with the 1972 nomination of Sen. George McGovern. Unlike Goldwater, who had a substantial following among elected and official Republican leaders, Ronald Reagan will have won his nomination over the substantial opposition of the Republican Party organization---much as McGovern did in the Democratic Party in 1972.

McGovern's nomination tore apart the Democratic Party and alienated many of its constituent interest groups. Reagan's nomination threatens to do the same for Republicans---with one vital difference; there may be no Democratic Watergate to save the GOP.

Like Reagan, McGovern was essentially the candidate of a narrow ideological band within his party. Like Reagan, McGovern attracted new party adherents through his own adherence to emotional and doctrinaire issues: Vietnam in McGovern's case and the Panama Canal in Reagan's case. McGovern would have had the United States get out of Vietnam at virtually any cost. Reagan would have the United States stay in the Panama Canal Zone at virtually any cost.

For both men, the issues were useful in winning primary elections because they generated strong emotional responses from sympathizers and strong voter turnouts. But McGovern found in 1972 that such sympathy does not translate into general election votes. A Harris survey after McGovern's nomination, for example, found that by a margin of 74-19 percent, voters did not believe that McGovern could fulfill his pledge to get American troops out of Vietnam in three months while 76-21 percent thought those troops should be withdrawn. Voters in general elections tend to be more pragmatic than the ideological emphasis of primaries would indicate.

Winning primaries makes a presidential candidate appear competent. That is the whole point of the primary system. A "competent" primary candidate does not make a competent general election nominee as George McGovern demonstrated. By winning the California Democratic primary over Hubert Humphrey, McGovern virtually guaranteed his nomination. He emerged so bloody from that confrontation, however, that he virtually ensured his defeat in November.

Ronald Reagan is engaged in the very same process. His \$90 billion federal do-away program corresponds with McGovern's \$1,000 federal giveaway. Both men would have preferred to forget their original proposals because both received insufficient examination for both policy and political impact. But the voters did not and will not forget. In the pursuit of the nominations of their respective parties, both McGovern and Reagan produced a wealth of material for their general election opponents. It did not take a sophisticated research staff to find McGovern's weak spots in 1972. His campaign was riddled with holes. Even mention of the three "A's," amnesty, abortion, and acid, were enough to send voters into the waiting clutches of CREEP. If McGovern was portrayed as some sort of hippie freak in 1972, Reagan will just as assuredly be painted as the wicked witch of the west in 1976.

The perception of Reagan as more "competent" than Ford has haunted the President's campaign all this year. That perception may disappear this fall as quickly as McGovern said "1000 percent" in 1972. Massive press coverage has a way of melting presidential candidates. Jimmy Carter won't have to melt Reagan; the press will fry Ronald Reagan for the former Georgia governor.

If nominated, Ronald Reagan will, like McGovern, owe his nomination to manipulation of the party rules. McGovern has an advantage in 1972 because he wrote the party's new delegate selection rules and therefore had a substantial advantage in interpreting them. Reagan backed the Republican Party's current delegate selection formula in 1972 to the detriment of his own state and the advantage of his own presidential interests. The Republican Party's current delegate allocation formula provides disproportionate representation for precisely those states where Reagan has maximum strength and penalizes the large industrial states where Ford's strength is concentrated. If Reagan receives the GOP nomination, it may well be because Ford was deprived the several hundred extra delegates he might have received under an equitable apportionment system.

McGovern was hurt by the image of his own supporters in 1972---an image at substantial variance with how many Democrats perceived themselves. Reagan may well find himself operating under similar handicaps. Traditional Republican voters may not be able to identify with the Wallace-leaning of Reagan's Texas supporters any more than George

Meany could empathize with Gloria Steinem.

Surveys of state and county Republican chairmen by the Christian Science Monitor have shown continuing support for President Ford. Regardless of ideological persuasion, elected leaders in most states have backed Ford. Gov. Meldrim Thomson (R-N.H.), Sen. Paul Laxalt (R-Nevada), and U.S. Rep. Phil Crane (R-Ill.) have been the exceptions rather than the rule. More typical is California where virtually the entire Republican establishment, most of which has long been allied with Reagan, backs Ford. Reagan can legitimately claim authentic grass roots support---but then so could George McGovern. The shortsightedness of Reagan's followers was demonstrated by the defeat of Arizona GOP National Committeeman John Haugh for a seat on his state's convention delegation and the near-exclusion of Ford-supporter Sen. Paul Fannin (R) from the Arizona delegation; the same weekend, Gov. James Edwards' attempt to bind the pro-Reagan South Carolina delegation to the unit rule brought howls of protest at his state's GOP convention. If Reagan wins the GOP nomination, he may have alienated irreparably a large segment of the GOP party leadership and thus automatically doomed his general election chances the same way that McGovern did.

Parenthetically, some Reagan supporters may not be unnerved by this prospect. They may see the chance to bury the Republican Party and then to launch the new conservative party that was such a popular subject for speculation in 1975. The defeat and elimination of George Wallace in this year's primaries and the shift in allegiance of his followers to the Republican primaries may have been the first step in that process. Alienating the GOP organization leadership may cost these new party advocates the general election, but smooth the way to a dramatic reorientation of the two major parties.

The similarities between 1972 and 1976 are more striking if one compares the campaign strategy of Richard Nixon with 1976's "new Nixon:" Jimmy Carter. Both pursued campaign strategies which sought to minimize their own issue positions and thus maximize their ability to attract the broadest possible interest coalitions. Nixon was assisted in this endeavor by George McGovern's imprisonment at the left-most edge of the political spectrum. Carter will undoubtedly be assisted in the same way by Reagan's imprisonment at the right-most edge of the spectrum. That positioning gave Nixon and will give Carter the maximum possible leeway for saying nothing and still seeming presidential by comparison with Reagan and McGovern.

In 1972, McGovern concentrated his efforts in the liberal, northern industrial states which have been traditionally sympathetic to Democratic candidates. He lost all but Massachusetts. Ronald Reagan's nomination would be the culmination of the Sun Belt strategy articulated by former Nixon aide Kevin Phillips. The nomination of Jimmy Carter, however, will checkmate a Sun Belt strategy. Reagan stands no chance of defeating a southern, fundamentalist Christian in the Sun Belt.

And so, if nominated, Reagan will earn himself a special footnote in history. He will McGovernize the Republican Party in a way that George McGovern never dreamed. ■

Contributor Notes: Sen. Jacob Javits is the senator from New York who was elected as a Republican. Arnold F. Krugler is a Nebraska FORUM correspondent, a professor at Concordia Teachers College, and the Ford chairman for Seward County. Robert Stewart is a member of the FORUM Editorial Board and a Boston lawyer.

THE RIPON SOCIETY, INC. is a Republican research and policy organization whose members are young business, academic and professional men and women. It has national headquarters in District of Columbia, chapters in fifteen cities, National Associate members throughout the fifty states, and several affiliated groups of subchapter status. The Society is supported by chapter dues, individual contributions and revenues from its publications and contract work.

THE RIPON FORUM is published semi-monthly by the Ripon Society, Inc., 1609 Conn. Ave., N.W., Washington, D.C. 20009. Second class postage rates paid at Washington, D.C. and other mailing offices. Contents are copyrighted © 1976 by the Ripon Society, Inc. Correspondence addressed to the editor is welcomed. (Ripon FORUM, Box 226, Charlestown, Mass. 02129.)

In publishing this magazine the Ripon Society seeks to provide a forum for fresh ideas, well-researched proposals and for a spirit of criticism, innovation, and independent thinking within the Republican Party. Articles do not necessarily represent the opinion of the National Governing Board or the Editorial Board of the

Ripon Society, unless they are explicitly so labeled.

SUBSCRIPTION RATES are \$15 a year, \$7.50 for students, servicemen, and for Peace Corps, Vista and other volunteers. Overseas air mail, \$6 extra. Advertising rates on request. Please allow five weeks for address changes.

Editor: Dick Behn

Editorial Board:

Robert D. Behn, Chairman
Clifford Brown
Robert H. Donaldson

Tanya Mellich
Robert G. Stewart
Ralph Thayer

Contributing Editors: Clifford Brown, Glenn Gerstell, William A. Koelsch, Daniel J. Swillinger, Josiah Lee Auspitz, Richard W. Rahn, John A. Rehfuss, Thomas A. Sargent, Richard Cleveland, Mark Frazier, Peter Berg, Martin Sours, and William K. Woods.

Technical Editor: Brian J. McCarthy

COMMENTARY: THE GOP

DECISION TIME FOR THE UNCOMMITTED

by Jacob Javits

Editor's Note: The following is excerpted from Sen. Jacob Javits' speech to the Ripon Conference on the Future of New York.

Many here as members of the Ripon Society have dedicated themselves to the maintenance of progressive, liberal and moderate Republicanism. Yet, I regret to say that these principles are in greater danger of destruction in 1976 than ever before in the 120 years of our party's life. Indeed, I believe that the Republican Party itself could well be on the way to extinction as a national governing alternative before the year is out.

We are in the midst of an election campaign in which two conservative candidates are vying for our party's leadership and our country's presidency. One of them---by far the more moderate---is today President of the United States and he is the candidate in serious danger of losing his office to a candidate who has adopted positions so extreme that they would alter our country's very economic and social structure and our place in the world to such a degree as to make our country's policy at home and abroad, as we know it, a thing of the past.

For Governor Ronald Reagan would instill a lack of governmental concern for the poor, including the aged poor, the disadvantaged and the unemployed in domestic policy---leaving them to take their chances in the competitive economy; and he would install an uncompromising hard line in foreign policy which could wreck us both at home and abroad.

The same thing is occurring in the Republican Party of 1976 that took place in the Democratic Party four years ago and in the Republican Party in 1964. A minority group of dedicated partisans is waging a struggle---and meeting considerable success---to take over a party apparatus that was designed to embody the aspirations of many millions of Americans who are Republicans. Yet, millions of Republicans across the political spectrum could by this action be put on the way to exclusion from the process required to win elections and to govern the United States.

Let us remember that the genius of the two-party system is the fact that whichever party wins, the United States has a federal government with a centrist philosophy; hence the key to United States political stability is the two-party system.

President Ford and I have differed on

many issues of concern to all Americans and, particularly, those who live in our great cities---like this one. But it seems to me that the choice between the President and Governor Reagan is clear for those whose concern is the survival of the Republican Party and of the two-party system nationally. For us, Ford must be our man.

There is no doubt that the President could do more for New York City---and for the other big cities---than he appears willing to do. There's no doubt that he could have taken a different position than he did at the height of New York's fiscal crisis. We have seen more cutbacks in money across the board in social programs on manpower, youth, education, health, day care, and others than we like. We have seen government contracts, military bases, and federal installations slip away from the Northeast and into the so-called Sun Belt. But we have also been able to work things out on many fronts with President Ford; and his foreign policy has been, in general, in keeping with modern U.S. thinking---while we have good reason to believe that a Ronald Reagan White House will accelerate the negative, ultra-conservative process.

We have listened to Governor Reagan campaign on a defense platform, an international relations platform, an economic and social platform that might have been attractive in William McKinley's day; but, believe me, it simply won't play in the America of November 1976. Whatever the faults that we may perceive in President Ford, he is a President who comes out of the country's mainstream. In this particular campaign, he is the moderate Republican candidate because of his openness to moderate Republican ideas and because his nomination is essential to the survival of the Republican Party and of the two-party system.

The fact is that while the Republican Party candidate cannot be considered the favorite, President Ford can win this election; I cannot say the same for Governor Reagan. But the President needs the vote of every delegate he can get. He needs those votes now and I propose that he get them. For the overriding issue before Republicans is that it is either Republican survival or the road to extinction.

From all I know, the overwhelming number of Republicans in New York State also want Ford. They remember 1964 and its aftermath, and I believe that a Reagan nomination in 1976 would be even more devastating---for in 1976 the Repub-

lican Party has suffered an erosion of strength that had not yet manifested itself to this extent twelve years ago. Without a Republican Party that can kindle a response from a substantial proportion of the electorate, we could be reduced to factions or fractions which will have to join another party or form new ones.

We must do everything in our power to broaden the base from the present 18-24 percent of the American people who call themselves Republicans. We must only go up if we are to save the two-party system. It's our national obligation to grow and expand in strength---not to shrink or to become extinct. The fact is that the country is voting more independently than ever---an estimated one third at least---so a President Ford can win a national election. Can that be said for Governor Reagan? I cannot see it.

At this time, in this campaign, the highest priority for Republican progressives, liberals and moderates is to assure President Ford's nomination in Kansas City next August. Without that, the eroding structure of the two-

party system will suffer again so serious a shock as could topple it altogether.

The view that the Republican Party is a 20th Century mirror image of the Whig Party of pre-Civil War days could be proven in this 1976 election. I am a member of the uncommitted New York State delegation to the Republican National Convention, but as Vice President Nelson Rockefeller said, "I don't think this is an extremist country. I think Mr. Reagan has been taking some extreme positions." I agree with the Vice President's assessment and, that being the case, I intend to commit my vote today to President Ford as the Republican candidate for President of the United States. As far as I am concerned, there is nothing more to wait for, lest there be no one left for me to commit to.

If we want the Republican Party to survive, we must speak out on behalf of the only candidate who can win in November and there is only one such candidate today and he is in the White House. ■

Box 226, Charlestown, Mass.

● The structure of America's free enterprise system has created environmental and unemployment problems by raising labor productivity at the expense of capital and resource productivity, environmentalist Barry Commoner told the Ripon Conference on the Future of New York. Commoner's thesis was disputed by another speaker, Dr. John Sawhill, former administrator of the Federal Energy Administration and president of New York University where the May 14-15 conference was held. Sawhill made "the case for economic growth" with a four-part program of central economic planning, tax incentives for social goals, expanded research and development, and speeded transfer of technology to commercial use. Other speakers at the conference were Sen. Jacob Javits (some of whose remarks are excerpted elsewhere in this issue) and State Sen. Roy Goodman, who criticized New York City's three-year program of budget austerity and explained how the city budget could be cut without disrupting basic services. Discussion leaders for the New York Chapter-sponsored conference included Ruth J. Abram, executive director of the Women's Action Alliance; Doris Fitzgerald, associate dean of faculty, Borough of Manhattan Community College; Harvey J. Goldschmid, professor of law at Columbia University; Mary B. Goodhue, New York State assemblywoman; Lee W. Huebner, partner, Witcom Investment Company; Lewis E. Lehrman, president of the Rite Aid Corporation; Kenneth Lipper, partner, Salomon Brothers; Stephen May, chair-

man of the New York State Board of Elections; Robert B. McKay, president of the Legal Aid Society; Tanya Melich, editor, corporate affairs, CBS, Inc.; John R. Price, vice president of Manufacturers Hanover Trust Co.; Edward V. Regan, Erie County Executive; Willis L.M. Reese, professor of law at Columbia University; William Toby, acting regional administrator of the Social and Rehabilitation Service, Department of HEW; Albert A. Walsh, president of the National Realty Committee.

● Don A. Childears is the new president of the Colorado Chapter. Other officers include Dick Brown, secretary of national affairs, Susan Hickey, secretary of local affairs; John Bush, executive vice president, and John E. Moye, treasurer. Childears, Hickey and John R. Head are the chapter's representatives to the National Governing Board. At-large members of the chapter's board of directors are Tanne Aspromonte, Paul Smith, and Willie Anthony. The Equal Rights Amendment was the topic of discussion at the chapter's May 20 meeting.

● The Ripon Society has elected its youngest president in its 14-year history. At the annual meeting of the Society's National Governing Board in Chicago April 18, Ripon elected Glenn V. Gerstell, 24, as its president and Peter V. Baugher as chairman of the National Governing Board. Gerstell attended New York University prior to entering Columbia Law School, from which he graduated in May, and has been active in Republican campaigns in New York. He was an at-large alternative delegate to the 1972 Republican National Convention and is chairman of the New York Chapter's governing board as well as a

former Ripon national vice president, Baugher, an attorney with the Chicago firm of Schiff, Hardin and Waite, was formerly a law clerk to a U.S. Court of Appeals judge. A graduate of Yale Law School and Princeton University, he is the current president of the Chicago Chapter of Ripon. Other officers elected at the Chicago meeting include: John Head, a Denver attorney as executive vice president for policy; L. Scott Miller, a Houston financial analyst as vice president for research; Ronald L. Strouse, a congressional administrative assistant as vice president for public information; Jackie Parsinen of Minneapolis as executive vice president for administra-

tion; Kathy McDonald, a partner in an international consulting firm in Washington, D.C. as vice president for chapter development; Victoria Golden, a government representative for a private corporation in Washington, D.C. as treasurer; Rick Forrestal, a Maryland law student as secretary; Edward Goldberg, a university administrator from New York as executive vice president for finance; Guy Rutherford, an investment banker in New York as vice president for financial development; and Fred Kellogg, an attorney in Washington, D.C. as vice president for financial administration.

POLITICS: NEBRASKA

SEPARATING THE WHEAT FROM THE CHAFF

by Arnold F. Krugler

The results of the Nebraska presidential primary must be understood in agricultural rather than foreign policy terms. In the GOP race, it wasn't Henry Kissinger in Africa but Earl Butz in Omaha that was crucial to the final outcome. The concession that the Ford Administration made to George Meany last year regarding shipment of wheat to Russia didn't affect the labor vote, but it certainly did cost Ford the farm vote.

For example, Seward County is chiefly rural. The county seat, Seward, a college-factory-retired farmer town, has 5,000 of the county's 16,000 residents, who have traditionally been less conservative than the rest of the state. Ford carried the town with 62 percent of the vote but Reagan won the more rural areas of the county with 51 percent of the vote.

In part, the Nebraska farmers were pragmatic and felt that Reagan had no chance up until the Texas and Indiana primaries. This realism was reflected in an poll published less than two weeks before the election by the Omaha World-Herald which showed Ford had a 56-33 percent lead over Reagan. The poll probably reflected Nebraska sentiments that Ford was acceptable despite his mangling of the wheat deal with Russia. When Ford seemed to be slipping on the basis of Texas and Indiana, a lot of farm voters decided to send a message to Washington. That same impulse probably explains Sen. Frank Church's surprise victory in the Democratic primary. Church campaigned hard while Carter didn't, but the cornerstone of the Church campaign was that he was from Idaho and hence understood the problems of Nebraska agriculture.

Although Ford seemed to have everything going for him in Nebraska up until a month before the election, the campaign itself was so low-level that most people were unaware of its existence. All the big names in Nebraska

Republicanism had rallied behind the President and Reagan was considered dead. Ford's campaign organization seemed to have done little to anticipate the final Reagan blitz, relying primarily on free media exposure granted to the President. The violence of the political shift was indicated by the near-elimination of Sen. Carl T. Curtis(R) as a Ford-pledged delegate.

Strange as it may seem to Easterners, Nebraska farmers are more cosmopolitan and non-isolationist than the people of Boston. Recent events since Nixon lifted the grain trade barriers with China and Russia have convinced the Nebraska farmer that his economic welfare is directly related to good diplomatic relations with China and the Soviet Union. Hence, it is doubtful that Nebraska voters bought Reagan's jingoist rhetoric. Ironically, the long-term effect of the Nebraska primary may be to ensure the election of Jimmy Carter in November. Reagan has no chance of doing any better in the general election than did Sen. Barry Goldwater in 1964, who also won the primary and failed to carry the state in November.

In other Nebraska election results, Omaha Mayor Edward Zorinsky built up a strong enough lead in his home county to overcome weakness elsewhere in the state and win the Democratic Senate nomination over former Democratic State Chairman Hess Dyas, whose supporters were not ecstatic about Zorinsky's recent conversion from Republicanism. Although U.S.Rep. John Y. McCollister, the GOP candidate, has his own primary wounds, they are probably less significant than those borne by Zorinsky. In the 1st C.D. which McCollister is leaving, TV Editorialist Lee Terry used his media exposure to defeat the early frontrunner, Douglas County Commissioner P.J.Morgan. Terry will face State Sen. John Cavanaugh(D) in November. The results, noted the Lincoln Evening Journal, show the "weakened internal positions of Nebraska" parties

COMMENTARY: CRIME

MANDATORY SENTENCING

by Robert Stewart

The evident inability of the criminal justice system to cope with rising crime rates has increased public and legislative interest in "reforming" criminal sentencing processes. The movement is clearly toward more fixed and mandatory sentences in place of discretionary or indeterminate sentences. The movers, however, have a lot of questions to answer and a lot of value judgements to make on the answers.

Most criminal statutes today provide for so-called discretionary or indeterminate sentences, whereby judges have wide discretion from probation and suspended sentences to usually, a fixed maximum sentence. This judicial discretion has, in modern times, been considered essential to justice for the simple reason that all convicted criminals are not alike and that the circumstances surrounding specific crimes vary greatly. Nevertheless, the favorite proposed reform is the mandatory or mandatory-minimum sentence.

The concept has surprisingly broad support among conservatives and liberals and portends an abandonment of rehabilitation as a goal of criminal justice in favor of deterrence and good, old-fashioned retribution. Deterrence, the reformers argue, will come from the certainty of confinement which is not present under an indeterminate sentencing system. The mandatory sentencing approach appeals to liberals ostensibly as a means of avoiding the general unpredictability of and prejudice supposedly inherent in indeterminate sentences. There is, however, a serious question as to whether mandatory sentencing will solve these problems.

Deterrence is a function of the type of crime and type of criminal. Auto theft, for example, is primarily committed by the so-called "joy rider," usually a young person who steals a car, uses it for a short time and then abandons it. Joy riding is one crime which may well be deterred by a certainty of a prison sentence. But do the proponents of mandatory sentences intend to include juveniles who commit a large proportion of these crimes? Mugging and burglary, on the other hand, are primarily committed by dope addicts or other persons in desperate need of money. Does anyone seriously believe that such criminals will be deterred by fixed sentences instead of indeterminate sentences? By any sentences? The more serious crimes raise the same questions. Will, for example, a mandatory sentence deter murder when a substantial proportion of murders are crimes of passion which, by definition, cannot be deterred?

And how many rapes are committed by depraved persons rather than persons who may be deterred by from committing the crime because of a mandatory penalty?

And finally, as a more basic proposition, most observers note that it is not the type of sentence but the assurance of quick, firm justice that deters. If so, there is a more pressing need to increase the number of prosecutors and investigators and reduce the reliance on plea bargaining so that there is some semblance of potential justice facing the criminal. Mandatory sentences will fill that bill.

The question of too much discretion and prejudice are serious matters. Disparity in sentences for the same crime among various judges is vast and unexplainable. Again, however, the question is not whether wide discretion is a problem, but whether mandatory sentencing will solve it.

Judges have shown an uncanny ability to exercise discretion even in a mandatory sentencing system. A recent Civil Liberties Union of Massachusetts study points out some of the techniques used by judges to avoid the harsh impact of the Massachusetts Gun Law which imposes a one-year minimum sentence for possession of an unregistered handgun:

* A juvenile, charged with carrying a gun while he raced drunkenly down the street was instead convicted of parading without a permit;

* One judge continued a gun case until the year 2012;

* One little old lady carrying a shopping bag full of biblical literature was arrested for carrying a small pistol in the bag for protection. She was acquitted when the judge ruled that the gun was found as a result of an illegal search of her bag.

* Some judges have simply violated the law and imposed suspended sentences.

Obviously, conscientious judges are not going to be compelled to impose unjust penalties. And what about the prosecutor's discretion to prosecute and the police officer's discretion to arrest? As judges are restricted by mandatory sentences, prosecutors and police are going to be more and more pressured to employ their discretion to fill the gap. And that discretion is far less controllable and accountable.

Finally, are the taxpayers really willing to bear the monetary cost of a mandatory sen-

tencing program? The criminal justice system has already reached the breaking point. As professor James Vorenberg of Harvard recently wrote, the only reason the system is now able to cope is that ninety percent of criminal cases never reach trial. Most are disposed of through plea bargaining. The problem with mandatory sentences is that defendants will not plead guilty to crimes which carry a mandatory one-, two-, or three-year term unless the maximum penalty is so high that constitutional questions are raised. If Professor Vorenberg is correct, for a system of mandatory sentences to work, the number of prosecutors, judges, and courts would have to be increased many fold.

And where will the convicted prisoners be sent? The jails are full. One observer has recently estimated the cost of imposing mandatory sentences (many of which would otherwise be suspended) for only one crime in Massachusetts, auto theft. Just to care for the increased number of prisoners would cost approximately \$20 million per year. In addition, the correctional system would have to increase by approximately 20 percent at a cost of \$20,000 per cell. Remember, these costs are only for "hot box" operators. Mandatory sentences for this crime would cost \$50 million the first year; is the public really ready to foot that kind of bill and are the reformers ready to ask them to do it? Without this level of expenditures, the result would be chaos.

What then can be done? One interesting compromise proposal is beginning to emerge, the concept of presumptive sentencing. Under this system, the legislature would establish a maximum and a minimum sentence for each crime as well as an intermediate "presumptive" sentence. Judges would be required to impose the presumptive sentence unless they found certain, legislatively-established aggravating or mitigating factors present. Aggravating factors might be a leadership role in a criminal enterprise, cruelty of treatment of victims, injuries, use of a dangerous weapon, refusal to make restitution, or absence of need. Mitigating factors might be duress or coercion, affirmative steps to avoid injury or violence, drug addiction or other desperate financial needs, youth or reduced mental condition. In that case, they would be entitled to increase or decrease the presumptive sen-

tence up to a certain percentage, but would be required to set down their findings in a written opinion.

Judges would also be allowed to impose sentences up to the maximum or down to the minimum in extraordinary cases, but again would be required to put their findings in a written opinion. The sentence would be subject to appellate review, and in any case in which a judge imposed a sentence beyond limits allowed in the case of specific aggravating or mitigating factors, there would be a heavy appellate presumption against its validity.

Such a system carries with it several of the advantages of mandatory sentencing. Because a presumptive sentence would be highly favored on appellate review, because variations would be based on fixed standards or extraordinary circumstances, and such standards or circumstances would be in writing, discretion would be limited and judges would be accountable in its exercise. Realistic minimums could be set, however, to provide necessary flexibility where justice demanded it.

Presumptive sentencing does carry with it, however, the same need for a substantial financial and human commitment to increasing the capacity and efficiency of the entire criminal justice system even though for many crimes, a minimum sentence of probation could be set. For if presumptive sentences are to be imposed, convicted criminals will be imprisoned, and that requires prisons. Criminals will still be tried and convicted, and that requires prosecutors and courts. If pleas bargaining remains the norm, prosecutors will have to continue to make deals, and only the nature of the deal will be changed. This will deprive the system of the certainty of justice and confinement on which deterrence depends.

Unless the public and the politicians are willing to commit substantial additional resources for prisons, courts, and prosecutors ---in many states perhaps even doubling or tripling the capacity of the criminal justice system---sentencing reforms, whether mandatory or presumptive, will be a disaster if not a joke. ■

RIPON FORUM

Published semi-monthly by the Ripon Society, 1609 Conn. Ave., N.W., Washington, D.C. 20009. Second class postage paid at Washington, D.C. and other mailing offices.