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Commentary: Congress

A SUNSET LAW FOR CONGRESS

by Dick Behn

Sen. Howard Baker, Jr. recently proposed a return to a citizen-legislature with part-time duties, part-time salaries, and outside occupations. Baker made his proposal as part of a bid to add a "sunset" clause to the recently-passed Senate Ethics code that severely limited the amount of outside income that may be earned by senators. Baker's proposal would have automatically terminated the ethics code in 1980. His alternative "would enable members to find out what their constituency thinks and reimmerse themselves in the mainstream of the country's life."

Baker's idea, however, contradicts the predominant trend in Congress which is to strengthen and reward incumbents by narrowing their role as full-time ombudsmen-legislators. In essence, Congress has set up a sort of legislative Civil Service which protects incumbents---especially Democratic ones---from the indignity of being ousted from office. The strict rules of procedure, the heavy emoluments and perquisites of office, are intended to make members behave and thus give them tenure.

The Senate's new ethics code has even given the senators what amounts to a Hatch Act in reverse by prohibiting them from engaging in non-political employment. Instead of relying on public disclosure and the electorate's good sense to control senatorial activities, the Senate has substituted rules and limits. In so doing, the Congress has treated itself somewhat like the kindergartener who is promised a lollipop (pay raise) if he won't play in the mud (make money). The duplicity and stupidity of the Congress' actions is mind-boggling unless one remembers the primary goal of congressional ethics: get members reelected.

Commenting on Congress' neurotic pursuit of purity, the Washington Post's David Broder wrote:

Whenever things got tight in the House and Senate debates, there was always someone waving a poll and arguing that, whether a particular prohibition made sense or not, the public demanded it. The ethics debate was the worst example of the abandonment of good judgment to the appeasement of public opinion I've witnessed since ---well, since the same moral fervor mixed with fear seized Congress after Watergate and produced the campaign finance "reforms" of 1974.

The answer to Congress' problems may be not to limit outside income but to limit congressional terms of office. A limit of five two-years terms for the House and two six-year terms for the Senate may be the only way to break up the congressional bureaucracy. The power of the incumbency---particularly for Democrats unaffected by the taint of Watergate---is so great that only one Democratic freshman was ousted in 1976. Recent increases in office allotments, salaries and other privileges have intensified the problem.

Congress is more insidious than the Civil Service because it concludes its own labor-management deals. It legislates effective job security. As political scientist Morris P. Fiorina recently wrote in the Washington Monthly, the "primary goal of the typical congressman is reelection." Notes Fiorina: "...there is a kind of natural selection process at work in the electoral arena. On average, those congressmen who are not primarily interested in reelection will not achieve reelection as often as those who are interested. We, the people, help to weed out congressmen whose primary motivation is not reelection. We admire politicians who courageously

adopt the aloof role of the disinterested statesman, but we vote for those politicians who follow our wishes and do us favors."

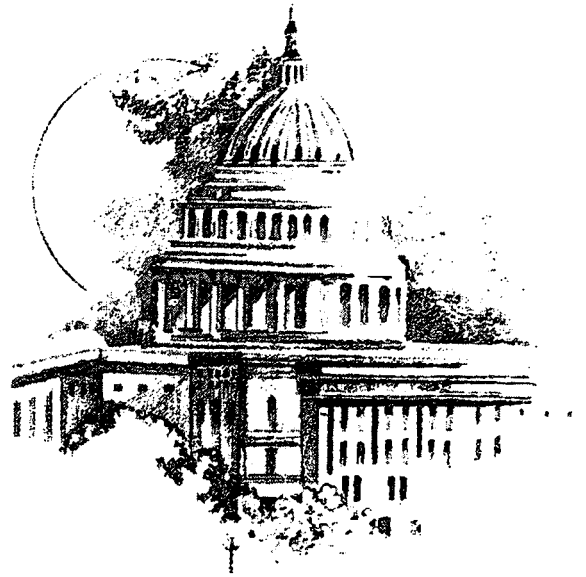
The immediate opposition to Baker's proposals for a citizen legislature centered on the complexity of problems faced by contemporary congressmen. Today's issues require constant attention. The truth, as Fiorina points out, is that lawmaking on the momentous problems of the day consumes only a third of a congressman's time. The rest is devoted to pork-barreling and casework, both of which are considerably more important to a congressman's reelection than how he votes on the B-1 bomber.

A congressman is elected to be a lawmaker but is expected to be an ombudsman. Congress succumbs to a sort of Parkinson's Law of Casework. The more office resources available for casework, the more casework is done, the more it is expected by constituents, the less constituents rely on other bureaucratic channels, the more Congress emphasizes casework to meet constituent needs, the more resources are devoted to casework, etc., etc. And the incumbents keep getting reelected.

Given the massive federal bureaucracy, the ombudsman role of Congress is a valuable function. It is also a self-perpetuating, self-aggrandizing and highly expensive one. Writing in the March 18 issue of *New Times* magazine, Robert Shrum notes that each representative costs \$1.5 million per year and running Congress costs more than running Philadelphia.

Republicans in particular and insurgents in general and anyone who believes in democratizing Congress has a vested interest in tempering congressional tenure. The current system demands that incumbents worship at the campaign chapel. Only with power can any good be done, so getting power becomes more important than doing good. Notes Fiorina:

The key to the rise of a semipermanent Washington establishment (and the fall of the non-safe congressional seat) is the following observation: the growth of an activist federal government has stimulated a change in the mix of congressional activities. Specifically, a lesser proportion of congressional effort is now going into programmatic activities and a greater proportion into pork-barrel and casework activities. As a result, today's congressmen make relatively fewer enemies and relative-



ly more friends among the people of their districts. Hence, more safe seats."

The same thing has happened to Congress that happened nearly a hundred years ago in the executive branch: a fluctuating spoils system has been replaced by a stable spoils system. The citizen bureaucrat has been replaced by the civil servant and the citizen legislator by the legislative master. The valid arguments for bureaucratic and legislative professionalism have been carried to an extreme.

So despite public dissatisfaction with Congress, the Democratic majority has insulated itself from that discontent. And the Republican Party is suffering from both the excesses of Richard Nixon and the largesse of Congress.

Republicans have an inherently frustrating job in Congress, particularly in the House where they seldom have the numbers nor the committee staff support to make a substantial impact. Some of the brightest and most able---like Maryland's Gilbert Gude and Pennsylvania's Edward Biester---quit last year rather than become career congressmen. Others---like California's Alphonzo Bell and Michigan's Marvin Esch---sought to move up to the Senate or out. They ended up out.

The redress of a congressional balance between the two parties may well require a sunset law for congressmen.

Such limits are obviously in the GOP's partisan interest but they are also in the national interest as well. The current congressional setup has the ironic effect of increasing the advantages of incumbency while decreasing the respect in which Congress as an institution is held. Congress is being depoliticized in somewhat the same way critics of the Federal Bureau of Investigation repeatedly demand that it be depoliticized. The net effect of depoliticization is to make Congress less responsive and more remote.

Jimmy Carter got himself elected President as a sort of citizen-candidate. The intended impact was to restore public faith in the Presidency. Republicans will continue to have a far greater chance to elect a GOP President

than Congress because a presidential election depends less on constituent casework and porkbarrelling than does that of a congressman. The interests of Republicans lie as much in a citizen legislature as Carter's lay in a citizen Presidency.

The GOP has as much chance of ousting Democratic incumbents as they do of firing civil servants. The rules which Congress has enacted to govern ethics and elections are egregiously egocentric. To broaden the Republican base in Congress, the GOP may have to demand that the base of all elected officials be broadened and their terms shortened. Congressional self-importance will die very hard, but Democratic euthanasia is a political impossibility. ■

Ripon: Update

TENNESSEE Gov. Ray Blanton (D) has said he will quit elective politics when his term expires rather than challenge Sen. Howard Baker, Jr. (R). "I plan on going back into business. I would not be a candidate for the U.S. Senate." The state GOP has chosen attorney Tom Beasley, who directed the 1974 Lamar Alexander and 1976 Ford campaigns, to be the next state chairman. Beasley succeeds Dortch Oldham.

CALIFORNIA Assemblyman Ken Maddy has stepped up his gubernatorial maneuvers in the wake of Attorney General Evelle Younger's vote for confirmation of Rose Bird to the California Supreme Court. Maddy, a moderate who backed Reagan last year, may be a candidate for the former GOP governor's blessing. Younger postponed a major fundraiser from March to June while a group called "Agricultural Friends of Ken Maddy" is strengthening his Central Valley base.

MAINE Sen William Hathaway's upcoming reelection campaign appears to be making him nervous. Hathaway never has had affectionate ties to his senior

colleague, Senator Edmund S. Muskie (D), and his votes against some of Muskie's pet causes over the past year have exacerbated the problem. The Maine congressional delegation, although split between two Democratic senators and two Republican congressmen, has had a relatively unified approach to the state's problems in recent years. Now that Hathaway has been succeeded as delegation chairman by U.S. Rep. David Emery, Hathaway appears to have black flies under his skin. Hathaway is in a biting mood because he can't determine if Emery or U.S. Rep. William Cohen (R) will oppose him. Hathaway has been sniping at Cohen---particularly on the Indian claims controversy---but Emery has been the one getting mad. The 1st C.D. congressman wrote Hathaway that "if we are not able to separate our responsibilities as elected officials from our individual political aspirations, then we will probably fail to meet the challenge that has been presented to us by these critical questions." Hathaway has been reluctant to agree to a truce. Cohen has settled for a moratorium of another kind; he isn't discussing whether he'll run for senator or governor. A decision may come later this spring.

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.

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Politics: South Dakota

ABOUREZK'S LAST STAND

The decision of Sen. James Abourezk (D) not to seek reelection has heated up South Dakota politics well in advance of the 1978 elections. Abourezk, whose pro-Arab, pro-Indian stands have given him a maverick reputation, was already in reelection trouble before he announced his retirement after one term. His announced intention to devote more attention to his family in his home state. It is suggested that when the letters urging him to reconsider stack up to two feet in his Senate office, Abourezk may do just that.

Had Abourezk stayed in the race, he probably would have been trounced by U.S.Rep. Larry Pressler (R-1st). A poll commissioned Pressler in January showed him defeating Abourezk, 81-19 percent, in the 1st C.D. and 70-30 in the 2nd C.D. Pressler is given the lead for the Republican nomination, but should Abourezk resign early---as has also been rumored---Pressler might have difficulty winning the nomination from the GOP state committee.

Pressler has created a moderate but maverick reputation---particularly through his habit of criticizing fellow Republicans. He has a phenomenal ability to say the right thing at the right time. He was one of only three Republicans to unseat an incumbent Democrat in 1974. In 1976, he won an incredible 81 percent of the vote.

His popularity within the GOP is less than overwhelming. He has not mended his fences---unless barbed wire has been used. His failure to endorse President Ford left a few thorns in Republican sides---particularly since Ford narrowly lost Pressler's district. Although he is considered too liberal by many party pros, if the party is looking for a winner, Pressler is it.

His closest rival for the nomination, U.S.Rep. James Abdnor, was defeated by Abourezk in Pressler's poll. He was also far behind Pressler in a poll of Republican preferences for the nomination. So far, Abdnor is interested in, but not committed to a race.

Should former GOP State Chairman Leo Thorsness enter the Senate contest, he and Abdnor would split the conservative vote and ensure Pressler's victory. Thorsness, a former POW who ran a strong but losing race against

Sen. George McGovern in 1974, is being urged to stay out of the race. Republicans reason that Thorsness is perceived as a one-issue (Vietnam) candidate. They also argue that Thorsness had his chance. (He did a creditable job as state chairman, returning the state legislature to Republican control and elected the state's first female Republican public utilities commissioner. He was succeeded in January by Arlene Ham, a former party vice chairman from Rapid City.)

Gov. Richard F. Kneip (D) is the Democratic Party's strongest candidate for the Senate seat. His personal life has attracted some public disfavor but such disfavor would be less of a factor in a Senate race than in a gubernatorial contest. The GOP's most likely candidate to succeed Kneip is Attorney General William Janklow, who combines a strong law and order image (which pleases rightwingers) with a deep personal sensitivity to human rights (which pleases moderates). Janklow has not yet committed himself to the gubernatorial race. If Kneip carries his campaigning skills and political IOUs down the Senate trail, then Lt. Gov. Harvey Wollman (D) would be the Democratic frontrunner. Wollman is an attractive, articulate official who would be a difficult gubernatorial target for the GOP.

Behind Janklow, there is a long line of Republican gubernatorial aspirants: House Speaker Lowell Hansen, a Sioux Falls bus line owner; State Sen. Clint Roberts, a rancher with a Marlboro Man appeal; LeRoy Hoffman, a wealthy former opera singer turned farmer; House Majority Leader Walter D. Miller; and State Rep. George Mickelson, son of a former governor. Roberts and Hoffman are very conservative while Mickelson and Hansen are younger and more moderate.

A Pressler Senate run would leave the 1st C.D. open to a congressional campaign by State Treasurer David Volk, a moderate who ran Ford's primary campaign in the state last year. He could be opposed by Hansen or Ron Williamson, director of the South Dakota League of Municipalities. Williamson could also be a candidate in the 2nd C.D. where Rapid City Mayor Art LaCroix (the only Indian mayor of a major state city) and Donald Ham, husband of the new state chairman, are also possibilities. ■

Commentary: Degovernment

LETTING SOME SUN SHINE ON SUNSET

by Robert D. Behn

Editor's Note: The following is excerpted from testimony by Dr. Behn before the Subcommittee on Intergovernmental Relations of the Senate Committee on Governmental Affairs. The subcommittee conducted hearings March 29 on proposed federal Sunset legislation.

Sunset Laws are specifically designed to combat one of the reasons that public policies are difficult to terminate---that they are designed for permanence. Indeed, Sunset Laws are a direct response to those features of the legislative oversight and budgetary process that perpetuate government programs.

Some of these features are quite formal, i.e., permanent and unlimited budget authorizations. Others are less formal but equally consequential, i.e., the practice of incremental budgeting. Behind all these, however, is a fundamental assumption: a government program should continue to exist until it is demonstrated that it should be terminated. The purpose of Sunset is to reverse that assumption---to create the attitude both inside government and without that any program should terminate unless it is demonstrated that it should be continued.

Thus, the basic question is: will a Sunset Law reverse this assumption? I think not. An assumption is just that---an assumption. It is not subject to manipulation by changing procedures, for the same assumption can informally circumvent a variety of formal procedures.

Executive agencies and legislative committees can be required to evaluate periodically every one of their programs---to prepare a zero-based or sunset review. But what will they do when their assumptions---that their program is obviously in the public interest---conflicts with the assumption of Sunset's authors? If an evaluation is required, it will be submitted; but no law can ensure that the evaluation be meaningful. A sunset review can always conclude that the consequences of termination will be a national tragedy.

The enactment of a new law often reflects a shift in both public and of-

ficial attitudes, and the adoption of Sunset can signal a reversal of the assumption about program continuation and termination. But a Sunset Law cannot force such a change. All it can do is give any new attitude an opportunity to find expression through the legislative decision-making process. What must be changed is a pervasive attitude, not a system of procedures.

After all, a large number of programs are already subject to periodic expiration of their authorizing legislation. Yet that does not mean they are terminated. Thus, in addition to subjecting all programs to periodic termination, Sunset would also subject all programs to prior evaluation.

But the new evaluation process would be dominated by the same groups---the agency that administers the program, the legislative committees responsible for oversight of the program, and the program's constituency---that controlled the old authorization process and guaranteed continuation. All these people may believe in the fundamental principle that every program should be terminated unless evaluation proves it worthy of continuation; but they will also believe that their program is, without a doubt, very worthy.

The comments of two agency administrators in Maryland concerning a state Sunset Law illustrate a point. "I have no objection to being reviewed," said one. "I object to being categorized with those who should be candidates for hanging." The head of the barbers' board remarked: "The concept is good...But I'm opposed to having barbers in this particular bill."

The challenge of Sunset is not to convince people that automatic and periodic termination and evaluation is good as a general principle, but that it ought to be applied vigorously and rigorously to the programs from which they most directly benefit.

Whether or not Sunset is adopted, policy termination will require a terminator. No new procedures can disguise that a reauthorization vote is a vote on termination. It may be

stated as a vote on whether or not to continue the program, but the clientele---if no one else---will make sure that that everyone voting knows it is a vote on whether or not to terminate. If the program to be ended has any reasonably organized clientele, there will be a fight over termination.

Consequently, termination will still require a terminator. Someone will have to make the case for termination---explaining publicly why some people should be denied benefits that they believe are honestly earned---and mobilize the termination coalition. The terminator, whether successful or not, will still make a significant number of dedicated and bitter enemies.

Thus, the second question is: will Sunset create any incentives for political leaders to become policy terminators? Again, I fear not. Unless the enactment of Sunset reflects not only a vague public antipathy to governmental inefficiency and ineffectiveness, but a clear understanding of the critical role of a policy terminator in eliminating inefficient and ineffective programs, any terminator will make many more dedicated enemies than friends. Consequently, political leaders will find it much more rewarding to devote their time and energies to creating new programs---and ensuring the continuation of those programs that most benefit their constituents---than in termination.

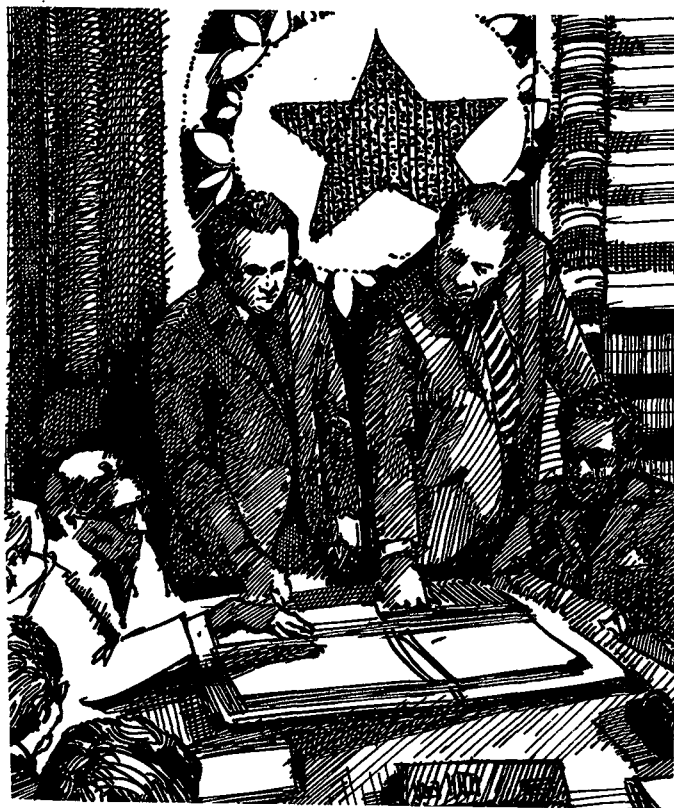
Sunset legislation relates directly to very few of the conditions that facilitate termination. The institution of a Sunset Law would do nothing to enlarge the constituency of any particular policy that was a candidate for termination. It would not focus public attention on the harm of any particular policy, nor would it stimulate the creation of appropriate severance payments to mollify a policy's beneficiaries.

Moreover, Sunset might actually abet compromise rather than preclude it, for by requiring a large number of policies to be reauthorized at the same time, Sunset creates an opportunity for logrolling. Lobbyists and legislators more concerned about the continuation of their favorite programs than in the termination of any others will be more than willing to trade their support for the continua-

tion of other policies to ensure that their own are not terminated. The result could be that a program that might be terminated if it were considered alone could be continued if its supporters were able to arrange cooperation with the backers of some less vulnerable programs.

Finally, Sunset would not designate outsiders to serve in the critical position of terminator. Indeed, Sunset would entrust both the evaluation of each policy and the advocacy of its termination to precisely those legislators who have been most closely associated with the policy's past. Last year, John W. Gardner of Common Cause argued before this subcommittee that "Substantial committee reorganization, including adoption of a system of rotation of committee members is a prerequisite to effective Sunset oversight." Yet, there appears to be little support for this critical component of any Sunset system.

This analysis of the Sunset laws is based primarily upon my own tentative judgments concerning the termination process. These judgments may not provide accurate or even informative descriptions of how public policies are terminated---nor assist in



making intelligent decisions about how they can be. But to the extent that these judgments are revealing and valid, they presage little impact for a Sunset Law. The difficulties associated with policy termination will not be significantly alleviated, the disincentives for political leaders to become terminators will not be eliminated, and the conditions that facilitate termination will not be created. The enactment of a Sunset Law will not result in a significant increase in the termination of government programs.

If policy termination is so difficult and rare, and if a Sunset Law will do little to make it easier or more frequent, what can be done about the durability of public programs---particularly ineffective, inefficient, duplicative and obsolete ones? Can anything be done to enhance the prospects for termination? I think so---but I also think that the immediate benefits will be few.

The first task has already been undertaken by this subcommittee through the hearings that it has held. We know that government programs are rarely terminated; we need to understand why this is so and what precisely is required to terminate any individual one. Termination efforts can be more successful if would-be terminators begin with a clearer understanding of what must be done to achieve success.

Further, if it is understood how few are the political dividends for undertaking any termination effort, terminators may be rewarded with a few dedicated friends. Any significant increase in program termination will have to be preceded by an increased appreciation of the difficulties of termination and of the plight of the terminator.

Second, although my best estimate is that Sunset will have little impact, the idea would probably be worth adopting as a limited experiment. We know so little about the termination process, that the detailed analysis of the consequences of a limited Sunset provision might be very revealing. The results of such a conscious and explicit experiment could help Congress decide whether to discard the idea or to make Sunset permanent and universal---and it could suggest how the concept should be revised or improved.

Because of equity considerations, this subcommittee has decided against testing Sunset on any selected list of spending programs. The beneficiaries of the targeted programs would naturally believe that the committee had discriminated against them. Most of the states have enacted Sunset legislation, however, have done so strictly for regulatory agencies. This might be a useful approach for a federal experiment.

There appears to be a vague consensus that (more than any other governmental function) many federal regulatory activities could be eliminated. Certainly, these are some of the most frequently criticized government programs. A federal Sunset Law for regulatory activities may not, for the reasons stated above, result in the termination of many federal agencies, programs or policies. But if Sunset cannot work here, it certainly will have little impact on federal spending programs in general.

Finally, the most profitable thing that political leaders who are concerned about the lack of program termination can do is to terminate a program. Every new effort increases our knowledge of the termination process, and every successful effort demonstrates to others that similar undertakings may not be futile.

Policy termination is a political process, and every termination---even if initiated under Sunset---will be realized only after a major political fight. It seems more useful, therefore, to focus political resources directly on the most difficult task, the specific termination itself, rather than on altering general procedures that will do little to ease the terminator's burden.

Public policies are rarely terminated more because of our political values and the informal arrangements of our political system than because of the formal procedures for governmental decision-making. This should not be surprising. Any public policy objective is difficult to achieve precisely because policy outcomes are often determined less by the procedural and structural institutions of government---which are relatively easy to modify---than by complex public attitudes, the incentives for political behavior, and the

informal processes of extra-governmental decision making (none of which are subject to central control). If the termination of public policies is to increase, it will be the result not of changes in governmental procedures mandated by new laws, but of fundamental changes in personal and political behavior based on new knowledge and new values. ■

Contributor Note: Dr. Robert D. Behn is an associate professor of policy sciences at Duke University's Institute of Policy Sciences. Behn has written on the termination of the Massachusetts reform school system and the Department of the Interior's dune-preservation program on North Carolina's outer bank.

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● Nominations for officers of the Ripon Society can be sent to the Society's Washington office during April. The Society will hold the annual meeting of the National Governing Board in New York on May 14-15. Sen. Howard Baker, Jr. will be the featured speaker at the Society's dinner at the Princeton Club May 14. Back in Washington, Steve Livengood has joined Sandy Thompson in staffing Ripon's office. Livengood is assistant to the president and Thompson is managing director. Livengood, a former assistant to the city manager of Marietta, represents the growing power of Georgia in Washington.

● Among the recent activities of the Chicago Chapter was a January 20 dinner meeting on "Reorganizing and Reforming the State Board of Elections." Speakers including Franklin J. Lunding, Jr., chairman of the State Board of Elections; State Rep. William L. Kempiners (R) of Joliet; State Rep. Michael J. Madigan (D) of Chicago; and Charles R. Bernardini, chairman of the Election Reform Committee of the Chicago Council of Lawyers. The Chapter sponsored a debate February 24 between two candidates for mayor of Evanston: Aldermen Lola Flamm and Jay Lytle. U.S. Rep. Tom Railsback was the guest of honor at a cocktail reception March 3.

● The New Leadership Fund, a new fundraising vehicle for progressive Republican candidates, was featured in an April 1 article by the New York Times' Warren Weaver. The fund was organized last year by the Ripon Society and distributed small contributions to 37 candidates although a direct mail appeal was not distributed to 25,000 persons until this spring. "The time has come for the American people to apply the hard-learned lessons of government corruption and bureaucratic bungling. It is time for a people whose patience and income is being overtaxed to speak out, to unite for the forces of moderation and sanity in our politics and our government. While the too-conservative and too-radical have been rallying to make their influence heard for the past decade, relatively little has been said and done for the man and woman in the middle," New Leadership says in its fundraising appeal. The Ripon-sponsored group is governed by a six-member National Board. Its members include Jeanne Cronin, Lee Huebner, Jared Kaplan, Frederic R. Kellogg, J. Eugene Marans, and Tanya Melich. The fund's advisory council includes Audrey Colom, Charles Goodell, Jane Hardaway, Linwood Holton, and Gerridee Wheeler. Further information on the fund can be obtained by writing New Leadership Fund, 800 18th Street, N.W., Washington, D.C. 20006.

● New Memphis Chapter president Linda Miller was unsuccessful in a recent attempt to win appointment to fill a vacancy on the Memphis City Council. She was one of three top contenders for the position. Miller is administrative assistant for the Tennessee Coordinating Committee of the National Commission on the Observance of International Women's Year. Other Ripon members on the Tennessee committee are Happy Jones, Urania Alissandratos, Mary Robinson, and Jocelyn Wurzburg, who was named last year to the National Commission. The chapter's officers this year include Bill Gibbons, vice president; Julia Alissandratos, treasurer; Erma Seaton, secretary; and John Fisher, research director. Tom Brock, Bill Robilio, and Gibbons are the chapter's NGB members. Another chapter member, Robert L. Morris, was selected last year to be executive assistant to Memphis Mayor Wyeth Chandler.

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