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# PROCEEDINGS

BEFORE THE

## Supreme Court of New Jersey

IN REFERENCE TO THE

### Death of Justice Clarence E. Case

### December 18, 1961

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CHIEF JUSTICE WEINTRAUB: Mr. Justice Heher.

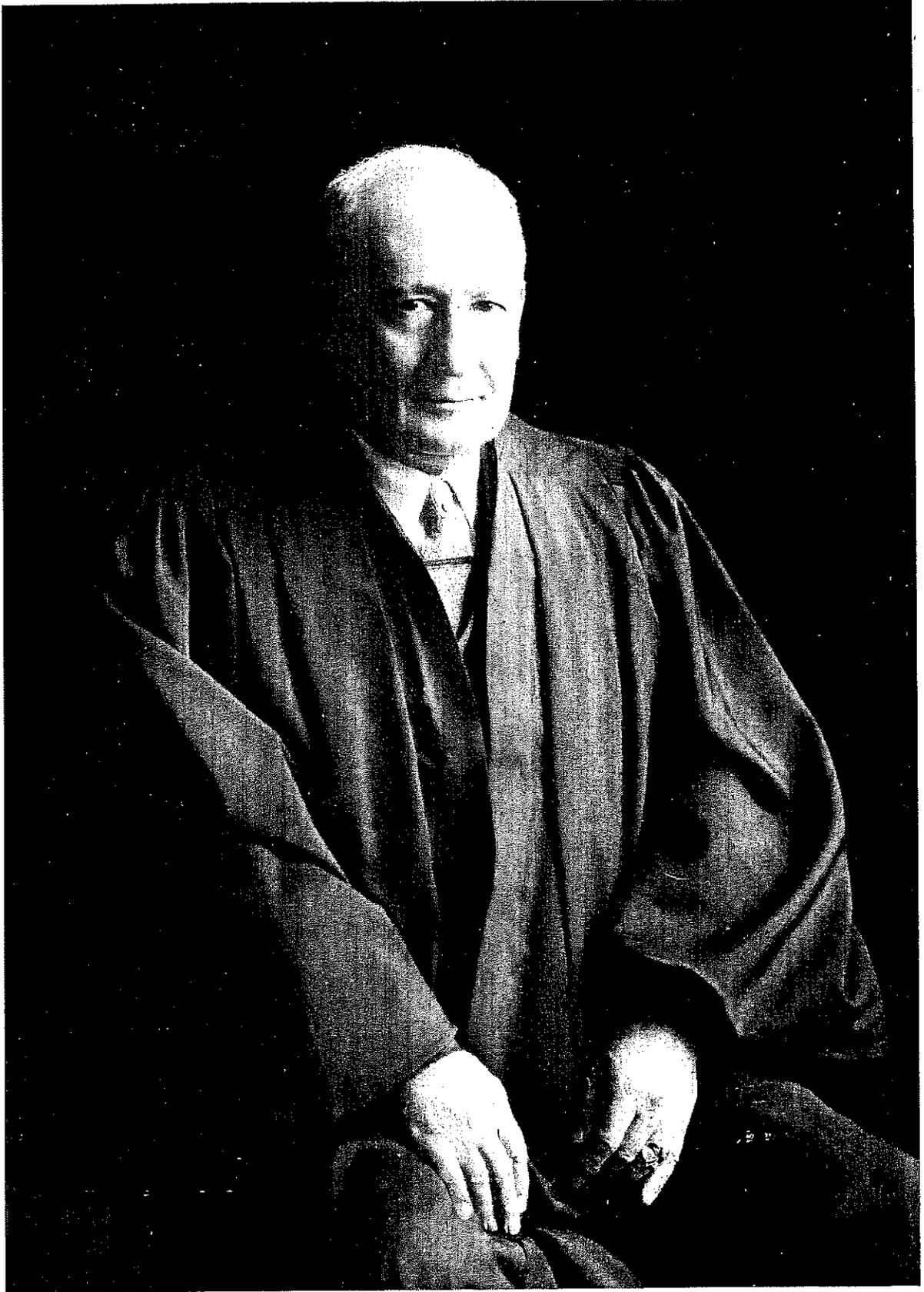
JUSTICE HEHER: Mr. Chief Justice and Associate Justices of the Supreme Court:

As the Committee appointed by this Court to prepare and submit an appropriate memorial to honor the late Chief Justice Clarence E. Case, we present the following:

We appear before this Court today to commemorate the life and career of our late Chief Justice who passed away on September 3, 1961, and to memorialize and record in these proceedings some of the many contributions he has made to our State and society.

As legal practitioner, educator, legislator and judge, he was an outstanding leader, known for his integrity, ability and dedicated devotion to the many and varied tasks to which he applied himself so unstintingly, tirelessly and conscientiously in the public interest.

His passing is mourned throughout this State, not only by its citizens for whose best interests and welfare he labored so assiduously, but especially by its bench and bar, which he served so long with great honor and distinction.



HONORABLE CLARENCE E. CASE

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Clarence E. Case was born in Jersey City, New Jersey, on September 24, 1877, to a family of modest means which had long resided in the Somerville area. At an early age, he returned to this rural county seat where he nourished and fulfilled his ambition to serve the people of New Jersey as lawyer, legislator and jurist.

Education, which he valued so highly, did not come easily to Clarence Case, whose early years knew real adversity. Compelled to leave public school at the age of 13 to help support his family, he continued his education on a part-time basis first at the Paterson Classical and Scientific School, where his ardor persuaded the headmaster to half the tuition, and then at Rutgers Preparatory School, where the future advocate took first prize in the senior oratorical contest. Recalling these years, upon his elevation to Chief Justice of New Jersey nearly fifty years later, he observed that, "A man who had a difficult youth is bound to be serious; he can laugh, but life is never frivolous to him."

He persevered in his self-supported education at Rutgers College and New York Law School, recalling many years later that his day as a law student began at 4:00 A. M. as a clerk for a downtown produce commission merchant. At Rutgers, where he graduated as first honor man in the Class of 1900, he also found time for debating, editorship of the student newspaper and interlocutor in the class minstrel show. In 1950, he repeated this last role on the occasion of the 50th reunion of the Class of 1900, revealing the keen wit by then known to generations of the bar. He rarely missed a gathering of his class and served Rutgers as a trustee for nearly forty years, relishing the chance to build educational opportunities for the young people of other generations.

After completing law school in two years, he entered the Somerville office of Alvah A. Clark, then dean of the Somerset bar. He became an attorney in 1903 and a counselor in 1907, continuing in practice in partnership with

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Mr. Clark until appointment as a Judge of the Somerset County Court of Common Pleas in 1910. At the age of 32, Clarence Case became the then youngest jurist in New Jersey. During his three years on the County bench, he married Anna Gist Rogers, who died in 1922, leaving two sons and a daughter, the center of a family which held his lively and loving affection. A few years before his elevation to the Supreme Court, he married Ruth Weldon Griggs, who died on July 6, 1959.

In 1913, he resigned from the bench and resumed a career in law and politics, which was to span the next two dramatic decades in the development of New Jersey. Long active in public affairs, he was elected Senator from Somerset County in 1917, serving four terms in that body.

As a legislator, he interested himself in a wide variety of matters and his reputation as a conservative did not deter him from leading his party's legislative majority in the adoption of a number of far-reaching proposals, the importance of which grow constantly in retrospect. In 1921, he sponsored and pressed through legislation creating the New Jersey State Police. Subsequently, he served on the Commission which framed the compact creating the Port of New York Authority and sponsored the supporting legislation.

He served as President of the State Senate in 1920 and briefly as Acting Governor in 1920, in which capacity he spoke at the inaugural of Governor Edwards in 1920, expressing in a few lines his philosophy of government:

“The structure of society is not petrified. It is no mummied shell of an ancient ideal. It is a living, nervous organism. To function it must give up its outworn substance and be replenished. Such is the law of life. It is for government to live, to grow, but not abnormally; to do, but not to overdo.”

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Senator Case played a leading role too in the partisan politics of his day, gaining throughout these struggles, however, the respect of his adversaries as a man of principle and integrity. As the late Chief Justice Vanderbilt was later to observe, "No man on the court had a keener sense of right and wrong, nor a more burning desire to do good." As the then Senator Case himself declared in the heat of a legislative battle in the late twenties, "The truth can hurt no one—who doesn't deserve to be hurt."

The prominence he gained in public life was paralleled and overshadowed at least for his brethren at the bar by his skill as an advocate. Senator Case's role in the courtroom in Somerset County and elsewhere is legend, capped, of course, by his dramatic part as defense counsel in the Hall-Mills murder case. His appointment as a Supreme Court Justice in January, 1929, began twenty-three years of service on the bench to the great profit and credit of New Jersey, its people and its bar. Yet Clarence Case was first and foremost the lawyer and an advocate, and the bench to him meant withdrawal from litigation, that remarkable Anglo-Saxon test of a lawyer, which lends zest to life at the bar. He felt this loss as keenly as any judge and, in 1946, observed not altogether facetiously, "Being on the bench is something like marriage; you finally get used to doing without the fun you used to have."

Yet it is as a jurist that Chief Justice Case made his highest mark in service to his fellow citizens. In twenty-three years, he participated in 6,491 reported decisions, wrote 677 majority opinions and recorded 330 dissents. His opinions, reflecting the scholarly wisdom of a learned man and the wit and understanding of a great gentleman, will continue to illuminate our jurisprudence as the law generates and regenerates itself from age to age.

In his distinguished careers as lawyer and legislator, Chief Justice Case revealed the great qualities of mind and spirit that later brought him eminence as a jurist. His

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elevation to the Supreme Court came by common consent, in recognition of his personal excellence and attainments and outstanding public service. In his long career as a Justice and Chief Justice of the Supreme Court, 1929–1952, he gave unremitting devotion to liberty under the law as the master principle of our civilization—individual freedom subject only to such restraints as may be essential to the common welfare and security. He believed with Emerson that all men live by truth, and that justice, in the words of Disraeli, is truth in action. In his deliberations and writings there was ever present the ideal of liberty, equality and justice under law—the conception of justice as inseparable from liberty, and the administration of justice, the determination of what is just, or right applied to human affairs, as the principle of order in our society, the very life blood of a civilized state. Such was the basic philosophy that moved Justice Case to the heights.

He was well acquainted with the general spirit of laws and principles of universal jurisprudence, and he had a masterly knowledge of our own internal constitutions and laws, their origin and historical development, as rules of human action for the maintenance of justice and civil liberty within a political society and for individual and community accommodation according generally to what is conceived to be distinguishing criterions of right and wrong. He believed with Justice Cardozo that the law cannot be known unless account is taken of its sources and that implicit in every decision “where the question is, so to speak, at large, is a philosophy of the origin and aim of law, a philosophy which, however veiled, is in truth the final arbiter.”

His were classic contributions to the body of legal doctrine, to the liberal science of jurisprudence as the theory or philosophy of law. He had in view not only the historical process of the law’s growth and advancement, but also its ideal future in terms of justice and the public well-being, although he was ever sensible of the fundamental limitations

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upon the exercise of judicial power. He was mindful of ethical implications and the concepts of natural justice, but never forgetful of the underlying doctrine of our jurisprudence that generally the administration of justice is according to fixed and predetermined principles constituting rules of law, rather than the exercise of free judicial discretion in keeping with the judge's concept of what is just in the particular case, regardless of general principles, and that the constitutional separation of governmental powers should have full observance by the judiciary according to the letter and spirit of this and kindred limitations. He recognized the area of action where justice is not dependent upon preordained rules, and the controlled discretion established from time immemorial or by custom or usage. But he deemed the law-making function to be on the whole the exclusive province of the legislature.

Justice Case's legal and moral philosophy and spiritual beliefs and his unique mastery of the art of exposition are exemplified in his opinion for this court in *Doremus v. Board of Education of Hawthorne*,<sup>1</sup> upholding the statute requiring daily reading to public school pupils of at least five verses of the Old Testament of the Bible, and permitting repetition of the Lord's Prayer, as "a simple recognition of the Supreme Ruler of the Universe and a deference to His Majesty," rather than "sectarian instruction or sectarian worship" in defiance of the First Amendment to the Federal Constitution. He found that "the Constitution itself assumes as an unquestioned fact the existence and authority of God," and that prior to, contemporaneously with and subsequent to the adoption of the Amendment "all branches of the government followed a course of conduct which openly accepts the existence of God as Creator and Ruler of the Universe," a "course of conduct" accepted as "not in conflict with the constitutional mandate." He cited Mr. Justice Brewer's

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<sup>1</sup> 5 N. J. 435.

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affirmation in *The Church of the Holy Trinity v. United States*<sup>2</sup> that "this is a religious nation"; and he declared it would be a "tragic experience" for the country and "its conception of life, liberty and the pursuit of happiness if our people lose their religious feeling and are left to live their lives without faith."

And he had great concern for adherence to the doctrine of separation of governmental powers. In *Winberry v. Salisbury*,<sup>3</sup> his concurring opinion cited Chief Justice Marshall's holding in *Osborn v. Bank of United States*<sup>4</sup> that "judicial power is never exercised for the purpose of giving effect to the will of the Judge; always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law." Adverting to the American conception of constitutional government as one of "checks and balances," Justice Case declared that transgression of constitutional limitations by the governor or the legislature are remediable by the courts, but "if our Supreme Court exceeds its powers, who shall impose the check? Therein lies the danger when the Court undertakes, not to construe law, but to *make it*." But he accepted the doctrine of *stare decisis* and legislative acquiescence in a judicial construction of a statute by non-exercise of the "amendatory power."<sup>5</sup> And he recognized that New Jersey "has been developing its own conception of the common law for 175 years," and a variance in our cases from the view of the common law expressed elsewhere "may well exist without prejudice to our own decisions."<sup>6</sup>

He was a firm and unyielding believer in the Bill of Rights and the civil and political liberties inherent in our society

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<sup>2</sup> 143 *U. S.* 457, 12 *S. Ct.* 511, 36 *L. Ed.* 226.

<sup>3</sup> 5 *N. J.* 240.

<sup>4</sup> 9 *Wheat.* 738, 866, 61 *L. Ed.* 204, 234 (1824).

<sup>5</sup> *Pennsylvania-Reading Seashore Lines v. Board of Public Utility Commissioners*, 5 *N. J.* 114, 132, dissenting opinion.

<sup>6</sup> *Milstrey v. City of Hackensack*, 6 *N. J.* 400, 414, dissenting opinion.

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and, by the same token, the accommodation of principle, however it may be viewed as abstract truth, to the needs of our complex social organism, a doctrine in no sense a compromise with truth, but rather the application of basic principle to the requirements of altered circumstances. He believed in written constitutions as the means of fulfilling the democratic ideal of social action conditioned by civil liberty and equality and justice under law, and the correction of injustice as a primary responsibility of government, an essential precondition to the existence of all civil liberties. The happiness of society, said John Adams, is the aim of government. Justice, affirmed Daniel Webster, in his tribute to Mr. Justice Story, is the great interest of man on earth. Man's capacity for justice, it has been well said, makes democracy possible, but man's inclination to injustice makes democracy necessary.

Justice Case was singularly endowed for service as an advocate, lawmaker and judge—a scholarly understanding and appreciation of the essential reason and spirit of jurisprudence as the science of civil law for the service of these principles basic to a free political society that, it has been truly said, could not subsist without the sense of justice and injustice, and as well intellectual integrity, forthrightness and fairmindedness. He had rare skill in analysis and clarity and facility of exposition and expression. He could make facts live, declared by Mr. Justice Holmes to be the main part of intellectual education, and reduce the scattered inorganic mass into organic order and resolve the issue by the application of general principle embodied in the context of its historic relation to other principles and “thus set it in the perspective without which its proportions will never be truly judged.” The art of explication was his in full measure. His interpretive genius was of the spirit that giveth life. In a word, his guiding philosophy was order and justice as the ideal of government under law, a union of democracy and discipline and the reconciliation of common

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and individual interests to this end. The art of accommodation was his in rare degree. He was indeed a great interpreter of life.

And Justice Case had an intuitive sense of equity as a means of supplying the deficiencies of positive law according to justice and good conscience.

His opinions, couched in the best chosen language, have an uncommon beauty and vigor of style. They have been acclaimed by Bench and Bar and specialists in the science of government as scholarly, erudite and graphic contributions to jurisprudence and an enrichment of our democratic institutions. They reveal strength of character, deep convictions, keenness and independence of mind and spirit, abhorrence of sophistry, and dedication to the highest traditions of the law and the interests of society. As Judge Learned Hand said of Justice Cardozo: "You might disagree with him but there was no mistaking where he stood."

His philosophy of life and his deep and abiding spiritual faith are revealed in a poem of his own composition entitled "Father Time and I," written but a week before his passing, in part thus:

"You rightly say my sands are run;  
Not so my life, that's scarce begun.  
Although I cannot clearly see  
What lies beyond that door for me,  
Faith tells me it's a better land,  
Called by the poets 'Heaven's Strand'  
Which high transcends this earthly while  
As love surpasses selfishness,  
And truth surpasses guile.

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Ah! You have shed that coat of rime!  
How warm the leaving, Father Time!  
The sun shines from a cloudless sky!  
The mists have gone! And so, good-bye!"

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We honor the memory of Justice Case as a distinguished advocate, legislator, statesman and jurist. An upright judge, a learned judge! A man of conscience, a man of principle! We pay tribute to his nobility of character and the richness of his life in good works. His spirit will live on to enshrine his enduring contributions to the science of jurisprudence and order and justice in our free society.

Respectfully submitted,

HARRY HEHER, *Chairman*

HENRY E. ACKERSON

JAMES I. BOWERS

FREDERIC R. COLIE

RALPH W. E. DONGES

HOWARD EASTWOOD

A. DAYTON OLIPHANT

WILLIAM A. WACHENFELD

T. GIRARD WHARTON

*Members of the Committee of the Bar  
chosen by the Supreme Court to prepare  
and present a Memorial on the Life and  
Career of the Late Justice and Chief  
Justice Clarence E. Case.*

CHIEF JUSTICE WEINTRAUB: Mr. Justice Hall will respond for the court.

JUSTICE HALL: The memorial which has just been presented so appropriately and completely portrays the distinguished career, contributions and character of Clarence E. Case that there is little to add on behalf of the court. We can and do most sincerely join in a seven-fold chorus of "Amen."

The committee's eloquent and moving tribute comes from the hearts of men who knew him intimately and worked with him closely as lawyer, public servant and judge over many years. We on this bench today have for the most part

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not enjoyed that fortunate opportunity. The relentless running of the sands of time is such that, although he retired but a few short years ago, no one of us served with him on this court. In truth we are a new generation of judges, but by no means a better one. While two of us sat with him very briefly in the old court system and others came to know him, at best almost casually, in other ways, our respect and admiration for his great qualities derive in a more impersonal fashion though with an equally deep and revered appreciation.

As lawyers and judges we know him, like countless generations still unborn will continue to know him, from his opinions found in some 99 volumes of our reports. He is thus with us and always will be. From those writings we have learned much and there is much more there to learn. Would that any of us could think as clearly, reason as cogently and write as well. In deciding the particular case, the intense desire to reach the right and just result under the law as he saw it always shines through. His knowledge of the law was profound and his expression of it learned indeed. As a judicial craftsman, he had no peer. He must have revelled in the joy of craftsmanship—which has been called one of the most precious and dependable of the satisfactions of a judge. His opinions not only proclaim the law but teach as well the difficult art of how to approach a case for decision, what to decide and what not to, what to say and what had better be left unsaid.

If we look behind the printed page to glimpse the judicial philosophy of the one we honor, he might well have written these words Learned Hand penned to a colleague in reflecting on twenty-five years of service on the bench :

“In this quarter century how much the whole character of the job has changed! And how much what is thought to be the proper function of a judge! You and I do not accept those changes; we believe that

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judges are to be the means of carrying forward the continuity of political institutions, not of making them over. Let us be loyal to that conviction, confident that, if the show is to go along at all, our duty will in the end seem as important as even that of those who seek to rebuild this world nearer to their heart's desire."

And fitting too is the language of a tribute paid to Judge Hand after his passing a few weeks ago. The writer, speaking of the remarkable appreciation of that great jurist which had come from outside his own profession, said this:

"It is as if, amid the jarring clamors of the zealots of the world, there has emerged a wistful admiration for the voice of moderation, a clinging faith that perhaps the qualities of the gifted judge are not irrelevant to the troubles of our time; a hope that beneath the raucous slogans of the partisans a sensitive ear may listen for undertones of common speech; an awareness that civilization, like the legal order, is not to be nurtured arduously for all by uprooting it conveniently for some."

How much pause and food for thought we neophytes of the bench should find in these words so indicative of the mind and soul of Clarence E. Case!

We present members of the court he graced and honored so nobly award him this, the highest accolade. He ranks in our esteem alongside those other giants of the New Jersey judiciary, Beasley, Gummere and Vanderbilt, who are no longer among us. We know you concur.

CHIEF JUSTICE WEINTRAUB: The court extends its thanks to the members of the committee. The transcript of these proceedings will be spread upon the minutes of the court and will be published in the reports.