

lieves that the law is on his side. I have repeatedly spoken out against Supreme Court decisions which have placed shackles upon the police and which have made increasingly difficult the problem of law enforcement. In a Senate speech on April 20 of this year, I made a statement which was as follows:

If we want to really come to grips with the spiralling crime rate, the place to start is in the appointments to the Supreme Court of the United States.

I repeat that statement today, and I say with all sincerity and with the strongest conviction that the Senate, under the Constitution, must share the responsibility with the Chief Executive of making wise appointments to the Supreme Court. If the Court will not exercise a reasonable restriction upon itself, it is proper that that restraint be generated in the appointive process. If Presidential appointments show an apparent inclination to create a dangerous imbalance in the makeup of the Nation's highest tribunal, then it becomes the duty of the Senate to act to protect constitutional government against destruction by a court which increasingly gives evidence that the majority of its members will not impose self-restraint and which arrives at momentous decisions on the basis of modern sociological concepts rather than legal reasoning and legal precedents.

In the desire of all Senators to promote the concept that ours is a government of laws, not of men, I cannot be unmindful of Woodrow Wilson's statement that:

Constitute them how you will, governments are always governments of men, and no part of any government is better than the men to whom that part is entrusted.

Wilson's appraisal is no less applicable to the judiciary than to any other of the three coordinate and coequal branches of the Government.

I may be wrong in my estimate of Mr. Marshall, and I sincerely hope I am wrong. I supported his appointment as a judge on the U.S. Court of Appeals for the Second Circuit. I supported his appointment to the Office of Solicitor General of the United States. But as an Associate U.S. Supreme Court Justice, Mr. Marshall will hold a position far more critical to the future course of our country than was either of those two positions.

I do not believe that I can be justified in criticizing the U.S. Supreme Court for decisions which favor the criminal if I, by my own actions, fail to take a stand against the appointment of any individual to that Court whose past record in the legal profession and as a jurist point unmistakably, in my judgment, to the likelihood that the nominee will add to an already dangerously imbalanced High Tribunal. The past records of many nominees are unclear as to their guiding philosophies, but in this case the past record of the nominee appears in full outline, and I have arrived at my conclusion based on that record.

As I am able to see my duty, therefore, I feel it incumbent upon me, in the interest of law and order and in the interest of constitutional government, to vote against Mr. Marshall's nomination

to the Supreme Court of the United States.

He who saves his country saves all things and all things saved do bless him. He who lets his country die lets all things die, dies himself ignobly, and all things dying curse him.

Mr. HART. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SPONG in the chair). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HART. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. If there is no further comment, Mr. President, I ask that the Senate advise and consent to the nomination of Thurgood Marshall.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD (after having voted in the affirmative). On this vote I have a live pair with the distinguished Senator from Mississippi [Mr. STENNIS]. If he were present and voting he would vote "nay." If I were permitted to vote I would vote "yea." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Nevada [Mr. BIBLE], the Senator from Virginia [Mr. BYRD], the Senator from Alaska [Mr. GRUENING], the Senator from Oklahoma [Mr. HARRIS], the Senator from Minnesota [Mr. MCCARTHY], the Senator from Maine [Mr. MUSKIE], and the Senator from New Mexico [Mr. MONTOYA] are absent on official business.

I also announce that the Senator from Indiana [Mr. HARTKE], the Senator from North Carolina [Mr. JORDAN], the Senator from Arkansas [Mr. McCLELLAN], the Senator from South Dakota [Mr. McGOVERN], the Senator from Montana [Mr. METCALF], the Senator from Wisconsin [Mr. NELSON], the Senator from Georgia [Mr. RUSSELL], the Senator from Florida [Mr. SMATHERS], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

I further announce that, if present and voting, the Senator from Nevada [Mr. BIBLE], the Senator from Alaska [Mr. GRUENING], the Senator from Indiana [Mr. HARTKE], the Senator from South Dakota [Mr. McGOVERN], the Senator from Montana [Mr. METCALF], the Senator from Maine [Mr. MUSKIE], and the Senator from New Mexico [Mr. MONTOYA] would each vote "yea."

On this vote, the Senator from Oklahoma [Mr. HARRIS] is paired with the Senator from Florida [Mr. SMATHERS].

If present and voting, the Senator from Oklahoma would vote "yea" and the Senator from Florida would vote "nay."

On this vote, the Senator from Wisconsin [Mr. NELSON] is paired with the Senator from Georgia [Mr. RUSSELL].

If present and voting, the Senator from Wisconsin would vote "yea" and

the Senator from Georgia would vote "nay."

On this vote, the Senator from Minnesota [Mr. MCCARTHY] is paired with the Senator from Arkansas [Mr. McCLELLAN].

If present and voting, the Senator from Minnesota would vote "yea" and the Senator from Arkansas would vote "nay."

Mr. KUCHEL. I announce that the Senator from Iowa [Mr. HICKENLOOPER] and the Senator from California [Mr. MURPHY] are absent by leave of the Senate on official business.

The Senator from Arizona [Mr. FANNIN] is detained on official business.

If present and voting, the Senator from California [Mr. MURPHY] would vote "yea."

The result was announced—yeas 69, nays 11, as follows:

[No. 240 Ex.]

YEAS—69

Aiken	Fulbright	Morse
Allott	Gore	Morton
Anderson	Griffin	Moss
Baker	Hansen	Mundt
Bartlett	Hart	Pastore
Bayh	Hatfield	Pearson
Bennett	Hayden	Pell
Boggs	Hruska	Percy
Brewster	Inouye	Prouty
Brooke	Jackson	Proxmire
Burdick	Javits	Randolph
Cannon	Jordan, Idaho	Ribicoff
Carlson	Kennedy, Mass.	Scott
Case	Kennedy, N.Y.	Smith
Church	Kuchel	Spong
Clark	Lausche	Symington
Cooper	Long, Mo.	Tower
Cotton	Magnuson	Tydings
Curtis	McGee	Williams, N.J.
Dirksen	McIntyre	Williams, Del.
Dodd	Miller	Yarborough
Dominick	Mondale	Young, N. Dak.
Fong	Monroney	Young, Ohio

NAYS—11

Byrd, W. Va.	Hill	Sparkman
Eastland	Holland	Talmadge
Ellender	Hollings	Thurmond
Ervin	Long, La.	

NOT VOTING—20

Bible	Jordan, N.C.	Murphy
Byrd, Va.	Mansfield	Muskie
Fannin	McCarthy	Nelson
Gruening	McClellan	Russell
Harris	McGovern	Smathers
Hartke	Metcalfe	Stennis
Hickenlooper	Montoya	

So the nomination was confirmed.

Mr. HART. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### THURGOOD MARSHALL TO THE SUPREME COURT—A HISTORIC APPOINTMENT

Mr. MANSFIELD. Mr. President, the confirmation of the nomination of Thurgood Marshall as an Associate Justice of the Supreme Court is also a confirmation of the vitality of the democratic system. It is a tribute to the good sense of President Johnson who made the nomination, and to the judgment of the Senate which approved it.

The confirmation means that a man who loves the law and who has a firm respect and high faith in it moves to the top of his profession by entering the highest judicial body in the United States. Thurgood Marshall's rise to the Supreme Court reaffirms the American ideal that what counts is what you are

and not who you are or whom your antecedents may have been.

This is a shining hour, Mr. President, for Mr. Marshall, for President Johnson, for the Senate, and for the United States of America. We have come a long, long way toward equal access to the Constitution's promise. We shall go further along that way because we have recognized the work and the dedication and the commitment of Thurgood Marshall and asked him to enlarge his contribution to the Nation as a member of the Supreme Court.

I join my colleagues in the Senate in extending sincere congratulations to Mr. Justice Marshall on this most auspicious day in his life.

#### LEGISLATIVE SESSION

Mr. HART. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to; and the Senate resumed the consideration of legislative business.

#### LEGISLATIVE PROGRAM

Mr. DIRKSEN. Mr. President, while Senators are still in the Chamber, I should like to renew my inquiry of the distinguished majority leader as to the program for the remainder of the day and the week, and when we reconvene on September 11.

Mr. MANSFIELD. The schedule is the same as announced last night. There will be no more votes until 2 o'clock p.m. on Monday, September 11.

Mr. DIRKSEN. That will be the treaty vote.

Mr. MANSFIELD. Yes, the treaty vote. That is it.

Mr. DIRKSEN. I thank the distinguished majority leader.

#### ARTHUR A. KINOY, AND THE ATTEMPT TO FEDERALIZE LOCAL POLICE DEPARTMENTS

Mr. THURMOND. Mr. President, a recent issue of the Washington Post published a story from New York detailing a highly unusual suit which has been filed against the Newark, N.J., Police Department. The suit asks that the Newark Police Department be placed in receivership and that a Federal "master" be appointed with full administrative power over its affairs. The article goes on to explain that the suit is a pilot project which, if successful, will be extended to other areas across the country.

This suit is nothing other than an attempt to federalize the police forces of this Nation and to concentrate all police power in the hands of Federal authorities. This is manifestly contrary to the spirit of the U.S. Constitution and our traditions of local control. This is an attempt to subvert the American system by using the courts of law.

One of the long-term goals of the Communists has been to concentrate the police power in Federal hands so as to destroy local liberties. It is highly significant, therefore, that one of the chief advisers in this suit is a well-known New York lawyer who has had many connec-

tions with Communists and their sympathizers. The Washington Post staff writer, Mr. Leroy F. Aarons, describes this man as "Arthur A. Kinoy of the New York firm of Kunstler, Kunstler, & Kinoy, one of the country's most prominent civil liberties attorneys."

I think it is misleading to describe Mr. Kinoy in this fashion without indicating his constant association defending Communists and Communist causes. I have therefore asked the Senate Internal Security Subcommittee to supply me with an amplified background about Mr. Kinoy, and I ask unanimous consent that this staff report be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. THURMOND. Mr. President, I have left the most shocking aspect of this lawsuit to the end of my remarks. Mr. Kinoy, who is notorious for the associations I have just indicated, has been actively working in cooperation with the New York Legal Services Project, an agency funded by the Federal Office of Economic Opportunity. I feel that Mr. Sargent Shriver, the Director of the OEO, ought to give some explanation as to why a federally funded project cooperates with a man of such well-known leftist inclinations in a program which is aimed at undermining the traditional structure of local government.

I ask unanimous consent that the article from the Washington Post of Friday, August 25, 1967 entitled "U.S. Reform of Newark Police Urged" be printed in the Record.

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

#### U.S. REFORM OF NEWARK POLICE URGED

(By Leroy Aarons)

NEW YORK, August 24.—Seventeen Negro civic leaders and poor people asked the Federal courts today to take over and reform the Newark Police Department.

Similar action may be taken in other cities. The unusual move came in the form of a civil lawsuit filed in U.S. District Court in Newark and announced at a press conference at New York offices of the American Civil Liberties Union.

#### BRUTALITY CHARGED

The suit charges a long and continuing pattern of police brutality in Newark, which, it says, has either been ratified by city officials or is out of their control. During the five days of violence in July, the suit charges, police used the "pretext" of putting down the riot to intensify the mistreatment and commit acts of "violence, intimidation and humiliation" against Negroes.

The lawsuit asks that the Department be placed in receivership and that a special "master" be appointed with full administrative power over its affairs.

The master would be ordered to hold public hearings leading to a plan for rehabilitation of the police department under court supervision.

The complaint also urges that the Newark officials—specifically Mayor Hugh J. Addonizio, Police Director Dominick A. Spina and Police Chief Oliver Kelly—be enjoined from allowing such alleged acts of brutality as beatings, intimidation, use of racial epithets and derogatory language, compiling dossiers on civil rights leaders, and refusal to arrest policemen who commit crimes against Negroes.

#### "NATIONAL PROBLEM"

While the suit deals only with Newark, Robert L. Carter, general counsel of the NAACP, told the press conference, "We regard this as a national problem." He said the NAACP is investigating similar action in many other cities across the country. He named Cincinnati, and another source said Cleveland is being considered.

Carter is one of 22 lawyers who signed the complaint. They represent five cooperating agencies in the case: ACLU, NAACP, the Newark Legal Services Project, the Law Center for Constitutional Rights, and the Scholarship, Education and Defense Fund for Racial Equality.

The suit was actually put together by the New Jersey ACLU, headed by Henry M. DiSvero, in cooperation with the Newark Legal Services Project, an agency funded by the Federal Office of Economic Opportunity and charged with aiding poor people in civil cases. A chief adviser was Arthur A. Kinoy, of the New York firm of Kunstler, Kunstler and Kinoy, one of the country's most prominent civil liberties attorneys.

#### PLAINTIFF ATTENDS

Approximately 200 affidavits from Negroes claiming various kinds of mistreatment during the riots have been compiled in support of the lawsuit. DiSvero said the affidavits are being kept secret for fear that the signers will be intimidated.

One of the alleged victims, the Rev. Dennis Westbrook (also one of the 17 listed as plaintiffs) was present at the press conference. He charged that during the riot he was roughed up by police despite the fact that he identified himself as a minister who had been authorized by the Mayor to be in the trouble area.

It was understood that other signed complaints in the hands of the attorneys allege that:

A Negro professional man, who was taking food to his mother, was arrested by police, beaten and forced to kiss and lick policemen's feet before he was released.

A man walking with two women was stopped by police and forced to strip, then made to run naked down the street.

Police, particularly state troopers and National Guardsmen, fired indiscriminately into Negro homes and deliberately at stores run by Negro merchants.

The attorneys justified their report to Federal courts by citing several civil liberties amendments to the Constitution and a Federal law dating back to Reconstruction days. That law provides for civil action at the Federal level where local officials violate the civil rights of an individual or class.

The law was tested and upheld in a suit against the Sheriff of Neshoba County, Miss., where three civil rights workers were murdered. That suit, which asked that Federal marshals be appointed to oversee the actions of local sheriffs, is now in District Court in Mississippi.

#### FEDERAL REMEDY

DiSvero said the Federal remedy was sought because there is no legitimate machinery for police brutality complaints in Newark, and state courts have been hostile to actions against policemen.

He also noted that for the duration of the Federal suit, new acts of alleged brutality in Newark can be added to the complaint and depositions taken from policemen and witnesses. Thus, said DiSvero, the court action will serve as a temporary review board for brutality complaints.

#### EXHIBIT 1

ARTHUR KINOY

According to the *Washington Post* of January 5, 1965, page A9, Arthur Kinoy was attorney for the Freedom Party. He addressed a meeting of this organization held at Lincoln Memorial Congregational Temple on