

DOCUMENT WITHDRAWAL RECORD (NIXON PROJECT)

DOCUMENT NUMBER	DOCUMENT TYPE	SUBJECT/TITLE OR CORRESPONDENTS	DATE	RESTRICTION
1.	Note	"Law and Background" with attachments Nos. 2 - 7	n.d.	D
2.	Note	"S.C. Nominee - 1 - ..."	n.d.	D
3.	Note	"1/16 conveyed to atty..."	n.d.	D
4.	Fact sheet Note	"I Facts: In 1968..."	n.d.	D
5.	Fact sheet Note	"Law and Background"	n.d.	D
6.	Note	"Gifts Made" "White House Note Paper"	n.d.	D
7.	Note	"1. Finances - How wealth required."	n.d.	D
8.	Questionnaire Note	Cover memo "Three important areas of concern..." open with following attachment: No. 8 "Personal Data Questionnaire"	n.d.	D

FILE GROUP TITLE

FOLDER TITLE

BOX NUMBER

WHSF - Ehrlichman - Alpha Subject

53 16

Carswell, [G. Harold]

RESTRICTION CODES

- A. Release would violate a Federal statute.
 B. National security classified information.
 C. Pending or approved claim that release would violate an individual's rights.
 D. Release would constitute a clearly unwarranted invasion of privacy or a libel of a living person.

- E. Release would disclose trade secrets or confidential commercial or financial information.
 F. Release would disclose investigatory information compiled for law enforcement purposes.
 G. Withdrawn and return private and personal material.
 H. Withdrawn and returned non-historical material.

THE WHITE HOUSE

WASHINGTON

DETERMINED TO BE AN
ADMINISTRATIVE MARKING

March 20, 1970

E.O. 12066, Section 6-102
By RD -----NAH, Date 4-17-90

CONFIDENTIAL

MEMORANDUM FOR WILLIAM REHNQUIST

Subject: Carswell

John Ehrlichman would like a daily name tally on who is supporting the nomination of Judge Carswell to be submitted to Ken BeLieu in Bill Timmons office by 3 pm each day.

This would be your best estimate of a nose count from your people working on the Carswell nomination to be worked into our estimates over here.

We would like this to be a daily enterprise beginning Monday, March 23, 1970.

Thanks, Bill.

BUD KROGH

THE WHITE HOUSE
WASHINGTON

March 11, 1970

MEMORANDUM FOR BUD KROGH

From: William E. Timmons *bt*

I wish I could give you a definite date for the confirmation of Judge Carswell as requested in your March 9 memo.

Timing depends on whether or not the Southerners filibuster the voting rights bill currently being considered by the Senate.

Guessing, I think voting rights will be concluded this week with Carswell on tap for debate and vote late next week. We are hoping this is the case.

Therefore, I recommend tentative clemency petitions for week of March 23rd. Hookay?

File

MEMORANDUM

DETERMINED TO BE AN
ADMINISTRATIVE MARKING

E.O. 12065, Section 6-102

By RS NARS, Date 4-23-80

THE WHITE HOUSE

WASHINGTON

~~CONFIDENTIAL~~

JANUARY 26, 1970

FOR BUD KROGH

RE: CARSWELL

A member of the New York State Supreme Court called Ehrlichman on Friday, January 23, 1970, and indicated that both LBJ and Senator Fulbright had made some very racist speeches in 1957. He thought that it might be appropriate to research their speeches in preparation for the Carswell confirmation hearings.

John thought this was a good idea and asked that I direct this information to you.

Many thanks.



Tod R. Hullin

~~CONFIDENTIAL~~

THE WHITE HOUSE

WASHINGTON

February 18, 1970

INFORMATION

American Trial Lawyers
Association Evaluation of
G. Harold Carswell

MEMORANDUM FOR THE PRESIDENT

In the attached letter, the American Trial Lawyers Association indicates that "they are unaware of any clear or overwhelming valid basis to urge that the confirmation of this nomination be denied."

This evaluation was not sought and, as far as I can determine, is merely another attempt to convince this Administration that the Association should be given all background data on future appointments to the Federal Judiciary for review and evaluation. They opposed the Haynsworth nomination.

RECOMMENDATION

I see no need for you to read the attached letter.

Egil Krogh, Jr.

JOHN C. STENNIS, MISS., CHAIRMAN

RICHARD B. RUSSELL, GA.
STUART SYMINGTON, MO.
HENRY M. JACKSON, WASH.
SAM J. ERVIN, JR., N.C.
HOWARD W. CANNON, NEV.
STEPHEN M. YOUNG, OHIO
DANIEL K. INOUE, HAWAII
THOMAS J. MCINTYRE, N.H.
HARRY F. BYRD, JR., VA.

MARGARET CHASE SMITH, MAINE
STROM THURMOND, S.C.
JOHN G. TOWER, TEX.
PETER H. DOMINICK, COLO.
GEORGE MURPHY, CALIF.
EDWARD W. BROOKE, MASS.
BARRY GOLDWATER, ARIZ.
RICHARD S. SCHWEIKER, PA.

United States Senate

COMMITTEE ON ARMED SERVICES

WASHINGTON, D.C. 20510

T. EDWARD BRASWELL, JR., CHIEF OF STAFF

January 23, 1970

Mr. Gene Cowen
Special Assistant to the President
The White House
Washington, D. C.

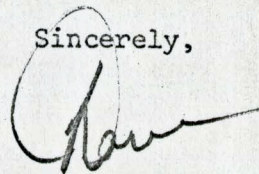
Dear Gene:

As you know, the Senator tried to help the President with the Carswell nomination by speaking out immediately following the announcement and consequently being quoted with favorable reaction in the first-day stories.

It was his thought that this might be interpreted in the press as significant in view of previous postures.

Thursday morning came the disclosure of the 1948 remarks. Immediately following the State of the Union, the Senator made a point of stopping in the Senate TV gallery to state that he stands firmly behind the nomination. The appearance grew out of a request from ABC but was filmed by the other nets as well. I didn't monitor so don't know whether it got much play for you or not. Enclosed is a rough transcript of his remarks which I felt you might want to see.

Sincerely,



David Newhall, III
Administrative Assistant
to Senator Schweiker

DN:as
Enclosure

Folk-transcript

Reaction to Carswell appointment

1/22/70

"I intend to support the nomination of Judge Carswell to the Supreme Court. The speech that he gave ~~many years~~ some twenty-two years ago was given one year out of school and he's catagorically rejected it. I feel that ~~his experience~~ we ~~should judge the man on the basis of his present performance and his philosophy as now constituted on the bench and I've been given information in a Senate briefing that it will measure up. And of course just recently the Senate made the judgement of this a few months back when they confirmed him to the Circuit Court of Appeals. And I believe that he will meet the standards required for the Supreme Court.~~

PRESERVATION COPY

Carswell's Credo Is Restraint

By FRED P. GRAHAM

Special to The New York Times

WASHINGTON, Jan. 20 —

Judge G. Harold Carswell, President Nixon's new nominee to the Supreme Court, has a virtually unblemished record as the type of "strict constructionist" that Mr. Nixon promised to appoint when he campaigned for the Presidency.

In speeches across the country, Mr. Nixon promised to name men to the high court who would "interpret" the law, not "make" it.

In 11 years as a Federal District judge in Tallahassee, Fla., and in six months as a member of the United States Court of Appeals for the Fifth Circuit, Judge Carswell sprinkled the lawbooks with opinions on matters ranging from civil rights to the legality of Florida's poultry law.

Throughout these opinions runs a consistent tendency to view the law as a neutral device for settling disputes, and not as a force for either legal innovation or social change.

An Ironic Comparison

An ironic byproduct of this consistency is that Judge Carswell's judicial record is more conservative than that of Judge Clement F. Haynsworth jr., who was defeated for confirmation to the same seat by liberal forces that branded him as a conservative who was "not a contemporary man of the times."

Judge Haynsworth was ahead of the Supreme Court in devising fuller review for state prisoners in Federal habeas corpus proceedings, and occasionally anticipated the high court in ruling in favor of Negroes in civil rights cases.

An exact comparison with Judge Carswell is difficult, as the new nominee served as a trial judge much of the time, and most of his opinions dealt with day-to-day issues rather than sweeping constitutional matters. But the lawbooks contain at least 25 appellate opinions he wrote when he sat, as District judges frequently do, on the Court of Appeals.

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

Attitude of Restraint

This attitude of restraint has generated friction only in the field of civil rights, where Judge Carswell's policy of sticking with settled precedents until change came from higher courts had the result of allowing dilatory school officials to delay segregation.

An example was provided when parents of Negro children in the Pensacola area sued to break up the segregation of faculty and staffs in the formerly all-black school. Although the higher courts had not said in so many words that faculty, as well as student, segregation must end, lawyers for the Negroes argued that these courts could not have meant that the newly integrated schools would be staffed with all-black and all-white faculties. Judge Carswell ruled otherwise.

"The Brown cases," he



Associated Press

Judge G. Harold Carswell of Tallahassee in his chambers

blatantly segregationist. He was a clever and an intelligent man, so that when he was wrong on the law it wasn't because he didn't know what the law was—it was because he was biased."

A Yale University doctoral candidate, Mrs. Myron P. Curzan, wrote a political science dissertation in 1968 that analyzed the civil rights decisions of the 31 Federal District judges appointed to posts in the Deep South between 1953 and 1963.

When she ranked the 31 judges in terms of the number of times they had ruled in favor of Negro plaintiffs' position, Judge Carswell ranked 23d. Her study showed that, of his civil rights decisions to be appealed, 60 per cent were reversed.

In most of these cases, Judge Carswell would have had to move beyond clearly settled precedents to rule in favor of the civil rights position. When those precedents have existed, he has struck down segregation in crisp, forthright opinions.

In 1965, he declared that the barber shop in Tallahassee's Duval Hotel had to serve Negroes under the public accommodations provision of the Civil Rights Act of 1964.

He brushed aside a barber's assertion that he was not covered because 95 per cent of the customers were local people and not guests in the hotel. "From a reading of the act it is clear," Judge Carswell observed, "that relative percentages of local, as compared to transient, customers may not be used as criteria to determine coverage."

Prospects Brighter

In 1960 when Tallahassee Negroes sued to desegregate the counters, waiting rooms and restrooms in the city-owned airport, he did not hesitate to order desegregation.

Even though Judge Carswell's civil rights record may be fully as objectionable to civil rights forces as that of

Judge Haynsworth, the new nominee's prospects for confirmation seem much brighter, partly because he has not antagonized organized labor as Judge Haynsworth had.

Federal District Judges rarely rule on labor cases, which are usually appealed from the National Labor Relations Board directly to a Court of Appeals.

Tom Harris, the official of the American Federation of Labor and Congress of Industrial Organizations who led the successful attack against Judge Haynsworth, said today that Judge Carswell "doesn't appear to have a significant record on labor cases." He said the AFL-CIO had no plans at present to oppose him.

The few labor opinions that Judge Carswell has written reflect his reticence to use judicial power and his tendency not to extend the judiciary's power.

Some Dissenting Opinions

In one decision, when a three-judge Court of Appeals ordered a soft-drink company to comply with the minimum wage laws, he dissented, saying: "It is my view that the injunctive power of courts should never be invoked lightly, nor should it be converted into a mere ministerial function triggered automatically upon the finding of an infraction of the law."

Judge Carswell's opinions tend to be bloodless documents, setting out the facts and the precedents, then briskly coming to a conclusion that is said to be within the precedents.

He is not given to broad statements of his philosophy, but his creed at this point in his career seems to have been summed up in one statement from an opinion he wrote shortly after he became a judge in 1958: "Established law, with its imperfections, must nonetheless be applied as it is and not on the predilections of the court."

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"The Brown cases," he wrote, referring to the Supreme Court's landmark school decisions of 1954 and 1955, "hold that the segregation of white and Negro children on the basis of race denies to Negro children equal protection of the laws guaranteed by the 14th Amendment to the Constitution." He put the word "children" in italics, and went on to state that these decisions and subsequent ones by the Fifth Circuit did not reach the question of faculty desegregation.

Not Directly at Issue

"This court can not indulge in a presumption that these Federal Courts decided the points of law asserted by plaintiff by inference," he said, because staff members' rights were not directly at issue in those cases.

Finally, he declared, students have no standing to intervene in such matters: "Students herein can no more complain of injury to themselves of 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."

Some civil rights lawyers who have appeared before Judge Carswell have charged that his tendency to issue declaratory judgments rather than injunctions—to hand down limited desegregation orders rather than sweeping ones—was a convenient use of judicial self-restraint to cloak segregationist sympathies.

Leroy D. Clark, a professor of law at New York University, who formerly headed the operations of the N.A.A.C.P. Legal Defense and Educational Fund, Inc., in northern Florida, asserted in an interview today that Judge Carswell had repeatedly delayed school cases by failing to rule until pressed to do so, and then by often issuing decisions that were palpably wrong and quickly reversed.

"We would have a hearing and it would take several months for him to rule," Mr. Clark said. "I would have to file a motion to ask him 'would you please rule?'—which is outrageous."

"It was my view that of the Federal District judges I appeared before, Harrold Carswell was clearly the most openly and

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Carswell ^{Post} Selected ^{1/20/70} By Nixon

PRESERVATION COPY

Senators Back Choice; Rights Units Opposed

By Carroll Kilpatrick
Washington Post Staff Writer

President Nixon announced yesterday that he will nominate Judge George Harrold Carswell of Tallahassee, Fla., a member of the Fifth Circuit Court of Appeals, to be an associate justice of the Supreme Court.

If confirmed by the Senate, Carswell, a 50-year-old native of Georgia, would take the seat formerly held by Justice Abe Fortas. The nomination of Judge Clement F. Haynsworth Jr. of South Carolina to the same court seat was rejected by the Senate last year.

Carswell, like Haynsworth, was criticized by civil rights leaders, but the immediate reaction in the Senate indicated Carswell would have less opposition there.

Several Republicans who opposed Haynsworth were quick to say yesterday that they supported Carswell.

In June, the Senate approved by voice vote without opposition President Nixon's nomination of Carswell to the Fifth Circuit.

The Senate approved Carswell for the promotion from federal district judge for the northern district of Florida despite an objection by the Leadership Conference on Civil Rights, which said he had shown "a strong bias against Negroes asserting civil rights claims."

A Democrat turned Republican, Carswell was named United States Attorney for the northern district of Florida by President Eisenhower in 1953. In 1958, Mr. Eisenhower nominated him to be a federal district judge. He was chief judge of the district until named to the Circuit Court last year.

In announcing the President's decision, White House Press Secretary Ronald L. Ziegler said that Carswell had an "outstanding judicial record."

Ziegler also said there "has been a complete clearance as is the case in all appointments," with a review by the FBI and a review of his tax returns.

See JUDGE, A6, Col. 3

President Chooses Judge Carswell Of Florida for the Supreme Court

JUDGE, From A1

"It was a very thorough check into the entire background," Ziegler said.

Asked if there was significance to the fact that both Haynsworth and Carswell were Southerners, Ziegler replied: "It's a fact."

Ziegler said the President did not know Carswell personally and the President had never met Haynsworth until after his defeat by the Senate. But Judge Carswell said he had met Mr. Nixon for a brief handshake when the latter, as Vice President, spoke to United States attorneys more than 15 years ago.

At 1:30 p.m. yesterday, two hours before the announcement was made, President Nixon telephoned Carswell, who was at his home in Tallahassee, to inform him that he was the choice for the high court.

In Tallahassee, Judge Carswell said later of his response to the announcement: "I told the President I was overwhelmed." He added, "I don't really think there will be problems but I'll just roll with the punches" when the Senate takes up the nomination.

The President made the final decision on Carswell late Saturday, Ziegler said. He had narrowed the choice down to "four or five" persons, all judges, and "thoroughly reviewed" Carswell's record, the press secretary said.

Among the other names reported under consideration were Judge Louis H. Burke of the California Supreme Court, Judge William E. Miller of the Federal District Court in Nashville, and Justice Earl O'Connor of the Supreme Court of Kansas.

Worth About \$200,000

Carswell was in Washington early last week for conferences with Attorney General John N. Mitchell and other Justice Department officials. Carswell also conferred while here with Egil Krogh, a deputy special assistant to the President.

Ziegler said there had been no check on Carswell with the American Bar Association and no political clearance.

However, Attorney General Mitchell conferred yesterday with a number of Republican Senate leaders and Republican members of the Senate Judiciary Committee and gave them a financial statement on Carswell.

Sen. Roman L. Hruska (R-Neb.) said that Carswell "is not a pauper but he's far from affluent." His total worth is about \$200,000, "which for a man of 50 who has practiced law is not out of keeping," Hruska said.

Mrs. Carswell, the former Virginia Simmons, owns 70 or 80 shares in a family concern, the Alberta Box and Crate Co. in Georgia, and Carswell has a minority holding in an inheri-

tance of Georgia timber land, Hruska said.

The Carswells have four children—two married daughters and two sons, both students at Florida State University.

Senate Minority Leader Hugh Scott (R-Pa.), who opposed Haynsworth, said he supported Carswell "without qualification."

Hruska said Carswell's "record on its own merits will warrant prompt confirmation." The Carswell nomination was advanced by Sen. Edward J. Gurney (R-Fla.).

Chairman James O. Eastland (D-Miss.) of the Senate Judiciary Committee, who said he believed Carswell would make a good associate justice, scheduled hearings on the nomination for next Tuesday.

"Progressive Conservative"

The Leadership Conference on Civil Rights said Mr. Nixon "has again nominated an unknown to the Supreme Court whose principal qualifications for the post seems to be his opposition to Negro rights. While this may be good Nixon-Mitchell politics in the suburbs and the South, it can only add to the already dangerous racial tensions in America."

Rep. Don Fuqua (D-Fla.), Carswell's congressman, said the judge "is in no way a reactionary. I think he is basically a conservative, but he is also a progressive conservative."

NYT - 1/20/70

Southerner Named to Supreme Court; Carswell, 50, Viewed as Conservative

By ROBERT B. SEMPLE Jr.
Special to The New York Times

WASHINGTON, Jan. 19—President Nixon nominated Federal Judge G. Harrold Carswell of Tallahassee, Fla., to the Supreme Court today.

The announcement was made by the White House press secretary, Ronald L. Ziegler. The nomination was sent to Capitol Hill in late afternoon, and hearings in the Senate Judiciary Committee are expected to begin Jan. 27.

Judge Carswell is regarded as a conservative with judicial views closely parallel to those of the President. He is a 50-year-old Georgia native who was appointed by Mr. Nixon to the United States Court of Appeals for the Fifth Circuit last May.

If confirmed, Judge Carswell will fill the court seat left vacant by the resignation last May of Justice Abe Fortas. The Senate refused to confirm Mr. Nixon's first choice for the vacancy, Judge Clement F. Haynsworth Jr.

Congressional conservatives promptly hailed the choice, while some civil rights advocates denounced it as further evidence of the Administration's alleged "Southern strategy."



Associated Press

G. Harrold Carswell at his home in Tallahassee yesterday

In a view echoed by other Florida and Southern lawmakers, Senator Edward J. Gurney, Florida Republican, said he was "very pleased" with the nomination. Senator Gurney was reported today to have first suggested Judge Carswell for the post to Attorney General John N. Mitchell.

Joseph L. Rauh Jr., vice chairman of the Americans for Democratic Action, reacted differently from Mr. Gurney. Mr. Rauh said that the President had "again nominated an unknown, whose principal qualification for the post seems to

Continued on Page 20, Column 4

PRESERVATION COPY

be his opposition to Negro rights."

"While this may be good Nixon-Mitchell politics in the suburbs and the South, it can only add to already dangerous racial tensions in America," he added.

Judge Carswell participated with 13 other members of the Fifth Circuit court in a ruling last year that followed the wishes of the Administration by delaying immediate school desegregation in Mississippi. The ruling of the court, which is based in New Orleans, was unanimous. But it was later reversed by the Supreme Court.

Little else was known here today of Judge Carswell's views in part because he has been a member of the Court of Appeals for only a brief time. Some Government sources described him as "something along the lines of Judge Haynsworth in judicial philosophy" — an assessment the White House did little to discourage.

Mr. Ziegler, briefing newsmen after the announcement in midafternoon, said the judge met all the President's criteria — "a good judicial record, an outstanding background, and he is young." The judge was further described as a "strict constructionist" who, as a former prosecutor and trial judge, dispensed firm justice in criminal cases.

Met Nixon in 1954

Mr. Ziegler disclosed that Judge Carswell, to whom the press secretary spoke by telephone today, recalled meeting Mr. Nixon only once, for a "brief handshake" in 1954.

The press secretary said that Judge Carswell had been one of "four or five" men under active consideration. He did not disclose the names of the others but said that Mr. Nixon had made his final decision Saturday evening after returning from the Presidential retreat in Camp David, Md.

Perhaps mindful of the controversy over Judge Haynsworth's financial dealings, Mr. Ziegler said that Judge Carswell's personal, judicial and financial background had been subjected to thorough investigation by the Justice Department. Representative Don Fuqua, a Florida Democrat who said he was a personal friend of the judge's, said Judge Carswell "has no stock problems."

At the same time, however, the press secretary said that the nomination had not been subjected to "political" clearance on Capitol Hill or clearance with the American Bar Association.

Mr. Ziegler revealed that the judge came to Washington last week to confer with Attorney General Mitchell and Egil Krogh, an aide to John D. Ehrlichman, assistant to the President for domestic affairs.

Mr. Nixon called Judge Carswell today at 1:15 P.M. — reportedly their first exchange since the "brief handshake" in 1954.

Despite opposition in civil rights circles, there was no immediate indication from Capitol Hill that Judge Carswell's nomination would evoke the same angry, widespread furor that culminated in the defeat of Judge Haynsworth.

Judge Haynsworth, of South Carolina, drew fire from both civil rights and labor groups, but his greatest difficulty was the belief of many Senators that he had been insensitive to potential conflicts of interest between his private business affairs and his public duties.

Promise by Nixon

Following the Senate's rejection by a 55-to-45 margin of his nominee, Mr. Nixon issued a sharp attack on Judge Haynsworth's critics, defended the judge's integrity as "unimpeachable," and promised to use the same criteria that had governed his selection of Judge Haynsworth in choosing another Associate Justice.

Senator Roman L. Hruska, Nebraska Republican, predicted

swift confirmation and said that unlike Judge Haynsworth, a millionaire, Judge Carswell has had "a minimum of business dealings since he went into public office."

Mr. Hruska estimated the nominee's net worth at about \$200,000 — representing shares inherited by his wife in the Alberta Box and Crate Company, a peach packing concern, and 12,000 acres of timberland inherited from his family.

Senator Richard B. Russell, Democrat of Georgia, said that he could not conceive of "a more appropriate appointment." He said that while no one judge could change the direction of the Supreme Court, Judge Carswell "would get the Court back in its proper function as a judicial body."

"He'll get it to follow the constitution as it was written, not as it has been interpreted," Mr. Russell added.

In what may have been an important clue to Senate sentiment on the hill, Senator Richard S. Schweiker said he would vote to confirm Judge Carswell. The Pennsylvania Republican — one of a small but influential group of Republican moderates and liberals who opposed the Haynsworth nomination — said in a statement that he was satisfied with the thoroughness of the Justice Department's investigation of the nominee.

Judge Carswell graduated from Duke University in 1941 and from the Walter F. George School of Law at Mercer University in Macon, Ga. in 1948. He moved to Tallahassee in 1949 and practiced as a trial lawyer with Ausley, Collins and Truett, until 1951. He then practiced with his own firm of Carswell, Cotton and Shivers until 1953.

Swift in Politics

In 1953, President Eisenhower named Judge Carswell United States attorney for the Northern District of Florida. A Democrat, he had supported Senator Russell's bid for the Democratic Presidential nomination in 1952. After the democrats nominated Adlai Stevenson, he supported General

Eisenhower in the general election in November. He later became a Republican.

In 1958, Judge Carswell was named judge of the United States Court for the Northern District of Florida. In June, 1969, the Senate confirmed his nomination to the Fifth Circuit, which has jurisdiction in Florida, Georgia, Alabama, Mississippi, Louisiana, Texas and the Canal Zone.

The judiciary subcommittee that approved the judge's elevation from district to appeals court held only a 10-minute hearing June 5, and no opposition was expressed.

Six days later, however, the Leadership Conference on Civil Rights, a coalition of some 100 labor and civil rights organizations, submitted a memorandum asserting that since his appointment to the district court, Judge Carswell had displayed "a strong bias against Negroes asserting civil rights claims."

The subcommittee rejected these assertions, and Judge Carswell was confirmed by the Senate June 19 without opposition from the floor.

All of Mr. Nixon's nominees to the Court — Chief Justice Warren E. Burger, Judge Haynsworth, and now Judge Carswell — have been labeled "strict constructionists." The president on several occasions has used this term to define a man who interprets the Constitution conservatively. It is the right of Congress, he has said, to write the laws, and the strict constructionist in his view is a judge who moves cautiously in modifying those laws.

Specifically, in the campaign, Mr. Nixon charged that the Warren Court had unwisely broadened the rights of suspects in criminal cases. Most legal scholars now agree, however, that the law-and-order issue that prompted Mr. Nixon to undertake to restore "balance" to the Court is no longer paramount and that the Court itself is not out of "balance" but in a state of flux.

PRESERVATION COPY

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 20, 1970

*Tell Bud?
Have Hisin
hand AH*

MEMORANDUM FOR BRYCE HARLOW

FROM:

BUD KROGH *BK*

SUBJECT:

BRIEFING OF SENATORS RE CARSWELL

Last night you asked if the Justice Department would prepare some papers demonstrating that Judge Harrold Carswell evinces a balanced point of view on civil rights and labor issues.

Bill Rehnquist agreed to do this, but he felt it necessary to check with John Mitchell first. Mitchell's position is that it would be improper for the Justice Department to provide any documentation to friendly Senators before the Senate Judiciary Committee convenes to discuss these issues.

Apparently, the Attorney General is worried that he will be undercutting the Judiciary Committee's prerogatives by preempting the Committee's disclosure of Carswell's positions in open hearings.

In my judgment, it is much the better part of wisdom to pre-brief our friends today or tomorrow so they are prepared during this next week to rebut the attacks of civil rights and labor advocates.

I will be presenting a couple of paragraphs to Ron Ziegler this morning so he does not stand naked before a hostile world at this morning's briefing. However, I think your help is necessary to get the Attorney General to agree that pre-briefing is a good idea.

RECOMMENDATION:

That you call the Attorney General and ask him to permit the preparation of materials by Rehnquist for review by you and dissemination to our friends.

Three important areas of concern in the administration of justice are the criminal law, civil rights and labor law. While a Federal District Judge is not usually in a position to make law on his own, Judge Carswell's record for these areas is that of a competent judge following the authority laid down by higher courts when there was such authority; when the question was an open one, his judicial philosophy is that of balanced conservatism.

In the field of criminal law, Judge Carswell has indicated his concern that the right of society to convict and punish the guilty should not be lost sight of in an effort to protect the rights of the accused defendant. He decided that a defendant's claim of double jeopardy was unfounded (U.S. v Levy 232 Fed. Supp. 661, 1964); and while sitting as a Circuit Judge in the District Court, he held that where a criminal defendant employs his own lawyer, the claimed incompetence of the lawyer was not attributable to the state so as to amount to a violation of the defendant's right to counsel (Hayes v. Wainwright 302 Fed. Supp. 716). On the other hand, he decided that the refusal of a state court to allow an indigent criminal defendant a free copy of the reporter's transcript of the closing argument to the jury was a violation of that defendant's right to the equal protection of the laws secured by the 14th Amendment. (Bell v. Wainwright 299 Fed. Supp. 521).

In his civil rights decisions, Judge Carswell has demonstrated his understanding of the role that a Federal District Judge should play in interpreting

the law. He has repeatedly enforced the constitutional and statutory rights of Negroes. For example, in one case (Pinkney v. Meloy 241 Fed. Supp. 943, 1965) he held that a hotel barber shop was subject to the civil Rights Act of 1964. In another case (Brooks v. the City of Tallahassee 202 Fed. Supp. 56) an examination of Supreme Court decisions convinced him that an airport restaurant had denied the constitutional rights of several negroes by refusing to serve them.

Two of his school desegregation cases are illustrative of his judicial philosophy. In the first, decided in 1960 (Augustus v. Bd. of Public Instruction 185 Fed. Supp 450, 1960) Judge Carswell did not believe that existing Supreme Court decisions allowed consideration of the plaintiff's request to desegregate the faculty of a school system. This decision was later reversed by the Court of Appeals, 5th Circuit, and the Supreme Court has since held that such plaintiffs do have that right. However, in a later case in 1964 (Youngblood v. Board of Public Instruction 23 Fed. Supp. 74) 1964, he did not hesitate to reject an attempt of the school board to avoid submitting a realistic school desegregation plan. He found that the school board had administered intelligence and aptitude tests in such a way as to circumvent the constitutional rights of negroes under existing Supreme Court decisions to attend an integrated school. Judge Carswell's approach in labor cases is similarly even-handed. In litigation between the electrical workers union and Gulf Power Company, for example, he overruled five preliminary legal objections

of the employees in denying the latter's motion to dismiss. When he decided the merits of the case, he ruled against the union on its complaint and against the employer on its counterclaim (Local Union Number 1055 I. B. E. W. AFL-CIO v. Gulf Power Company, 175 Fed. Supp. 315; 182 Fed. Supp. 950, 1959). As a District Judge, Judge Carswell participated in 8 cases involving the National Labor Relations Act while sitting ~~by design~~ on Court of Appeals for the 5th Circuit. In five he voted to sustain the employee's position, and in three he voted to sustain the Union's position. In such of these cases as he wrote opinions, he made a conscientious effort to decide the case under the established law.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 20, 1970

*Tell Bud I
have this in
hand BH*

MEMORANDUM FOR BRYCE HARLOW

FROM:

BUD KROGH *BK*

SUBJECT:

BRIEFING OF SENATORS RE CARSWELL

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
E.O. 12066, Section 6-102
BY *AI* DATE: 12-12-98

Last night you asked if the Justice Department would prepare some papers demonstrating that Judge Harrold Carswell evinces a balanced point of view on civil rights and labor issues.

Bill Rehnquist agreed to do this, but he felt it necessary to check with John Mitchell first. Mitchell's position is that it would be improper for the Justice Department to provide any documentation to friendly Senators before the Senate Judiciary Committee convenes to discuss these issues.

Apparently, the Attorney General is worried that he will be undercutting the Judiciary Committee's prerogatives by preempting the Committee's disclosure of Carswell's positions in open hearings.

In my judgment, it is much the better part of wisdom to pre-brief our friends today or tomorrow so they are prepared during this next week to rebut the attacks of civil rights and labor advocates.

I will be presenting a couple of paragraphs to Ron Ziegler this morning so he does not stand naked before a hostile world at this morning's briefing. However, I think your help is necessary to get the Attorney General to agree that pre-briefing is a good idea.

RECOMMENDATION:

Three important areas of concern in the administration of justice are the criminal law, civil rights and labor law. While a Federal District Judge is not usually in a position to make law on his own, Judge Carswell's record for these areas is that of a competent judge following the authority laid down by higher courts when there was such authority; when the question was an open one, his judicial philosophy is that of balanced conservatism.

In the field of criminal law, Judge Carswell has indicated his concern that the right of society to convict and punish the guilty should not be lost sight of in an effort to protect the rights of the accused defendant. He decided that a defendant's claim of double jeopardy was unfounded (U.S. v Levy 232 Fed. Supp. 661, 1964); and while sitting as a Circuit Judge in the District Court, he held that where a criminal defendant employs his own lawyer, the claimed incompetence of the lawyer was not attributable to the state so as to amount to a violation of the defendant's right to counsel (Hayes v. Wainwright 302 Fed. Supp. 716). On the other hand, he decided that the refusal of a state court to allow an indigent criminal defendant a free copy of the reporter's transcript of the closing argument to the jury was a violation of that defendant's right to the equal protection of the laws secured by the 14th Amendment. (Bell v. Wainwright 299 Fed. Supp. 521).

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Two of his school desegregation cases are illustrative of his judicial philosophy. In the first, decided in 1960 (Augustus v. Bd. of Public Instruction 185 Fed. Supp 450, 1960) Judge Carswell did not believe that existing Supreme Court decisions allowed consideration of the plaintiff's request to desegregate the faculty of a school system. This decision was later reversed by the Court of Appeals, 5th Circuit, and the Supreme Court has since held that such

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E.O. 13068, Section 6-102
BY-AT 12-12-98

of the employees in denying the latter's motion to dismiss. When he decided the merits of the case, he ruled against the union on its complaint and against the employer on its counterclaim (Local Union Number 1055 I. B. E. W. AFL-CIO v. Gulf Power Company, 175 Fed. Supp. 315; 182 Fed. Supp. 950, 1959). As a District Judge, Judge Carswell participated in 8 cases involving the National Labor Relations Act while sitting ~~by design~~ on Court of Appeals for the 5th Circuit. In five he voted to sustain the employee's position, and in three he voted to sustain the Union's position. In such of these cases as he wrote opinions, he made a conscientious effort to decide the case under the established law.

DETERMINED TO BE AN
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E.O. 12065, Section 6-102
BY AR DATE: 12-12-92

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When he decided the merits of the case, he ruled against the union on its complaint and against the employer on its counterclaim (Local Union No. 1055 I. B. E. W. AFL-CIO v. Gulf Power Company 175 Fed. Supp. 315; 182 Fed. Supp. 950, 1959). As a District Judge, Judge Carswell participated in 8 cases involving the National Labor Relations Act while sitting on Court of Appeals for the Fifth Circuit. In five he voted to sustain the employee's position, and in three he voted to sustain the Union's position. In such of these cases as he wrote opinions, he made a conscientious effort to decide the case under the established law.



NIXON PRESIDENTIAL MATERIALS PROJECT
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① Call Bob Griffin & Sen. Roman Hruska
& John Williams (Honest John) to see
A/C Mitchell.

② Hugh Scott defeated before on race issue.
Bobby Griffin — on Conflicts
John Williams = on Reasonable suspicion.

③ Idea of doing same thing all over again
is outrageous. he should be positioned.

④ ^{Scott} Hugh should be told that going over w/
Bobby Griffin & R. Hruska.

⑤ Senator Holland — Just in advance
Senator Gurney — H/a. Sen. [carefully positioned]
Bob Sikes — Congressman

⑥ Not take Sen. Eastland by surprise.

⑦ Also, thorough discussion with John Williams.

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GEORGE HAROLD CARSWELL

Born:	12-22-1919	Irwinton, Georgia
Education:		Duke University Durham, North Carolina
	1937--1941	B.A. degree
		University of Georgia Law School Athens, Georgia
	1941--1942	
		Mercer University Law School Macon, Georgia
	1946--1948	LL.B. degree
Bar:	1948	Georgia
	1949	Florida
Military Service:	8-27-42--11-28-45	U.S. Navy Lieutenant when discharged
Employment:	1949--1951	Ausley, Collins & Truett Tallahassee, Florida Associate
	1951--1953	Carswell, Cotton & Shivers Tallahassee, Florida Partner
	7-11-53--4-17-58	United States Attorney Northern District of Florida
	4-18-58--present	United States District Judge Northern District of Florida
Marital Status:	Married	4 children
Office:	P.O. Box 546, P.O. & Courthouse Building Tallahassee, Florida 32302	
Home:	833 Lake Ridge Drive, Tallahassee, Florida 32301	

To be United States Circuit Judge for the Fifth Circuit.

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① Go tomorrow, Monday morning.

1

Scott & Griffin

m.c. S

Milton Young | allot.

+ minority side of

② Fact Sheet of George Harold Caswell

8:30 A.M.

A. ~~10 A.M.~~ Monday in A/G's office

B. morning. Prepare enough for 25
distribution to Senate Judiciary
Committee & the Leadership ~~copy~~

Roman, Hruska - 10:30

~~10 A.M.~~