

**The Most Un-Nerving Rumor Of The Week**

Could it be that Martha Mitchell is really a Weatherwoman, the biggest rock-thrower and window-smasher of them all? Is it possible she was recruited by the Young Anarchist League in Pine Bluff, Ark., and assigned at a tender age to work inside the Republican Party? Our sympathy for the Attorney General transcends our political differences. At press time he had neither divorced nor murdered his wife. We nominate him the Most Forbearing Husband of the year.

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## **The Real Meaning Of Nixon's Judicial Philosophies**

In the general condemnation of the President's outburst over the Carswell rejection, one point seems to have been rarely made, if at all. When Nixon spoke of the right of the South and "its legal philosophy" to be represented on the Supreme Court, few commentators observed that this only referred to the white South. Of the 50 million Southerners, about 10 million are black. For them, the Haynsworth and Carswell appointments, far from being representative, were an affront. The "legal philosophy"—as Nixon so pretentiously called it—of these two mediocre Southern judges is only white supremacy, as reflected in their foot-dragging on civil rights.

### **It Was—Remember?—Lincoln Who Won**

It is a very serious matter for the country that in this time of racial crisis, we have a President for whom 10 million Southern blacks are invisible, politically non-existent. This is far less excusable in a Northern President than it is in the average white Southerner. Nixon's predecessor, Lyndon Johnson, whatever his other faults, never showed such a blind spot to blacks, though a Southerner, nor to Mexican-Americans, though a Texan. On the contrary, he named the first Negro Judge to the Supreme Court. Johnson would never dare imply, as Nixon did in his statement protesting Carswell's rejection, that the South had a regional philosophy different from the rest of the country's. There is, after all, only one basic American philosophy, as expressed in the Declaration and the Constitution, and imposed on a rebellious South by the Civil War. It is a little late in the day to dignify racial inequality as an alternative American philosophy with a right to a seat on the Supreme Court, and more than strange to watch a Republican President march to the strain of Dixie.

There is today another white South which the President also ignores. It may be a minority white South, but when you add its numbers to the blacks and other minorities of color, it is big enough to elect a Yarborough in Texas and to lead the recent (and integrated!) Democratic State convention in South Carolina to reject a "freedom of choice" school plank. Indeed there are few places left in the South where a candidate for public office can treat blacks as politically non-existent. To act as if the South were still lily-white and monolithic, to key one's whole strategy opportunistically to Wallace, is to undermine that growing more thoughtful white minority in the South *and on its courts*. When Nixon says the Senate would not accept a Southern nominee, he is really saying that it will not accept the only kind of nominee which serves his short-sighted strategy. To nominate a Judge like Frank M. Johnson or Elbert Tuttle or Bryan Simpson from the Southern Federal bench (as the Rev. Ralph Abernathy suggested here the other night) would not fit into Nixon's plans because this

### **First Strike As U.S. Air Force Policy**

A startling revelation was made by Senator Fulbright during McGeorge Bundy's testimony on the SALT talks before the Foreign Relations Committee April 18. Fulbright read from the U.S. Air Force Basic Doctrine manual (AFM 1-1: Par. 3-11) that the U.S. must be prepared under certain circumstances to make a nuclear first strike. Under "First Strike Considerations", it says—

"Since we cannot preclude contingencies in which the U.S. may be the first to initiate the limited use of strategic force, our force posture and general war plans must consider the requirements for both first and second strike operations. It is necessary to recognize also that the onset of general war may blur any strict distinction between first and second strike, particularly if the war develops by stages of escalation." Fulbright said such doctrine was an obstacle to the success of the SALT talks. The Manual carries a foreword by General LeMay. An Air Force spokesman said the manual was current but added defensively that it was "just a reflection of U.S. policy". It is strange that an unclassified manual embodying doctrine with such fateful implications should have been kept from public knowledge all these years. It is also strange that it should surface only now when it may hurt the atmosphere of the talks. We would not put it past the Pentagon to arrange such a leak deliberately. The manual is dated Aug. 14, 1964.

would please the blacks and the non-bigoted whites, and give their South another representative, alongside Black and Marshall. The issue is not sectionalism but Nixon's effort—as Rev. Abernathy so well said—"to revive a dead order". Instead of building on a coalition of enlightened whites and blacks, Nixon is playing to the white mob. There could be no greater disservice to our country, no more serious violation of his oath of office.

Nixon's other complaint was that Haynsworth and Carswell were rejected because of "their philosophy of strict construction of the Constitution—a philosophy that I share." This also will not stand up under closer examination. Hugo Black is a "strict constructionist"—he applies the Bill of Rights and other constitutional guarantees strictly. Nixon and Mitchell are the loose constructionists. Most crime, especially of violence, has always been a State and local police matter. What could be a looser construction of the Constitution than to bring them under Federal control, as in their recent proposals on dynamiting? In the past three generations liberals have used

*(Continued On Page Four)*

## The Only Hope Is To Block ABM and MIRV Funds In The Senate

THE TWO ATOMIC SUPERPOWERS, THE DINOSAURS of our nuclear age, both muscle-bound monsters with more brawn than brain, too stupid to agree even when mutual advantage cries out for it, were about to meet in Vienna for the substantive stage of the SALT talks as we went to press. But hopes for an agreement in time to stop another spiral in the arms race were dim. This, like its predecessors in a series of disarmament talks during the past century\*, will serve only to disinform world public opinion into believing that something serious is being done about the mounting cost and danger when in fact the huge military-industrial complexes on both sides have no intention of allowing a brake on their activities, and the political leadership is too weak and uninspired to overcome them. The Soviet Union, too, is now ruled by Nixons, Lairds and Mitchells.

Through the thick veils of Soviet-style secrecy, one can still see (as we pointed out in a close analysis, *Why SALT Spells Fraud*, in the *Bi-Weekly* of last July 14) that the negotiating position of the Nixon Administration, if any, does not go beyond an agreement which would legalize a new and higher level of the arms race under cover of placing some numerical (but not qualitative) limitation on ABMs and MIRVs. The combination, considering the rapid progress being made in accuracy of delivery, will soon offer the U.S. the temptations—and the Soviet Union the fear—of a first strike. The horrors ahead were indicated by the latest world arms survey by the London Institute of Strategic Studies which estimates that we have 4,235 deliverable warheads now against the Soviets 1,880 and that MIRV will expand ours to 11,000 by 1975. The only hope of stopping a new era of fear and tension is for the Senate to follow up its 72-6 vote for the Brooke-Cooper resolution to halt MIRV testing by refusing to vote appropriations for ABM and MIRV.

IN AN INTERVIEW WITH THE EVANS AND NOVACK column (*Washington Post*, April 12) Thieu said pacification "will take years" and suggested "U.S. troops should stay here and guarantee the peace, like in Korea and Germany." Korea and Germany are still garrisoned by U.S. troops and cost together easily \$13 billion a year because there as in Vietnam the U.S. has taken the path of occupation rather than negotiation. These unsettled civil wars in which we are caught are terribly expensive. We are on the verge of edging into a new one in Cambodia and are already in another in Laos. The Formosa protectorate represents a similar involvement in the unsettled China civil war. However difficult negotiations

\* See my 4-part study, "A Century of Futility", now being published by the New York Review of Books.

### From The Former Chief Justice Whose Liberal Work Nixon Would Like To Blot Out

I start from a firm conviction that our nation stands at the crossroads of freedom with equality for all on the one hand and on the other racial distinction with resulting bitterness, disillusionment and discord for our children and their children into the indefinite future. . . .

(A)t least by the time of our bicentennial in 1976 we should have the slate wiped clean and be starting a new century of progress with a feeling of amity between all people of every race, color and creed who live under the protection of the flag of the United States of America. . . .

In all candor, I cannot say that in my view the organized bar of the nation has, on the whole discharged that obligation [to end divisiveness and foster justice] in a praiseworthy fashion. Throughout the McCarthy era, and for years following that shameful period, while the Federal courts were

### Out Of Poland's Stifling Depths

The chief characteristic of Communist society is a moral immobility. As in my case, the government decides the point of view: the whole nation is for the invasion of Czechoslovakia, that's all. It's more than not having freedom of speech. It's a sin against reality.

—*Slawomir Mrozek*, self-exiled Polish playwright, in an interview in the *Washington Post* April 5 in connection with the opening of two of his plays—"The Police" and "Enchanted Night"—at Washington's Arena Stage.

It is the first book I could write in complete freedom. American institutions — which are here taken for granted, like oxygen — are the subject of our wildest dreams in Eastern Europe. I have a certain pity for the Americans, because they do not know how to cherish what they have.

—*Leopold Tyrmand* on "Notebooks of a Dilettante," the first book he has written since leaving Poland in 1966, in an interview with Israel Shenker, New York Times, April 7.

may be, they are preferable to permanent intervention. It is time to see these situations in a larger framework. The military in all these cases sabotage negotiation because these unsettled quarrels provide an excuse for an ever larger military establishment. This is the basic truth at the bottom of all these costly entanglements.

OUR MILITARY SEEM TO BE PREPARING A NEW McCARTHYISM. In an interview, "Will Dissent Wreck Military? Why Defense Planners Worry", in the April 20 *U.S. News & World Report*, Gen. Wheeler, chairman of the Joint Chiefs of Staff, sees an old-fashioned Red plot behind the growing hostility to the military. "I don't mean that everybody who is against the American military . . . is a Communist agent or Communist-inspired," he said. "But I certainly think it's more than mere coincidence that this kind of thing is going on . . . I'm certain that people outside the country are contributing to it, but I couldn't document that in any way." Townsend Hoopes in *The Limits of Intervention* relates that Dean Acheson told President Johnson, after investigating the Vietnam mess, "the Joint Chiefs of Staff don't know what they're talking about." Wheeler was Chairman of the Joint Chiefs, then, too. How convenient if criticism of bad judgment by the military can be dismissed as subversive. The interview gives new weight to the American Civil Liberties Union suit to end Army surveillance of political dissenters as exposed in the February issue of the *Washington Monthly* by a former

struggling to make the Bill of Rights and the Civil War amendments meaningful in our society, the organized bar of the nation did precious little to assist. On the contrary, it occupied itself with trying to establish to the world that the Supreme Court of the United States was the handmaiden of Communism.

There were exceptions, of course, on the part of some courageous and responsible lawyers, and some local bar associations, including notably this one. But these were exceptions. And their voices were muted in the national councils. I suggest that is not good enough for a profession that prides itself in the role of its members as officers of the court and defenders of the Constitution.

—*Earl Warren*: 27th annual Cardozo lecture, before the Association of the Bar of the City of New York, April 9.

Army intelligence officer.

THE GREEK MILITARY DICTATORSHIP, which our military support, is only the latest warning of what can happen when the military get out of hand. Like Gen. Wheeler, the Greek court which has just convicted 27 Greeks accused of plotting the restoration of democracy, lumps criticism of the military with the Communists. The Greek oppositionists included Lt. Gen. George Iordanides, once the Greek representative at NATO, who was given eight years in prison. Though they represented a variety of views from left-of-center to conservative pro-democrat, they were all tried under the military junta's anti-Communist law which sets a maximum penalty of death. Eleven of the defendants bravely retracted confessions in court, claiming they were exacted under torture, but they were nevertheless convicted. One shudders to think of what may happen to them now that they are back in the hands of their jailers. Few Americans realize how this regime is abhorred in Western Europe. The Greek junta extends to the Eastern Mediterranean the kind of military regime our military favors in Brazil and elsewhere in Latin America.

A TIP OF THE HAT to the *Armed Forces Journal* (April 11) for exposing that film shown Congress, and later on TV, of a Maverick anti-tank missile destroying an M-41 tank. Gen. Ferguson of Air Force Systems Command said the tank was destroyed even though there was no warhead on the missile. His statement, the *AFJ* noted, led some cynics to ask "why bother to equip it with a warhead if the missile is so effective without one?" When an Air Force spokesman was asked how the "miracle" was accomplished, he said the missile is so heavy that "it can create enough damage to consider it a tank kill." He added that in this case "the target" was not resisting! The *AFJ* learned from a "reliable source" that the kill was achieved by loading the tank with gasoline and explosives so that the hit set it afame. Naturally this wasn't mentioned to Congress or on TV.

WE APPLAUD ISRAELI YOUTH for the signs "Goldmann to Cairo, Golda to the Kitchen." She was as usual too intransigent in blocking the private feeler extended Nahum Goldmann for a talk with Nasser after the former's April *Foreign Affairs* article suggesting a demilitarized Israel under world (and Arab) protection. What harm in hearing how Nasser reacted? We are also glad to see that Israeli youth is demon-

### A New Myth But An Old Reality

The administration is trying to strike a "low posture" in the rest of Southeast Asia while preserving an American base in Vietnam, and the Communists are not allowing them to do it. They cannot drive us out of Indochina, but they can force upon us the choice of either plunging in altogether or getting out altogether. It is this choice that the Nixon administration has thus far refused to make. With one foot in the swamp and the other foot out, they are trapped . . . In Vietnam they are plodding along with pacification and Vietnamization; in Laos they are reduced to hoping that the Communists will not choose to conquer the country; in Cambodia they are no doubt torn: glad in a way for the anti-Communist takeover but fearful that their new found friends will ask for help that they hardly dare grant and hardly dare refuse. "Myth" is a mild word for madness on so grand a scale. Not only has the rationale for Vietnam proved unfounded; it has shown itself to be disastrously mistaken. Instead of deterring Communist intervention in Southeast Asia, American military involvement has turned out to be a powerful magnet for it.

—Fulbright (D. Ark.) in the Senate, April 2.

strating against the plan for Jewish settlements around Hebron. These can become another obstacle to withdrawal from the West Bank as part of a peace settlement. Mrs. Meier takes risks for war but not for peace. What if Egypt had bombed a school near Tel Aviv killing 30 children and claimed the bombing was a mistake? Imagine the outcry from our side! Are we to shut our eyes and hearts when this happens on the other?

BRAVO TO THE DEMOCRATS for challenging the legality of giving Clark Mollenhoff, reporter-turned-White-House-snooper, access to confidential Federal income tax returns. But we can't suppress the sour comment that for years when they were in power, one Democratic President after another at the beginning of his Administration signed orders allowing the House Un-American Activities Committee to examine income tax returns, a power its renamed successor Internal Security Committee still wields. Will they cancel this when and if they return to power? We hope to be watching for it.

### On-The-Scene Reports Which Conflict With

From the air-conditioned briefing rooms of Saigon and Long Binh to the nearest of the sun-baked artillery bases maintained by American air cavalrymen along the Cambodian border is less than a half hour trip by helicopter. That quick hop seems to cover much of the vast gulf between Washington, where it has become possible to wonder how things can be going so well in Vietnam, and the jungle camps north of Saigon, where it is still possible to wonder if the war will ever end.

In the air-conditioned briefing rooms the speakers were saying earlier this week that enemy troops in the area around Saigon had largely retreated to their border sanctuaries desperately lacking food and ammunition and flagging seriously in both morale and discipline. The night before the briefers spoke, Communist troops poured more than 100 mortar and rocket rounds into Fire Base Jay near the Cambodian border and then assaulted it. Thirteen Americans died in the fight, and 34 more were wounded. Two nights later, the enemy attacked next door at Fire Base Illingsworth, killing 25 Americans and wounding 54 more. It had been nearly two years since so many Americans died in a single engagement.

The two attacks were the enemy's most serious efforts

### Official Optimism About The Vietnam War

so far in Third Corps area around Saigon in this week's "high point" of Communist activity. In neither battle did the Americans find their attackers undernourished, underfed, undisciplined or dispirited.

—John E. Woodruff in the Baltimore Sun, April 5.

Cai Lay, Vietnam—The only man awake at Fire Base Schroeder was the guard at the main gate, and they cut his throat. Then the Viet Cong sappers crept unchallenged into the base and methodically began blasting it to pieces with dynamite satchel charges. First they destroyed six 105mm howitzers. Then they blew up 20 trucks. Finally they worked over the perimeter bunkers where scores of Vietnamese soldiers were bivouacked with their families. That is how American sources describe the overrunning of Fire Base Schroeder, one of the first U.S. Army fire bases ever handed over to the Vietnamese army. The attack took place early Wednesday but few details were released. Only by weekend did the extent of the disaster become known. The action was one of the worst setbacks to the Vietnamese army in months . . . Only one American was there, an infantry captain, because U.S. advisers have been cut back in the 7th Division. He was killed in the first few minutes.

—Peter Arnett in the Washington Star, April 5.

## What Could Be Looser Construction Than Preventive Detention?

(Continued From Page One)

the commerce clause to make possible all kinds of social reform. Nixon and Mitchell are using it to create a Federal police, and to police not only criminals but the transportation of ideas across State lines, as in the prosecution of the Chicago 7.

### A Challenge From A Southern Senator

When the Supreme Court recently held 7-to-1 that the double jeopardy clause of the Constitution forbids a State to prosecute an acquitted man a second time on substantially the same evidence, who was construing the Constitution strictly—the majority or the lone dissenter, a Nixon-style "strict constructionist," his Chief Justice Burger? Or let us take a favorite proposal of the Nixon-Mitchell era, preventive detention. What could be a looser construction of the Constitution than to hold a man in jail before trial because you think he might commit some other crime in the meantime? You have to construe the Constitution with extraordinary looseness, in fact you have to ignore its guarantees of fair trial and bail, to arrive at any such result. Yet the Administration has a bill in Congress to allow preventive detention in Federal cases involving "violent" crimes. It is trying to slip the same proposal through Congress this year in the District of Columbia crime bill "by hiding it under a misleading title." The quotation is from a speech by a Southern strict constructionist, Ervin of North Carolina. He called the attention of the Senate April 8 to a study made by the National Bureau of Standards for the Law Enforcement Assistance Administration of the Department of Justice. This showed how spurious were Attorney General Mitchell's arguments for preventive detention.

Mitchell claimed that "the pre-trial release of potentially dangerous defendants constitutes one of the most serious factors in the present crime wave." But the study showed that only 5 percent of those originally charged with a violent crime are rearrested for another violent crime—arrested, notice, not proven guilty and convicted. Ervin said the Nixon Administration was ignoring one of the most meaningful conclusions of the study. He said it "clearly shows that speedy trial alone would eliminate almost completely the small number of crimes committed by persons on bail." He told the Senate "our task is not to enact an unconstitutional and unwise preventive detention law but to insure that the constitutionally

### Quis Custodiet Dept.

Sens. McClellan (D. Ark.) and Tower (R. Tex.) yesterday praised General Dynamics, maker of the trouble-plagued F-111 fighter-bomber. McClellan, conductor of a critical inquiry into the high-cost plane, said: "I have nothing against the General Dynamics company. It has made a great contribution." The company opened a plant in East Camden, Ark., 3 years ago after McClellan urged General Dynamics' chairman, Roger Lewis, to examine Arkansas' industrial potential . . . Tower assured him [McClellan] that it [the F-111] is "the best thing going" and urged spending "only \$1.5 billion" for another 324 planes. On the basis of a chart prepared by General Dynamics, Tower declared the F-111 had the best safety record of any current fighter-bomber.

—Bernard D. Nossiter: Washington Post April 10.

This story brings to light for the first time that General Dynamics put a plant in McClellan's home state three years ago. The McClellan committee broke off its investigation of the F-111 (the TFX) seven years ago. The resumed hearings seem aimed to criticize McNamara and to whitewash General Dynamics.

guaranteed right of speedy trial for all criminal suspects becomes a reality." He accused the Administration of using "the law and order slogan" to justify a "fundamental negation of America's constitutional traditions."

Behind Nixon's talk of the philosophy of strict construction, as behind his talk of the philosophy of the South, is plain and simple white middle class prejudice. Preventive detention means putting blacks in jail more easily. His strict constructionism is only a legislative device for restricting the rights of the blacks and the poor generally, as when Chief Justice Burger dissented from a recent decision holding that welfare payments could not be cut off without first granting the recipients a formal hearing. The Nixon-Mitchell-Burger philosophy is to give fewer rights to the disadvantaged. It is the philosophy of the smug, the unsympathetic rich and the Southern white supremacist. That is the kind of majority outlook he hopes to create on the Supreme Court, whether by appointing mediocrities from South or North.

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