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## RESOLUTION IN SUPPORT OF U.S. ATTORNEY FOR THE DISTRICT OF NEW JERSEY

Mr. CASE. Mr. President, I am happy to ask unanimous consent to have printed in the RECORD a resolution adopted by the trustees of the Essex County Bar Association in support of the U.S. attorney for the District of New Jersey.

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

ESSEX COUNTY BAR ASSOCIATION,
*Newark, N.J., March 23, 1970.*

Hon. CLIFFORD P. CASE,
*Old Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR CASE: The Trustees of the Essex County Bar Association have asked me to forward to you a copy of the following Resolution adopted at their meeting of March 10, 1970:

Whereas certain statements have been made in the Congress of the United States reflecting on the integrity and ability of the United States Attorney for the District of New Jersey to fulfill the requirements of his office; and

Whereas the basis for said statement has been reviewed by the Trustees of the Essex County Bar Association:

Now, therefore, be it resolved that the Trustees of the Essex County Bar Association reject any attack on the integrity and loyalty of the United States Attorney for the District of New Jersey and affirm their belief in his ability to carry out properly the functions of his office.

It is further resolved that a copy of this resolution be sent to a Congressman and a United States Senator for the purpose that it be spread upon the records of the House of Congress and the Senate.

Sincerely,

BILL KIRCHNER,
*Secretary.*

## VIETNAM AND DOMESTIC NEEDS

Mr. MONDALE. Mr. President, an early end to the war in Vietnam is and will remain a top priority national goal.

If and when it is attained, we hope that the resources that are freed can be turned to the urgent domestic needs which have accumulated to crisis proportions while the fighting has gone on. In addition, we are exploring other areas in which military spending can be reduced, at least to avoid preemption of the "peace dividend" by the Defense Department, and possibly to find more funds for pressing nonmilitary needs.

Surely a reordering of priorities along these lines is in the national interest. We must, however, also recognize the problems of transition it will entail, particularly for those States and communities which have a heavy economic dependence on defense and aerospace business. In the interest of overcoming those problems, and also to facilitate the most rapid possible transfer of resources, we should be moving now on a national program of planning for economic conversion.

The junior Senator from South Dakota (Mr. MCGOVERN) has long been a leading advocate of action in this field. He is the author of S. 1285, the Economic Conversion Act, which aims to develop practical alternatives for communities, resources, and manpower affected by Defense cutbacks.

Last Sunday, the Washington Post, along with a number of other newspapers, published an article written by Senator MCGOVERN in which he describes the depth and breadth of the conversion issue and outlines the steps needed to deal with it. I ask unanimous consent that the article, entitled "After Vietnam, Economic Pains of Peace," be printed in the RECORD.

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

[From the Washington Post, Mar. 15, 1970]

AFTER VIETNAM, ECONOMIC PAINS OF PEACE

(By Senator GEORGE MCGOVERN)

For all of our deep national longing, the end of the Vietnam war will not be an unmixed blessing.

For many Americans it can mean economic disaster. For all of us it may be at best the termination of a national tragedy, coupled with the waste of an opportunity to find new, more hopeful national directions.

The dominant expectation about the war's end is probably twofold. The killing and mutilation of American youth will be stopped, and some $20 to $30 billion annually will be freed to meet accumulated needs at home. At last we will have the wherewithal to improve our schools, to tackle such enormously complex problems as transportation and housing and such costly ones as hunger and poverty, to cope with the crime and violence which have become characteristic of life in America, and to end the despoilation—and perhaps begin the reclamation—of our environment.

But there is another side.

An early consequence of peace will be a reduction of some 800,000, and possibly more, in military manpower, bringing the total down at least to prewar levels. These persons, along with thousands of civilians working for defense agencies on assignments related to Vietnam, will have to be absorbed by the rest of the economy. The elimination of jobs is expected to occur on a scale approaching two million, including shrinkage in the private job market as a result of reductions in Vietnam orders.

CONCENTRATED CUTS

The least skilled and the most recently hired, probably many among racial minorities, will be the first to go and the last to find new jobs. The gloomiest outlook is suggested by a poverty program official in Connecticut who says that "if the layoff is not properly handled by federal and state agencies—and right now nothing is being done, at any level—then you are going to see blood flowing in the streets."

But there will be trauma among highly skilled technicians and scientists as well. The cancellation of the $3 billion Manned Orbiting Laboratory last June found top-flight technicians leaving McDonnell-Douglas' plant in Huntington Beach, Calif., with no place to go and with little prospect for comparable work in their areas of specialty. Vietnam employs thousands like them.

Because defense firms tend to be concentrated in a few states and localities, the economic impact will be concentrated as well. Some 37.4 per cent of California's manufacturing workers are employed in defense-related industries. That state can expect to lose about 130,000 jobs when the war is over, and it can expect about 80,000 returning servicemen to be added to its job market at the same time.

Moreover, there is unevenness of military work by occupation. More than half of the nation's research-and-development engineers are working on behalf of the Pentagon, directly or indirectly. Some of the largest universities—including the Massachusetts Institute of Technology, Johns Hopkins University, Stanford University, the California Institute of Technology and the University of Michigan—are concentration points of Pentagon work in the universities. Indeed, two of these, M.I.T. and Johns Hopkins, are listed among the 100 largest military-industrial contractors by the Department of Defense.

RIPPLE EFFECT

The Arms Control and Disarmament Agency has documented the ripple effects these cutbacks are likely to have. Its study of a layoff of 6,800 Martin Co. workers in Denver in 1963 disclosed that the economic expansion of the entire state was slowed and the expansion in Denver virtually came to a halt. The recovery took two full years.

We can be quite sure, then, that there will be a painful adjustment for many Americans. Its breadth and depth depend upon a variable which continues to elude a consensus among forecasters—the state of the total economy and the dynamism of nonmilitary sectors. In a level economy, the drop in military demands could easily stimulate a recession. If it were to coincide with a general slowdown, which many economists are predicting for 1970, the results could be serious indeed.

Apart from these less welcome concomitants of peace, we must recognize that the manpower, the technology and even the money involved in the war effort will not be turned quickly to peaceful priorities. The unemployed strategists from the Pentagon will certainly require some redirection before they can make meaningful contributions in other capacities. Unless some serious effort is made to locate appropriate uses, facilities which have been built up as needed by the war may be idled when they could be made useful in important domestic tasks. The Congress could doubtless find ways to dispose of $30 billion, but without careful preparation and assessment of alternative uses, much of it would doubtless be wasted or used less effectively than it should. Hence, peace can mean lost opportunities as well as economic difficulty.

In the face of these prospects, defense contractors appear to be little concerned. Their assumption seems to be that an end to the war will bring a successful rush by the Pentagon to claim the great bulk of the "peace dividend" to flesh out military wish lists developed during the Vietnam years. Their prognosis is that new cold war orders will come quickly to replace declining hot war demands.

REASONS TO RESIST

The events of 1969 may have given them pause, depending upon their judgments as to the probable longevity of Congressional demands for more careful scrutiny of military spending and for more persuasive justifications for new weapons systems. Certainly they must take into account the fact that after reducing military money requests an average of only 0.4 per cent a year in the previous 10 years, Congress squeezed 7.5 per cent, or $5.6 billion, out of the Pentagon budget for fiscal 1970, much of it through the effort of traditional allies of the armed services.

But the contractors have other reasons to resist conversion. Those whose sole or major customer is the Pentagon would, in terms of their sales capabilities, be most attuned to seeking new government business in the civilian sector rather than in private markets. But they know, particularly after recent closings of privately run Job Corps camps, that contracts in the social area carry greater risk and that budgets are more closely scrutinized. Firms specializing in problem-solving know that civilian problems tend to be infinitely more complex than such questions as whether it will take four or five bombs to achieve a desired target kill probability.

At this point the public is faced with a choice. If the reliance of the armament industry on expanded defense orders is well placed, the war is unlikely to free vast sums for domestic problems after all. We will simply shift from one kind of defense spending to another. If the industry's reliance is misplaced, the damage done by an end to the Vietnam war will be compounded by slackened overall defense outlays.

It is against this background that 35 of us in the Senate and some 50 members of the House have offered the Economic Conversion Act. In the conviction that no government agency can or should accumulate enough knowledge about each of the thousands of military contractors to formulate specific conversion plans, we have proposed that the contractors themselves develop alternative uses for the facilities and manpower. The bill would require conversion planning as a condition of contract fulfillment.

In addition, it would establish a National Economic Conversion Commission, made up of agency heads and of public members, to define further federal contributions to the conversion effort and to make specific recommendations to the President and the Congress. The commission should work extensively with arms manufacturers and defense personnel to help determine, under its estimates of future public spending patterns, the nonmilitary areas to which specific resources might be most readily transferable.

Our proposal aims to ease the transition from war to peace. I readily confess to another motive. I think we should go as far as we can toward freeing the vast constituency of the Pentagon from its economic dependence upon arms spending, because in the process we can diminish pork barrel pressures and elevate rational assessments of need in the debate over defense spending.

The importance of the plan extends, therefore, to both practical operation and national priorities. It can minimize the harm and maximize the advantages of military cutbacks. At the same time, it can help make possible the cuts that should be made, and it can serve as convincing evidence that wise business planners are those who exert their enterprise toward making our society a better place to live.

## THE CARSWELL NOMINATION

Mr. GURNEY. Mr. President, about 2 months ago, the Georgetown University Law School invited me to state for the record my views on the nomination of Judge G. Harrold Carswell to be an Associate Justice of the U.S. Supreme Court. My article appeared in the February 18, 1970, edition of the Georgetown Law Weekly. I ask unanimous consent that it be printed in the RECORD.

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

REMARKS OF SENATOR EDWARD J. GURNEY

In commenting on his judicial record the New York Times had this to say about Judge G. Harrold Carswell:

"These opinions reveal a jurist who hesitates to use judicial power unless the need is clear and demanding; who finds few controversies that cannot be settled by invoking some settled precedent, and who rarely finds the need for reference to the social conflict outside the courtroom that brought his cases before him."

The Times writer no doubt thought of this characterization as a rebuke of Harrold Carswell and as a damning criticism of his judicial attitudes. I think the criticism is not only fair and accurate, but I also think it is a highly laudatory statement!

For too many years, our Supreme Court justices, almost to a man, have acted without the judicial restraint which in years past was the universally accepted hallmark of a great jurist. Similarly, our high court has too often sought to interpret the law, not with reference to the constitution, congressional intent or precedent, but by measuring the enactment against the individual justices' own private notions of wisdom or virtue. In support of this proposition, and as a clear statement of the dangers inherent in such a course, I refer to Mr. Justice Frankfurter (AFL v. American Sash Co. 335 U.S. at 555):

"But there is reason for judicial restraint in matters of policy deeper than the value of experiment: it is founded on a recognition of the gulf of difference between sustaining and nullifying legislation. This difference is theoretical in that the function of legislating is for legislatures who have also taken oaths to support the Constitution, while the function of courts, when legislation is challenged, is merely to make sure that the legislature has exercised an allowable judgment, and not to exercise their own judgment, whether a policy is within or without 'the vague contours' of due process. Theory is reinforced by the notorious fact that lawyers predominate in American legislatures. In practice also the difference is wide. In the day-to-day working of our democracy it is vital that the power of the non-democratic organ of our Government be exercised with rigorous self-restraint. Because the powers exercised by this Court are inherently oligarchic, Jefferson all of his life thought of the Court as 'an irresponsible body' and 'independent of the nation itself.'"

CRITICISM OF THE COURT—BY THE COURT

One of the popular myths of the American liberal is that all criticism of the Warren Court necessarily originates with rustic bumpkins, racists or fascists. If one raises his voice against the Warren Court, so the myth goes, the speaker is automatically suspect of lacking compassion, intelligence or decency. The most effective means I know of dispelling this myth is to turn to United States reports and listen to the language of dissent.

Mr. Justice Whittaker in Mapp v. Ohio, 367 U.S. 643 (1961):

". . . The Court, in my opinion has forgotten the sense of judicial restraint which, with due regard for stare decisions, is one element that should enter into deciding whether a past decision of this Court should be overruled. . . . The action of the Court finds no support in the rule that decision of constitutional issues should be avoided wherever possible. . . . The unwisdom of overruling Wolf without full-dress argument is aggravated by the circumstance that that decision is a comparatively recent one (1949) to which three members of the present majority have at one time or another expressly subscribed, one to be sure with explicit misgivings. I would think that our obligation to the States on whom we impose this new rule as well as the obligation of orderly adherence to our own processes would demand that we seek that aid which adequate briefing and argument lends to the determination of an important issue. It certainly has never been a postulate of judicial power that merely altered disposition, or subsequent membership on the Court, is sufficient warrant for overturning a deliberately decided rule of constitutional law."

Mr. Justice Steward in Escobedo v. Illinois, 378v. 478 (1964):

"The Court says that what happened during this investigation 'affected' the trial. I had always supposed that the whole purpose of a police investigation of a murder was to 'affect' the trial of the murderer, and that it would be an incompetent, unsuccessful, or corrupt investigation which would not do so. . . . Supported by no stronger authority than its own rhetoric, the Court today converts a routine police investigation of an unsolved murder into a distorted analogue of a judicial trial. It imports into this investigation constitutional concepts historically applicable only after the onset of formal prosecutorial proceedings. By doing so, I think the Court perverts those precious constitutional guarantees, and frustrates the vital interests of society in preserving the legitimate and proper function of honest and purposeful police investigation."

Mr. Justice Black in Hamm v. Rock Hill 379 U.S. 306, (1964):

"Nothing in the language or history of the 1964 Act makes the Court's reading into it of a purpose to interfere with state laws 'inevitable' or even supportable, nor in any way justifies the Court's off-hand assertion that it is carrying out the 'legislative purpose.' For I do not find one paragraph, one sentence, one clause, or one word in the 1964 Act on which the most strained efforts of the most fertile imagination could support such a conclusion. And in what is perhaps the most extensive and careful legislative history ever compiled, dealing with one of the most thoroughly discussed and debated bills ever passed by Congress, a history including millions and millions of words written in tens of thousands of pages contained in volumes weighing well over half a hundred pounds, in which every conceivable aspect and application of the 1964 Act were discussed ad infinitum, not even once did a single sponsor, proponent or opponent of the Act intimate a hope or express fear that the Act was intended to have the effect which the Court gives it today."

Mr. Justice Harlan in Baker v. Carr. 369 U.S. 186 (1962):

"The Court today reverses a uniform course of decision established by a dozen cases, including one by which the very claim now sustained was unanimously rejected only five years ago. . . Such a massive repudiation of the experience of our whole past in asserting destructively novel judicial power demands a detailed analysis of the role of this Court in our constitutional scheme. . . In effect, today's decision empowers the courts of the country to devise what should constitute the proper composition of the legislatures of the fifty States. If state courts should for one reason or another find themselves unable to discharge this task, the duty of doing so is put on the federal courts or on this Court. . . There is nothing judicially more unseemly, no more self-defeating than for this Court to make in terrorem pronouncements, to indulge in merely empty rhetoric, sounding a word of promise to the ear, sure to be disappointing to the hope. . . To find such a political conception legally enforceable in the broad and unspecific guarantee of equal protection is to rewrite the Constitution. . ."

These are strong words and all the stronger because of their source. I could go on with this recitation but I think the point is made: there is a body of valid and very telling criticism of the Warren Court from very eminent and responsible commentators, including the present membership of the Supreme Court. The best summation of the criticism that I know is contained in the address of Professor Alexander M. Bichel, Chancellor Kent Professor of Law and Legal History at the Yale Law School who was last year's Holmes lecturer at my alma mater, the Harvard Law School. Professor Bichel gave the following analysis:

'The Warren Court has come under professional criticism for erratic subjectivity of judgment, for analytical laxness, for what amounts to intellectual incoherence in many opinions and for imagining too much history . . . The charges against the Warren Court can be made out, irrefutably and amply."

Professor Bichel has expanded his Holmes lectures into a book entitled "The Warren Court and the Idea of Progress" which will be