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ment of laws. Chivalry is fine in its place; but it is no substitute for the Constitution, for reason, or for the U.S. Senate.

Let the President send us a nominee he, and we, can be proud of, and then we will show him how courteous and kind and cooperative we can be.

Sixth. If Haynsworth was bad, and Carswell is worse, just imagine what the next nominee will be like.

Once again, the logic would be ludicrous, something out of Art Buchwald or Russell Baker, if not for its repetition in the halls of the Senate. The clear message of the Haynsworth vote was "We want something better." Perhaps at the time Carswell was named, the President thought he was better; but as we have seen, we are in an a fortiori situation. It is difficult to understand how anyone who voted against Haynsworth, for whatever reason, can vote for Carswell. And it is unlikely that anyone who was troubled by his vote for Haynsworth can vote with a clear conscience for Carswell.

We cannot, we must not, assume that because there have been two serious errors in the executive branch, there will be a third, even more serious. Perhaps we in the Senate are partially to blame. Our assignment is not only consent, but advice. Perhaps if this nomination is defeated, we can be more forceful and direct in our advice, both as to specific candidates and general principles. The message of a vote of rejection now would be clear: "Mr. President, we want a candidate who is so clearly qualified that we will all be pleased to share in the honor of his appointment. We want a man who represents the best this Nation has to offer. We want a man who will do justice to the Nation in every sense of the word, whom the entire country can look up to, whose opinions will enlighten and stimulate, even if they do not persuade. Mr. President, we have many such men, and we will help you to find them." That will be our message if we reject this nominee.

If we confirm Harrold Carswell our message will also be quite clear: "Mr. President, you can appoint anyone you like, no matter how pedestrian, no matter how undistinguished, no matter how pedestrian, no matter how unworthy of respect, no matter how abhorrent to our ideals, our traditions, and our liberty. And you will not have the Senate to worry about any more. We consider advice and consent a vestigial power which we are content to allow to atrophy."

Surely, we cannot allow such a message to go forth. We cannot dash the hopes of those who depend on the Senate as a bastion of liberty and justice and constitutional supremacy. We cannot take the easy route of silence and inaction. We must raise our voices in protest, and we must take action.

Mr. MONDALE. Mr. President, there has been a great deal of discussion in recent days about the standards for choosing and approving nominees to the Supreme Court. It has even been suggested that a nominee's mediocrity and lack of distinction are not valid grounds for voting against confirmation.

I refuse to believe that a majority of the Senate adhere to that view. But the very fact that such an argument has been made says something about the faith which Judge Carswell's defenders have in the nominee's abilities.

That their faith is shaken is not surprising in light of the overwhelming record verifying Judge Carswell's "slender credentials"—his failure to distinguish himself as a suitable candidate for membership on the Nation's highest court. For example, a Republican organization, the Ripon Society, stated:

> Virtually all legal historians and scholars who have examined G. Harrold Carswell's record have found him to be one of the least qualified, if not the least qualified, nominee to the United States Supreme Court in the twentieth century. Exhaustive studies which have been performed jointly in the last month . . . give extremely strong statistical corroboration to the contention of judicial scholars that G. Harrold Carswell is seriously deficient in the legal skills necessary to be even a minimally competent Supreme Court Justice.

The Ripon Society conducted a very unusual study of Judge Carswell's record upon the district bench. On the issue of reversals on appeal, the society came to this startling conclusion:

From 1958 to 1969 as a Federal district court judge, 58.8 percent of all of those cases where Judge Carswell wrote printed opinions and which were appealed resulted ultimately in reversals by higher courts. By contrast, in a random sample of 400 district court opinions, the average rate of reversals among all Federal district judges during the same time period was 20.2 percent of all printed opinions on appeal. In a random sample of 100 district court cases from the fifth circuit during the 1958–69 time period the average rate of reversals were 24 percent of all printed opinions on appeal.

Judge Carswell's rate of reversals for all of his printed cases was 11.9 percent as compared to a rate of 5.3 percent for all Federal district cases and 6 percent for all district cases within the fifth circuit during the same period.

When these results are analyzed cumulatively, they form a most impressive indictment of Judge Carswell's judicial competence. The incredibly high rate of reservals—59 percent—which Carswell has incurred on appeals in those cases in which he has written printed opinions brings into serious doubt the nominee's ability to understand and apply established law.

On the basis of this evidence, the Ripon Society has urged Republican Senators "to uphold their party's best traditions by rejecting confirmation" of this nomination. Coming from members of the President's own party, this can hardly be viewed as a partisan attack on a President's Supreme Court nominee.

The Ripon Society's analysis of Judge Carswell's qualifications is similar to views expressed by deans and faculty members from law schools throughout the Nation. Dean Derek Bok of the Harvard Law School stated that Judge Carswell has "a level of competence well below the high standards that one would presumably consider appropriate and necessary for service on the Court." Dean Louis Pollak of the Yale Law School testified before the Judiciary Committee that Judge Carswell "has not demonstrated the professional skills and the larger constitutional wisdom which fits a lawyer for elevation to our highest court. With all deference, I am impelled to conclude that the nominee presents more slender credentials than any nominee for the Supreme Court put forth this century."

And Duke University Law School Prof. William Van Alstyne, who testified in favor of Judge Haynsworth's nomination, told the Judiciary Committee:

> There is, in candor, nothing in the quality of [Judge Carswell's] work to warrant any expectation whatever that he would serve with distinction on the Supreme Court of the United States.

These strong and unequivocal expressions of "no confidence" in Judge Carswell's qualifications are not unique. As the dissenting members of the Judiciary Committee point out:

> The outpouring of professional dismay over this nomination has reached a level unequaled in recent history. Lawyers and law professors from all over the country, despite their preference for maintaining cordial relationships with members of the Court, have forcefully expresed their view that the Carswell nomination will demean the Court and dilute its stature.

This outpouring of professional dismay came to a head on March 13, 1970, when a group of almost 500 prominent members of the legal profession signed a statement urging the Senate to reject this nomination. This group—composed of Republicans and Democrats, liberals, and conservatives, academicians, and practioners—reminded the Senate of its constitutional duty in this matter:

> We respectfully urge that, although this is a second nominee for the vacancy, the Senate has a greater constitutional duty to exercise independent judgment in judicial appointments than it has in executive appointments. We believe that, in the exercise of that duty, the Senate should confirm an appointment to the Supreme Court only if the nominee is of outstanding competence and superior ability. Judge Carswell does not, in our opinion, meet that test.
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> The Senate has recognized this obligation in repeated instances. For example, of the 71 Supreme Court nominations sent to the Senate during the nineteenth century by the Presidents, more than one-fourth were denied Senate approval (Charles Warren: The Supreme Court in United States History, Vol. II, pp. 758–762).

In addition to the nearly 500 prominent attorneys throughout the Nation who have urged the Senate to reject this nomination, nine of the 15 faculty members of the Florida State University Law School—a law school which Judge Carswell helped establish—yesterday wrote to the President of the United States, urging that his nomination be withdrawn. I think that statement, by a group of faculty members, is a significant statement indeed.

Given this overwhelming and unprecedented reaction to the credentials of a Supreme Court nominee by prominent individuals representing the mainstream of the legal profession, we might ask ourselves why the President made such a choice. Anthony Lewis, a distinguished

student of the Supreme Court, posed and then answered the question in a recent article:

How, then, have we arrived at a point where a man with as minimal qualifications as Judge Carswell can be appointed? He was chosen, evidently, as an earnest of President Nixon's declared intention to roll back Supreme Court decisions that he thinks have gone too far in a libertarian direction. . . .

But the tragedy is that the appointment of narrow men, men of limited capacity, will make things worse, not better. What that Court needs is not more war of doctrine, in which moderation is crushed.

The Supreme Court today needs more reason, more understanding, more wisdom. If it has strayed too far from the true vision of American life, as the President believes, those are the qualities that will bring it back. There is nothing wrong with the Supreme Court that G. Harrold Carswell can cure.

This evidence of Judge Carswell's minimal qualifications is, I believe, sufficient grounds for refusing confirmation. But there is a more fundamental reason for rejecting this nomination—one that involves a great deal more than diluting the stature of the Supreme Court by appointing unqualified individuals.

During the debate over Judge Haynsworth's nomination to the Supreme Court, I observed:

The question before us is much broader and much more important than merely the nomination of a single individual to our highest court, as important as that would be by itself. The question really is the direction in which we will move in the country concerning the quality of rights which we say we stand for as a nation.

It is tragic that the nomination now before the Senate raises that same question—and raises it in an even more compelling manner.

For the Senate's acquiescence in this nomination will have an impact beyond that on the Court itself. At the very least, it will signify to millions of Americans that substantial evidence of an individual's hostility and insensitivity to human rights is no bar to membership on the Supreme Court. Perhaps even more important, confirmation of Judge Carswell will amount to an endorsement of this administration's calculated effort to reverse antidiscrimination policies developed over the past 10 years.

To determine Judge Carswell's position on human rights, it is not necessary to rely on a speech made 22 years ago. Even if that speech were erased from the record, Judge Carswell's actions since that time speak for themselves.

There are three basic aspects of Judge Carswell's career which clearly demonstrate his low regard for minority rights: his private activities, first as a U.S. attorney, and then as a Federal judge; his judicial decisions; and finally, his demeanor on the bench.

In regard to Judge Carswell's private activities, I believe that the three most disturbing facts are the following:

In 1953, Judge Carswell chartered an all-white booster club for Florida State University;

In 1956, he was an incorporator and director of a private segregated golf course, a move designed to circumvent the right of Negroes to play on a public course; and

In 1966, he signed a deed containing a "whites only" racial covenant.

There has already been a substantial amount of discussion about each of these episodes. However, it should be pointed out that these incidences take on an added importance in light of Judge Carswell's repudiation of his 1948 advocacy of racial supremacy. The nominee told the Judiciary Committee:

There is nothing in my private life, nor is there anything in my public record of some 17 years, which could possibly indicate that I harbor racist sentiments or the insulting suggestion of racial superiority. I do not do so, and my record so shows.

As noted by the dissenting members of the Judiciary Committee:

Judge Carswell's official and unofficial conduct must be scrutinized with this standard in mind, as well as for its implications regarding his professional qualifications.

Measured against this standard, the nominee's private activities "betray a continuing insensitivity to human rights and to his status as a Federal official and judge."

While there might be argument as to the real motive underlying Judge Carswell's private activities, there can be little doubt about the disregard for human rights continually illustrated in the nominee's judicial record. The minority report of the Judiciary Committee best describes this record as "one of obstruction and delay, amounting too often to an improper refusal to follow the mandates of the Constitution and the clear guidelines of the higher courts."

The accuracy of this summary is obvious after examining some of the more important cases decided by the nominee. On the vital issue of school desegregation, Judge Carswell has demonstrated that he believes more in "obstruction and delay" than in the Constitution.

In *Augustus* v. *Board of Public Education of Escambia County*, 185 F. Supp. 450 (1960), reversed 306 F. 863 (1962), civil rights lawyers attempted to present evidence on the necessity of ending racial segregation of school faculties as an essential step to making school desegregation work. Judge Carswell responded that black students have no standing to sue for desegregation of faculties, stating:

Students can no more complain of injury to themselves in the selection or assignment of teachers than they can bring action to enjoin the assignment to the school of teachers who were too strict or too lenient.

He, therefore, refused to hold a hearing on the issue and struck it from the complaint.

This part of the decision was reversed when the case was appealed to the fifth circuit. The court stated that Judge Carswell was wrong to assume without thorough investigation of the law or the facts that Negro students could not possibly be injured by faculty segregation. The court ordered a hearing on the issues, saying that "whether as a question of law or of fact, we do not think that a matter of such importance should be decided on a motion to strike."

In another aspect of the same case, Judge Carswell delayed for a year and a half in obtaining a desegregation plan from local authorities. He then approved a plan which gave local authorities 1 more year before even token desegregation would begin. This plan also allowed only 5 days a year for blacks to request transfer to white schools, authorized the school board to reject transfer applications on general grounds, and provided insufficient notification of rights to black parents.

The plan approved by Judge Carswell was contrary to existing law. The memorandum filed by dissenting members of the Judiciary Committee pointed out:

Because of the danger that such plans could be used to maintain segregation, the Fifth Circuit had previously held in 1959 that a school board's adoption of the Florida Pupil Assignment Law did not meet the requirements of a plan of desegregation or constitute a "reasonable start toward full compliance" with the Supreme Court's 1954 decision in *Brown-Gibson* v. *Board of Public Instruction of Dade County, Florida* 272 F. 2d 763 (1959). The Fifth Circuit had reaffirmed this decision in 1960. *Mannings* v. *Board of Public Instruction of Hillsborough County, Florida*, 227 F. 2d. 370 (1960).

In *Gibson* the Fifth Circuit also held that the Pupil Assignment Law, even if administered nonracially, was not enough to satisfy a school board's duty to desegregate; it had to be desegregating its schools simultaneously with the application of the Pupil Assignment Law.

Despite the clarity of the law on this point, and despite Judge Carswell's obligation to follow the decisions of the Fifth Circuit, the desegregation order he entered against Escambia County in 1961, provided, in effect, only that the Board should continue using the Pupil Assignment Law which, up to that time, had resulted in the continuation of a fully segregated school system. No meaningful additional steps were required.

The fifth circuit, of course, reversed this desegregation plan approved by Judge Carswell. The court found that the plan "has not gone far enough," and then instructed Judge Carswell as to the minimum that should be required.

In another important desegregation case, *Steele* v. *Board of Public Instruction of Leon County*, 8 Race Rel. L. Rep. 932 (1963), Judge Carswell approved a desegregation plan giving all children blanket reassignment to the segregated schools they were presently attending; black children wishing to attend an integrated school would be required to follow the procedures of the Florida pupil assignment law before being reassigned to a white school. In addition, the Carswell-approved plan provided for desegregation at the rate of only one grade per year.

The the fifth circuit had already ruled every aspect of this plan unconstitutional in the previously decided Augustus case did not deter Judge Carswell. His disregarded for the guidelines of the fifth circuit was again illustrated a year later in *Youngblood* v. *Board of Public Instruction of Bay County, Florida*, 230 F. Supp. 74 (1964). In that case, Judge Carswell approved a plan intended to prevent anything but token integration—this plan, too, was based on the Florida pupil assignment law.

Judge Carswell's record in desegregation cases also demonstrates his refusal to speed the pace of desegregation. Ignoring various rulings by higher courts rejecting grade a year desegregation plans and calling for faster desegregation, Judge Carswell continued to deny plaintiffs' motions to change these plans in the counties under his jurisdiction.

As a result of Judge Carswell's refusal to abide by the Constitution and by higher court rulings in desegregation cases, two of the three school districts under his supervision were among the only four reported Florida districts maintaining completely segregated faculties into 1967. More than 90 percent of the black children in the Tallahassee schools were still in separate and completely segregated schools. Southern Education Reporting Service, statistical summary, 1966–67, page 11.

There are other illustrations of Judge Carswell's refusal to follow the law in cases involving racial discrimination.

In *Due* v. *Tallahassee Theatres, Inc.*, 335 F. 2d 630 (1964), Negro plaintiffs filed for injunction to restrain a conspiracy among theater owners, city officials, and the county sheriff to enforce a policy of segregated operation of theaters.

Judge Carswell dismissed three of five claims in the complaint for failure to allege a claim on which relief can be granted. No evidentiary hearing was afforded.

The fifth circuit was unanimous in reversing this decision, with Chief Judge Tuttle stating that:

> The orders of the trial court dismissing the complaint for failure to allege a claim on which relief could be granted can be quickly disposed of. These orders are clearly in error.
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> * * * * *
>
> It appears, in fact, to be a classical allegation of a civil rights cause of action.
>
> * * * * *
>
> There is no doubt about the fact that the allegations here stated a claim on which relief could be granted, if the facts were proved.

In *Dawkins* v. *Green*, 285 F. Supp. 772 (1968), plaintiffs alleged that city officials had initiated bad faith prosecutions against them to retaliate for past civil rights activities and to intimidate them from engaging in future civil rights activities. Judge Carswell again granted the defendents' motions for summary judgment and dismissed the case. The fifth circuit reversed this decision, stating that "no facts were present so that the trial court could arrive at its own conclusions."

And in *Singleton* v. *Board of Commissioners of State Institutions*, 356 F. 2d 771 (1966), a suit to desegregate Florida State reform schools was brought by former inmates on probation at the time of the decision. Plaintiffs were still inmates when the suit was filed. Judge Carswell dismissed the complaint for lack of standing, stating that the plaintiffs were released from original commitment and were no longer under the board's custody.

The fifth circuit again reversed Judge Carswell, stating that the plaintiffs were released on conditional probation, and were thereby subject to recommitment if they violated the conditions. The Court found that this is "well within" the requirements for standing. The Court also observed that Judge Carswell's reasoning would prevent desegregation in reform schools, since an inmate's average stay was less than the time required to file suit and obtain a court order.

There are various other cases decided by Judge Carswell—involving issues of civil rights and of criminal rights—which present the picture of a judge who follows his own beliefs rather than constitutional and legal requirements. For example, there are at least nine criminal cases in which Judge Carswell was unanimously reversed by the fifth circuit for refusing to grant an evidentiary hearing in habeas corpus proceedings or similar proceedings under 28 United States Code, section 2255.

It is no wonder, then, that the dissenting members of the Judiciary Committee concluded that Judge Carswell's record:

> Reveals that he is not, in fact, a "strict constructionist" in any sense of that vague term. Indeed, he has displayed little, if any, regard for the principle of "stare decisis" when its application has directly required him to follow the holdings of the 5th Circuit and the Supreme Court in civil rights cases. His decisions in this area merely reinforce the picture of a judge who was unable to divorce his personal prejudices from his judicial functions.

Perhaps the most distressing aspect of Judge Carswell's overall record is the testimony before the Judiciary Committee concerning his courtroom demeanor when dealing with civil rights litigants and their lawyers. According to Prof. Leroy Clark, a black attorney who supervised the NAACP legal defense fund litigation in Florida between 1962 and 1968, Judge Carswell was:

> (T)he most hostile federal district court judge I have ever appeared before with respect to civil rights matters . . . Judge Carswell was insulting and hostile. I have been in Judge Carswell's court on at least one occasion in which he turned his chair away from me when I was arguing. I have said for publication, and I repeat it here, that it is not, it was not an infrequent experience for Judge Carswell to deliberately disrupt your argument and cut across you, while according, by the way, to opposing counsel every courtesy possible.
>
> It was not unusual for Judge Carswell to shout at a black lawyer who appeared before him while using a civil tone to opposing counsel.

Since appearing before Judge Carswell was such a unique experience, Mr. Clark was forced to take extraordinary precautions. He told the committee that—

> (W)henever I took a young lawyer into the state, and he or she was to appear before Carswell, I usually spent the evening before making them go through their argument while I harassed them, as preparation for what they would meet the following day.

Three other attorneys appeared before the committee and verified Professor Clark's characterization of Judge Carswell's courtroom behavior. One of these witnesses, Norman Knopf, is now a Justice Department attorney who testified pursuant to a subpena. He corroborated the testimony of Prof. John Lowenthal of Rutgers University Law School that Judge Carswell "expressed dislike of northern lawyers" appearing in southern civil rights cases. According to Mr. Knopf:

> Judge Carswell made clear, when he found out that he was a northern volunteer and that there were some northern volunteers down, that he did not approve of any of this voter registration going on . . . It was a very long strict lecture about northern lawyers coming down and not members of the Florida Bar and meddling down here and arousing the local people, and he in effect didn't want any part of this, and he made quite clear that he was going to deny all relief that we requested.

Judge Carswell's hostility went beyond discourtesy and rudeness. These lawyers also testified that Judge Carswell acted outside a judicial capacity to detain civil rights workers in jail and to insure that nine clergymen arrested as "freedom riders" would retain a permanent criminal record.

I have been a lawyer for 15 years and served as attorney general in my State for 5 years, and I have never heard of any judge doing that sort of thing.

In addition to these witnesses, further evidence concerning Judge Carswell's antipathy to attorneys representing civil rights litigants was presented to the Senate by Senator CRANSTON on March 18, 1970. The distinguished Senator from California spoke with two other attorneys who had appeared before Judge Carswell and who had experienced the same hostility. Senator CRANSTON recounted his conversation with one of these attorneys, Theodore Bowers, of Panama City, Fla.:

> He said of his experiences in Judge Carswell's court that the judge was hostile, even in regard to routine procedural matters.
>
> He stated that civil rights cases seemed to affect him emotionally, that he would get excited in the course of such trials in his court.
>
> Bowers told me that Judge Carswell turned away from him, looking off to the side, turning his body to the side, when he was presenting an argument. He stated that Judge Carswell stayed turned aside throughout half of his total argument. He argued for 10 minutes, and for 5 of those minutes Judge Carswell was looking away, had turned bodily away, seemed to be totally ignoring the case he was seeking to make.
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> He stated that Judge Carswell would appear especially hostile when he, Theodore Bowers, or others cited decisions of the Supreme Court. Judge Carswell attacked Supreme Court decisions while he was sitting on the bench of a lower court.
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> All this, said Bowers, was a consistent pattern of behavior by Judge Carswell from 1964 until 1968, when he left the court where these observations were made.
>
> Theodore Bowers added that the judge would attack attorneys appearing in desegregation cases, and all this, he said, constituted what he would term to be "totally improper judicial posture."

I fully agree with Senator CRANSTON'S contention that Judge Carswell's courtroom behavior raises serious questions that he continually violated canons 5, 10, and 34 of the Canons of Judicial Ethics, which read as follows:

> 5. Essential Conduct
>
> A judge should be temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

10. Courtesy and Civility

A judge should be courteous to counsel, especially to those who are young and inexperienced, and also to all others appearing or concerned in the administration of justice in the court.

* * * * *

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In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, *courteous, patient,* punctual, *just, impartial,* fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; . . .

Somewhat like those of us in the Senate:

He should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

Despite the seriousness of the charges of unfairness and hostility made before the Judiciary Committee, Judge Carswell did not reappear to rebut these charges. Instead, he issued a general statement that there has never been "any suggestion of any act or work of discourtesy or hostility" on his part.

To accept this statement, we almost have to believe that four attorneys perjured themselves before the Judiciary Committee.

The significance of Judge Carswell's courtroom demeanor is best explained in the minority report on this nomination:

Our judicial system must accord litigants a fair hearing. Justice is not dispensed when a judge's personal views and biases invade the judicial process. In Judge Carswell's court, the poor, the unpopular and the black were all too frequently denied the basic right to be treated fairly and equitably.

Judge Carswell was simply unable or unwilling to divorce his judicial functions from his personal prejudices. His hostility towards particular causes, lawyers, and litigants was manifest not only in his decisions but in his demeanor in the courtroom.

Mr. BAYH. Mr. President, will the Senator from Minnesota yield?

The PRESIDING OFFICER (Mr. BYRD of Virginia). Does the Senator from Minnesota yield to the Senator from Indiana?

Mr. MONDALE. I yield.

Mr. BAYH. I note with a great deal of interest the reference my colleague from Minnesota made with regard to justice and the attitudes that citizens who become involved in the judicial process have relative to the treatment they get in our courts. Is the Senator from Minnesota at all concerned about the impact that this nomination will have on large numbers of people that, through his efforts, and the efforts of others, are beginning to have a better opportunity to join other Americans who live in prosperity?

Is the Senator at all concerned how they will view this nomination?

Mr. MONDALE. I thank the Senator for asking that question, because it is quite apparent that one of the great and fundamental debates in this country involves capacity of American institutions to respond to the just needs of the people of this country—particularly the poor and the deprived, who are not in a position politically, economically, culturally, or educationally to assert their rights as others more privileged are able to do.

Whether our institutions will respond to the rights and privileges found in the Constitution depends upon the sense of humanity of the judiciary and those who make it up. I very much fear that Judge Carswell not only lacks competence to perform his duties as a Supreme Court Justice in a technical sense; but also I am even more certain that he lacks the basic commitment to human rights, decency, and justice which is absolutely essential if this country is going to hold itself together.

Mr. BAYH. I concur in the evaluation of this particular concern that the Senator from Indiana shares. I have talked to a number of people, as I have gone about my various duties, and have been in and out of Washington in the past 2 or 3 days, and I have been surprised at the number of cab drivers, hotel employees, and restaurant employees who are concerned over the nomination of Judge Carswell to the Supreme Court. I cannot, in all honesty, suggest how severe this is, or how nationwide it is, but I must say it is significant enough that I am deeply concerned over the impact this nomination has on those who have been trying to work within the system.

I appreciate the Senator from Minnesota yielding to me.

Mr. MONDALE. I thank the Senator for his observations. What is unique about this debate is that it is only the second time in 20 years, perhaps more, that we have ever had a Supreme Court nominee presented about whom there is any question of personal commitment to human rights and the principles enunciated by the Supreme Court.

This certainly is not a partisan issue. President Eisenhower presented nominees who were brilliantly qualified and totally committed to human rights. Indeed, I would believe most attorneys would agree that most of the Eisenhower court appointees in the South, as well as to the Supreme Court, established a magnificent standard of commitment to the cause of human rights and the cause of human justice.

What is unique about Judge Carswell's nomination is that it raises the question of whether a person who has a lifetime record—a personal record as well as a judicial record—of antagonism and hostility to human rights and civil rights, and to the enforcement of the law of the land, and specifically to orders of the circuit court under which he operated, should be permitted to serve on the highest court of the land.

I believe that it would be exceedingly unwise and disastrous to do so. And I regard it as one of the great historical departures of modern American history that we should be reopening the question of human rights and the 14th amendment and argue again a question going back to the 19th century on the issue of human rights.

Mr. GURNEY. Mr. President, the Senator mentioned his lifetime of hostility on the part of Judge Carswell in talking about civil rights cases that went through his court.

I draw the attention of the Senator from Minnesota to the letter to the chairman of the Judiciary Committee, as shown on page 328 of the record, written by Charles F. Wilson. Mr. Wilson was a civil rights attorney in the northern district of Florida for many years. He writes about his experience from 1958 to 1963.

He says:

I represented plaintiffs in civil rights cases in the Federal court for the northern district of Florida, which was then presided over by Judge Harrold Carswell.

I remember he was a black attorney. As a matter of fact, in checking with some of the lawyers in Florida who I know were also concerned in civil rights cases before Judge Carswell's court, they tell me that Charles Wilson really was the first attorney to represent civil rights litigants in the northern district of Florida.

The letter says, as I am sure the Senator from Minnesota knows—and I will read a little bit from it:

There was not a single instance in which he was ever rude or discourteous to me, and I received fair and courteous treatment from him on all such occasions.

He talks about representing plaintiffs in three major school desegregation cases. And he goes on and generally says that, during all of the time he appeared before Judge Carswell, he had only one disagreement with him, and that was over the extent of the relief to be granted.

An interesting thing about Mr. Wilson is that he is presently employed, as the Senator will observe from the letter, as Deputy Chief Conciliator for the U.S. Equal Opportunity Commission.

He was appointed, I presume, by President Johnson.

How can the Senator from Minnesota say that Judge Carswell has had a lifetime of hostility in these cases in view of the evidence in the record?

Mr. MONDALE. Starting from 1948, when he made one of the most outrageous statements on racial supremacy that I have ever heard from a candidate for public office——

Mr. GURNEY. That was a speech he made as a young man.

Mr. MONDALE. I can refer to four specific witnesses who appeared under oath before the Judiciary Committee and personally testified to outrageous acts of insensitivity and hostility by Judge Carswell.

Mr. GURNEY. One of those was a law professor who went down there one time to practice in his court.

Mr. MONDALE. We have affidavits from Mr. Maurice Rosen, under oath, and from Theodore R. Bowers, both of whom practiced before Judge Carswell.

We have a statement made by the Senator from California (Mr. CRANSTON) yesterday, based on personal conversations with attorneys who practiced before Judge Carswell's court. Then we have, may I say, a very decided pattern——

Mr. GURNEY. If we are going to get into the facts——

Mr. MONDALE. In which Judge Carswell, time after time, would not even listen to the factual case that was brought before him by litigants asserting civil rights claims, but would dismiss them summarily.

Time after time the circuit in which he operated would reverse him. He would not even show courtesy to plaintiffs' counsel who appeared before him in civil rights cases, and he would strike the allegations in the pleadings.

These facts, I think, establish a very clear record of insensitivity and hostility in civil rights cases.

Mr. GURNEY. Mr. President, will the Senator yield?

Mr. MONDALE. I will yield in a moment. It is always said that those who know Judge Carswell best are for him. However, I note that in addition to the 500 prominent attorneys who urge the U.S. Senate to reject the nomination of Judge Carswell, nine of the 15 faculty members of Florida State University Law School yesterday wrote the President of the United States asking that the nomination of Judge Carswell be withdrawn.

I think that all of this establishes the type of pattern I have been discussing.

Mr. GURNEY. Mr. President, will the Senator yield further?

Mr. MONDALE. I would be delighted to yield at this time.

Mr. GURNEY. I would say in answer to the rebuttal argument of the Senator that there is some merit in it. I would point out, though, that he has not answered any of the questions I tried to get answered during his recitation.

So that we could get the facts on the table. How long had these lawyers practiced before Judge Carswell's court? I think in the case of one professor—and it may have been Lowenthal from Rutgers, but I do not recall—he appeared in court one time before Judge Carswell.

That is not exactly the kind of weighty evidence represented by Attorney Charles Wilson, who appeared before his court for 5 successive years, presented.

However, here is another——

Mr. MONDALE. I would be glad to respond to the Senator.

Mr. GURNEY. All right.

Mr. MONDALE. Mr. Clark, the NAACP Legal Defense Fund attorney in that area, on page 227 of the record said:

> Judge Carswell was insulting and hostile. I have been in Judge Carswell's court on at least one occasion in which he turned his chair away from me when I was arguing. I have said for publication, and I repeat it here, that it is not, it was not an infrequent experience for Judge Carwell to deliberately disrupt your argument and cut across you, while according, by the way, to opposing counsel every courtesy possible. It was not unusual for Judge Carswell to shout at a black lawyer who appeared before him while using a civil tone to opposing counsel. But I mention those as asides, really, and I do not think them important, because I am sophisticated enough, and other lawyers, black lawyers who appeared before him, were sophisticated enough to sustain that kind of personal insult.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. MONDALE. I yield.

Mr. BAYH. I think it is most appropriate that the distinguished Senator from Minnesota raised this question on the testimony of Mr. Clark in relationship to the comment of our distinguished friend, the Senator from Florida.

I think it would be appropriate to add in the RECORD at this time the further testimony of Mr. Clark on page 226 of the hearings that indicate his competence to testify before us on this point.

Mr. Clark said:

> I knew every single lawyer in the State of Florida who practiced civil rights law, white and black, and indeed I know what their evaluation of Carswell was.

He goes on to say that he has appeared before Judge Carswell at least nine or 10 times personally, and that he has had access to the opinions of every attorney that has been working in this important area in the State of Florida.

So, I think the Senator from Minnesota has found the correct answer to the question raised by the distinguished Senator from Florida.

Mr. GURNEY. Mr. President, if the Senator will yield, he apparently has overlooked Mr. Charles Wilson, who appeared in the court for 5 years. He did not make any mention of him.

May I introduce one of the best pieces of evidence into the RECORD? On this matter of sensitivity I think it is very interesting.

I received a telegram from Julian Bennett. He also wrote a letter for the record, on page 328. Mr. Bennett represents the Bay County School Board in Bay County, Fla. That county has Panama City located in it. He handled the litigation involving the school desegregation in Bay County before Judge Carswell.

Here is what his telegram has to say:

> First counsel for Negro plaintiffs was Charles F. Wilson, Pensacola, Florida, who I understand has filed a letter supporting Judge Carswell's nomination to Supreme Court. Present counsel, Theodore Bowers, . . .

That is the attorney that the Senator from California (Mr. CRANSTON) mentioned the other day. I continue to read from the telegram:

> Present counsel, Theodore Bowers, is one of 14 different lawyers representing individual plaintiffs against school board in seven years that this case has been pending.
>
> Judge Carswell was a District Judge for approximately six of these seven years. During six years Judge Carswell . . .

I think this is extremely interesting on the sensitivity issue:

> actively encouraged and challenged the parties to pursue voluntary desegregation, failing which he entered numerous desegregation orders. He was constantly calling counsel together to determine desegregation progress. Voluntary efforts without court orders resulted in the total integration of high schools in 1967 by closing county's all-Negro school. Presently there are no all black schools in Bay County, Florida. Indicative of Judge Carswell's fair play and fair rulings is that in 6 years of continuous desegregation litigation, plaintiffs and NAACP, thought it necessary to appeal his orders only one time and that in 1969 resulting in the fifth circuit court of appeals, en banc, saying of the Bay County desegregation efforts: "This system is operating on a freedom of choice plan. The plan has produced impressive results but they fall short of establishing a unitary school system." Page 23 of slip opinion—Sing Leton et al. v. Jackson Municipal Separate School District et al., case No. 27863.
>
> In 6 years I saw Judge Carswell patiently listen to all arguments of all counsel. No allegation made in any pleading anywhere or on appeal to higher court of mistreatment of any client or counsel by Judge Carswell at any time. No attorney in my 6 years before the court complained to the court of any alleged mistreatment, publicly or privately, prior to nomination of Judge Carswell to U.S. Supreme Court. Judge Carswell did request Justice Department representing USA to try to assign the same lawyer to our case for continuity in order to avoid the court having to review for new counsel old ground already covered and former rulings of the court on evidentiary matters. His patience and courtesy in bring each new counsel up to date was remarkable to behold. All counsel were treated with respect and fairness. Judge Carswell constantly chided the school board to do better. He told us after Green v. New Kent County, that freedom of choice was out and that we must come up with some other plan. Presently school system operating on straight neighborhood zone plan with all black schools integrated with white students. Letter to follow.
>
> JULIAN BENNETT.

There is direct evidence from a lawyer who spent years in litigation in school desegregation matters before Judge Carswell. It seems to me that kind of evidence is very probative in our case and that it is far more important than a law school professor who came down there for one case. There is another side to the sensitivity story. It is borne out in the letter of Charles Wilson, in this telegram, and others letters in the record.

I thank the Senator.

Mr. MONDALE. I thank the Senator. Of course, the testimony of Mr. Clark was under oath before the committee. He tried nine or 10 cases before Judge Carswell. He was the Director of the NAACP Legal Defense Fund Office in the area. He supervised civil rights cases throughout the State of Florida and was in a fine position to know what was going on. Testimony on this matter was not limited to a single lawyer, but included several other attorneys who testified to the same effect with respect to Judge Carswell's record.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. MONDALE. I am glad to yield.

Mr. DOLE. I just noticed at page 324 of the hearings a letter from Mike Krasny. I will read a portion of that letter because it relates to whether there was a period of hostility and whether Judge Carswell was pro or anticivil rights:

> I was Judge Harrold Carswell's law clerk from February 1960 to June 1962, a period of approximately two and a half years. I believe I was his law clerk longer than any other law clerk he had before or since. I am a member of the Florida Bar practicing law in Melbourne, Fla.
>
> As a member of the Jewish faith and consequently a member of a minority, I sincerely believe that the day to day association which I had with Judge Carswell, both in and out of the courtroom, would have revealed any racist tendencies or inclinations, had there been any. Without the slightest hesitation, I can assure you and the members of your committee that the litigants in the United States Federal District Court in Tallahassee were not judged by their race, creed or color.

Judge Carswell's integrity and honesty is beyond question in this regard. He dealt fairly honestly and respectfully with all those who came before him. His judicial manner was not altered by the race or color of those who appeared before him. I believe that I am more qualified to judge this man than are his accusers. I would be willing, at my own expense, to testify under oath that none of the decisions rendered by him during my tenure of office were tainted in any manner with a so-called racist philosophy, nor were civil rights lawyers or litigants treated in any manner other than the respectful manner accorded to all litigants and attorneys appearing before him.

The people of this country have a right to know the truth about his beliefs, unsullied by false accusations and innuendo.

I deeply resent the attempt of some to tarnish the reputation of a man of Judge Carswell's caliber. He would be a great asset to the Supreme Court.

MIKE KRASNY.

That letter was sent to the chairman of the Committee on the Judiciary. The point I make is that apparently the Senator's case is built upon the statement of Mr. Clark, as well as the statement of the Senator from Massachusetts, but there is other evidence.

It has been pointed out many times that we all have a duty and obligation to weigh the evidence, not just the evidence against and not just the evidence for, but all the evidence. The Senator from Minnesota cites the statements of four witnesses but how many litigants and attorneys appeared before Judge Carswell all the time he was on the bench? What percentage of the total number of lawyers who appeared before Judge Carswell does Mr. Clark represent? There is no specificity about the number of litigants or their mistreatment, only general statements by the Senator from Minnesota and the Senator from Massachusetts about a man's bias and hostility. That may be a fair statement, but I do not believe it is.

It would be helpful to have the facts. How many lawyers appeared before Judge Carswell? How many litigants appeared before Judge Carswell? What was the occasion of his being rude or turning the chair?

Mr. MONDALE. I refer the Senator to my earlier remarks in which I detail the argument to which the Senator objects.

These are four witnesses who testified under oath. Mr. Clark had wide experience before several judges in Florida, including Judge Carswell. He was in charge of litigation in that area. There are several affidavits. The Senator from California (Mr. CRANSTON) testified as to conversations with attorneys who practiced before Judge Carswell. There is an abundance of evidence under oath which showed his antipathy toward settled law, his dismissal of legitimate lawsuits brought by civil rights attorneys, and his personal involvement in the efforts to keep segregated institutions in his own community—tracing from the present all the way back to 1948. All of these occurrences raise grave doubt as to whether there is any commitment whatsoever on the part of Judge Carswell to human rights and to the enforcement of the Constitution; they also raise grave doubt as to whether Judge Carswell has the competence necessary to discharge the responsibility of serving on the Highest Court of our land.

Mr. DOLE. Mr. President, will the Senator yield further?

Mr. MONDALE. I yield.

Mr. DOLE. I believe this information would be helpful to all of us in the Senate and to the public. The bad things about Judge Carswell are widely reported in the newspapers and the network programs.

I would like to know how many lawyers appeared before Judge Carswell. I would like to know how many litigants appeared before Judge Carswell. He has been a member of the bench for 12 years. He has handled approximately 4,500 cases. He has been a Federal district judge, which is a trial judge, as the Senator from Minnesota knows. He has been a member of the appellate court for well over a year. He has had literally thousands of litigants and lawyers before his court.

I would guess any of us, whether it be in a political campaign or a campaign of this kind, could pick up one or two, or half a dozen, people who may not agree with the Senator from Kansas or the Senator from Minnesota. So to be fair and honest, as I know the Senator from Minnesota wants to be, we should have relative numbers. The Senator is great on numbers of reversals—x number of x cases. But what about the total number of lawyers who appeared before him, the total number of litigants? Is that information available?

Mr. MONDALE. I do not know. I have referred to the record I have before me. I am no statistician on the northern Florida judicial district. I do not know how many lawyers practiced before the court or how many cases there were. One has to judge on the basis of his official opinions and on the basis of the experience of those who practiced before him; and the issue we are now debating is Judge Carswell's opinion on human rights. What is his attitude and demeanor toward those who practiced before him in those cases?

We have heard sworn testimony from NAACP legal defense fund attorney who tried cases before him nearly 10 times and sworn testimony from three other attorneys. All the testimony was to the same effect. How many other attorneys who tried other lawsuits? How many property cases? How many title cases? How many patent cases? How many aircraft accident cases? I would not have the slightest idea, and I do not think it is slightly relevant.

Mr. DOLE. Will the Senator yield further?

Mr. MONDALE. I am happy to yield.

Mr. DOLE. We are talking about the "total man." The Senator is looking for the perfect man, apparently.

Mr. MONDALE. I am looking for somebody better than this.

Mr. DOLE. I could comment on that.

We have heard these same arguments before. It is a replay of the Judge Haynsworth nomination—the same cast of characters, the same accusations, the same parts, are paraded in this Chamber. The arguments made during the consideration of Judge Haynsworth's nomination are now being applied in the case of Judge Carswell. Judge Haynsworth was "insensitive." I am not certain whether the Senator from Minnesota said this but others have said Judge Carswell is very mediocre; therefore, he is not worthy of the honor of sitting on this High Court. It is the same cast of characters and the same scenario—just a different picture.

Mr. MONDALE. And we were correct both times. The Senator from Kansas will recall that I supported the nomination of Judge Burger to be Chief Justice of the United States. The record will show I have supported most nominees sent to the Senate by the President of the United States. The President should have a broad parameter of choice. Where I draw the line is when a nominee is before us who is wrong on human rights—because we cannot back off the cause of human rights. We cannot back off the 14th amendment to the Constitution and still have a country.

That is why I am opposing the nomination of Judge Carswell. That is why I opposed the nomination of Judge Haynsworth. It may be the same cast of characters, but I am proud to be a part of the play. I am sorry we are faced with this kind of nominee.

Judge Carswell's record, both on and off the bench, persuasively leads to but one conclusion: that at best, the nominee has shown himself to be indifferent and insensitive to human rights; at worst, he has demonstrated his hostility to those who sought to challenge unlawful discrimination through legal channels.

To the nearly 500 lawyers who urged the Senate to reject this nomination, it is a record which clearly indicates that "the nominee possesses a mental attitude which would deny to the black citizens of the United States—and to their lawyers, black or white—the privileges and immunities which the Constitution guarantees." Anthony Lewis, a distinguished student of the Supreme Court, has said:

That record displays at the very least extraordinary insensitivity. It must raise questions about Judge Carswell's fitness for a lifetime position on a court that must decide some of the most sensitive and most important racial questions before the country. For the black community, the idea of Judge Carswell on the Supreme Court bench must now be a provocation.

Particularly disturbing about the nomination of Judge Carswell is the fact that it is one more symbol of the indifference to racial justice displayed by this administration. Those who believe that the southern strategy exists only in the minds of partisan journalists should consider this nomination as a part of the following pattern of administration actions:

The award of defense contracts to textile firms with a history of racial discriminations;

The proposal of a voting rights bill which was designed to downgrade our commitment to equal suffrage in the South and which was a patent call to southern members to embroil the simple