health care benefits and requiring the employees to pay part of the premium. The company also proposed to reduce sick leave and cut back on job security protections. In addition, the company would not even consider the wage increase that the workers are seeking.

The company left workers no choice but to go on strike when their current contract expired—and at midnight last Sunday they did so.

Many of the affected employees earn less than $6 an hour. All of them count on health benefits for themselves and their families. These employees include Marilyn and Donnie Henderson, a husband and wife from Methuen, MA. They began working at Shaw's over 15 years ago, when the company was a family-owned business. Now it is owned by a corporation based in Britain. Donnie Henderson suffers from emphysema. He needs the health insurance. So do the couple's children, one of whom is disabled.

The Hendersons and thousands like them are hardworking, dedicated employees of Shaw's. They went on strike only as a last resort, because they can't afford to take the cuts the company demanded.

Today, it appears that the company and union have reached a tentative settlement of their dispute. Union members will vote tomorrow on whether to ratify the agreement. Employees could be back on the job by this weekend.

All of us agree that labor disputes are best resolved when the parties themselves can reach agreement. I am hopeful that this is what has happened between Shaw's and its employees.

But, if the matter is not resolved, and workers are forced to continue to walk picket lines, I am concerned that the company might again turn to the use of replacement workers. Shaw's used replacements from the beginning of this strike, and I regret that. This tactic is hostile to loyal workers like the Hendersons, and hostile to the collective bargaining process. In strikes where permanent replacements are used, workers lost the most, but studies show that everyone else loses as well. Employers suffer, too, because strikes are prolonged.

According to a study of the period from 1935 to 1973, the average duration of a strike was seven times longer in cases where permanent replacements were used.

Another study found that, where employers neither announced an intention to hire permanent replacements nor actually hired them, the average length of strikes was 27 days, but it soared to 84 days when permanent replacements were hired.

The ability to hire permanent replacements tilts the balance unfairly in favor of businesses in labor-management relations. Hiring permanent replacements encourages management intransigence in negotiating with labor. That practice encourages employers to replace current workers with new workers willing to settle for less—to accept smaller paychecks and other benefits.

This tradeoff is unacceptable for the 6,500 striking workers at Shaw's Supermarkets, and it is unacceptable for working men and women across the country. Therefore, if the tentative settlement between Shaw's and its employees breaks down, and Shaw's tries to hire replacement workers again, I intend to offer legislation to prohibit this practice. The Workplace Fairness Act will ensure that the right to join a union and bargain over wages and employment conditions remains a meaningful right, instead of a hollow promise. The bill reaffirms our commitment to the collective bargaining process, and to a fair balance between labor and management.

I am hopeful that employees and Shaw's management will resolve all their differences this week. But if they do not, and replacement workers appear at the supermarkets again, I intend to offer a bill to outlaw that tactic, and will urge my colleagues to approve it.

WILLIAM J. BRENNAN, JR., GUARDIAN OF THE CONSTITUTION

Mr. MOYNIHAN. Mr. President, current Supreme Court Justice David Souter captured the legacy of jurisprudence left behind by William J. Brennan Jr., when he said: ''Justice Brennan is going to be remembered as one of the most fearlessly principled guardians of the American Constitution that it has ever had and ever will have.''

In an era when no institution is more embattled than the U.S. Constitution, we must make special note of the passing of such ardent guardians. In a manner that endeared him equally to friend and foe, Justice Brennan matched the importance of his decisions with literary acumen. With language that could be compared to the authors of the Constitution, Justice Brennan guarded the constitutional principles—most especially the freedom to criticize one's government.

Madison's original version of the first amendment submitted on June 8, 1789, provided that: ''The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.'' Justice Brennan's identification of Madison's inviolable protection was crucial during the civil rights movement when members of the press were being figuratively gagged for their criticism of public officials. Thus, Brennan wrote in The New York Times versus Sullivan:

We consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. * * *

A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions—and to do so on pain of libel judgments virtually unlimited in amount—leads to a comparable ''self censorship.'' Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. * * *

Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which ''steer far wider of the unlawful zone.'' The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the 1st and 14th Amendments.

In 1789, James Madison warned that, ''If we advert to the nature of republican government, we shall find that the censorial power is in the people over the government, and not in the government over the people.'' Exactly 200 years later, Brennan expanded this underlying premise of constitutionally protected forms of free expression in the case, Texas versus Johnson, 1989:

If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. * * *

There is, moreover, no indication—either in the text of the Constitution or in our cases interpreting it—that a separate juridical category exists for the American flag alone. Indeed, we would not be surprised to learn that the persons who framed our Constitution and wrote the amendment that we now construe were not known for their reverence for the Union Jack.

The first amendment does not guarantee that other concepts virtually sacred to our Nation as a whole—such as the principle that discrimination on the basis of race is odious and destructive—will go unquestioned in the marketplace of ideas.

We decline, therefore, to create for the flag an exception to the joust of principles protected by the First Amendment. * * *

The way to preserve the flag's special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong * * * We can imagine no more appropriate response to burning a flag than waving one's own. * * *

Justice Brennan came to embody the defense of a Madisonian concept of the first amendment. We shall not soon forget his legacy, nor the critical mantle he has left behind.

I ask unanimous consent that an Editoral from the New York Times of July 25, and an article by Anthony Lewis of July 28, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JUSTICE BRENNAN'S VISION

William J. Brennan Jr., who died yesterday at the age of 91, brought to his long and productive career on the United States Supreme Court a tenacious commitment to advancing individual rights and the Constitution's promise of fairness and equality. He served for 34 years, a tenure that spanned eight Presidents.

Named to the Court in 1956 by Dwight Eisenhower, Justice Brennan saw the law not as an abstraction but as an immensely powerful weapon to improve society and enlarge justice. As such, he was a crucial voice on

the Warren Court of the 1960's, a body that boldly expanded the role of the Federal courts and the Constitution itself to protect individual liberties.

Yet even when the Court shifted in a more conservative direction under Chief Justices Warren Burger and, later, William Rehnquist, Justice Brennan was not content to play a marginal role as an eloquent dissenter. Armed with a keen intellect, a forceful personality and a gift for building coalitions, he had surprising success in mustering narrow majorities to keep alive the legacy of the Warren Court and its core notion that the Constitution was a living document that could and should be interpreted aggressively.

''There is no individual in this country, on or off the Court, who has had a more profound and sustained impact upon public policy in the United States for the past 27 years,'' said an article in the conservative journal National Review in 1984, and it is hard to disagree with that assessment. Justice Brennan was the author of 1,350 opinions, many of them landmark rulings that altered the political and social landscape.

He left his mark on a wide range of issues. Banker v. Carr, in 1962, asserted the one-person-one-vote doctrine that transformed democracy and, through reapportionment, the composition of the nation's legislatures. His famous First Amendment ruling in New York Times v. Sullivan in 1964 reconfigured the law of libel to give ''breathing space'' for free expression and the robust debate of public issues. In Goldberg v. Kelly, a 1970 ruling of which he was particularly proud, Justice Brennan initiated what turned out to be a steady expansion of the 14th Amendment's guarantee of due process by ruling that a state could not terminate a welfare recipient's benefits without a hearing.

Over all, Justice Brennan's greatness was rooted in his vision of the law as a moral force and his understanding that the ''genius of the Constitution'' would be betrayed if the Court insisted on the narrow, static doctrine of original intent, the notion that the Constitution can best be interpreted through the eyes of the Framers. The unique feature of the Constitution, he argued instead, was ''the adaptability of its great principles to cope with current problems and needs.''

That vision and driving passion are not thriving in today's Court. Like Justice Brennan himself, they are sorely missed.

ABROAD AT HOME

(By Anthony Lewis)

REASON AND PASSION

MINNEAPOLIS.—William J. Brennan Jr. once said, in conversation, that every Supreme Court justice with whom he had served was as committed as he was to the Constitution. It was not just an idle remark. He meant that he respected his colleagues' faith in their differing understandings of what the Constitution requires.

Justice Brennan's extraordinary influence on the Court, his ability to shape majorities, was often ascribed to his personal charm and kindness. But those qualities would not have persuaded men and women of strong views. I think, rather, that his colleagues felt his respect for them—and felt in him an intellectual force that was the stronger because it was accompanied not by arrogance but by modesty.

Justice Brennan's character won him affection on the Court across ideological lines. Justice Antonin Scalia, calling him ''probably the most influential justice of the century,'' said. ''Even those who disagree with him the most love him.'' Justice David Souter, who was appointed to the Court on Justice Brennan's retirement in 1990, was pressed at his confirmation hearing to distance himself from the expansive Brennan view of human dignity and freedom. He said:

''Justice Brennan is going to be remembered as one of the most fearlessly principled guardians of the American Constitution that it has ever had and ever will have.''

Outside the Court, Justice Brennan's critics on the political right denounced him in extravagant terms, calling him an ''activist'' who invented constitutional protections of liberty. But even in their own terms those critics missed the point.

In the great decisions with which he is especially linked, Justice Brennan was passionately faithful to the principles that the Framers expressed in the spacious phrases of the Constitution: ''the freedom of speech,'' ''due process of law'' and the rest. What he did was to apply those principles to changed conditions.

Thus James Madison, drafter of the First Amendment, intended it to protect Americans' right to criticize their rulers—however harshly, even falsely. At the time, civil libel actions did not menace that freedom. But when Southern politicians began using libel, in the 1960's, as a way to threaten press reporting of the civil rights movement. Justice Brennan saw that libel suits, too, must conform to Madison's principle. That was the thrust of his majestic opinion in New York Times v. Sullivan.

Again, the courts over many years kept hands off the issue of legislative districting. But when state legislatures came to be controlled by small numbers of voters in rural districts, and the legislators in power refused to redistrict, Justice Brennan grasped the challenge to democracy. His remarkable opinion in Baker v. Carr in 1962—one that no other justice could have made the Court's—opened the way for a judicial scrutiny that is now universally accepted.

More broadly, Justice Brennan saw that the Constitution's guarantees must be applied to the reality of the vast expansion of government in modern times. In Goldberg v. Kelly in 1970, he wrote for the Court that government benefits—on which so many now depend—could not be withdrawn without notice and a hearing.

He ''translated from the level of principle to legal reality,'' Justice Stephen Breyer said, adding: ''That is an enormous contribution.''

We have a more conservative Supreme Court now, and it has overturned some of Justice Brennan's opinions. But the heart of his legacy remains. Part of that legacy is in the institution itself.

Here in Minneapolis the other day, at the Eighth Circuit Judicial Conference, Justice Clarence Thomas spoke movingly of the Court and Justice Brennan. ''I don't think there was a more decent or more brilliant human being,'' he said. He described how well the justices get along today despite their differences; he said he hoped Americans would get over ''the presumption that all is wrong with our institutions'' and realize that ''they are working and those in them deserve our respect.''

Justice Brennan left us his vision of American freedom. Just before his retirement he wrote the Court's opinion in the second flag-burning case. ''We are aware,'' he said, ''that desecration of the flag is deeply offensive to many.'' But ''punishing the desecration of the flag dilutes the very freedom that makes this emblem so revered, and worth revering.''

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ENTITLED ''U.S. ARCTIC RESEARCH PLAN, BIENNIAL REVISION: 1998–2002''—MESSAGE FROM THE PRESIDENT—PM 57

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Governmental Affairs.

To the Congress of the United States:

Pursuant to the provisions of the Arctic Research and Policy Act of 1984, as amended (15 U.S.C. 4108(a)), I transmit herewith the fifth biennial revision (1998–2002) to the United States Arctic Research Plan.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *July 29, 1997.*

MESSAGES FROM THE HOUSE

At 11:25 a.m., a message from the House of Representatives, delivered by one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 103. An act to expedite State reviews of criminal records of applicants for private security officer employment, and for other purposes.

H.R. 1596. An act to amend title 28, United States Code, to authorize the appointment of additional bankruptcy judges, and for other purposes.

H.R. 1855. An act to establish a moratorium on large fishing vessels in Atlantic herring and mackerel fisheries.

H.R. 1953. An act to clarify State authority to tax compensation paid to certain employees.

H.R. 2005. An act to amend title 49, United States Code, to clarify the application of the Act popularly known as the ''Death on the High Seas Act'' to aviation incidents, and for other purposes.

H.R. 2209. An act making appropriations for the Legislative Branch for the fiscal year ending September 30, 1998, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con Res. 74. Concurrent resolution concerning the situation between the Democratic People's Republic of Korea and the Republic of Korea.

H. Con. Res. 98. Concurrent resolution authorizing the use of the Capitol grounds for the SAFE KIDS Buckle Up Car Seat Safety Check.

H. Con. Res. 124. Concurrent resolution expressing the sense of the Congress regarding acts of illegal aggression by Canadian fishermen with respect to the Pacific salmon fishery, and for other purposes.