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SIDEY, FISCHER, MacNEIL, STACKS, AUSTIN, FENTRESS, GOODPASTER

A letter from the PUBLISHER

Henry Luce III

MORE than in any other of our domestic news bureaus, each of TIME's 20 Washington correspondents is responsible for his own special news beat. Week in and week out, they keep watch on the man in the White House, the men on the Hill, and on all the personalities and machinery of government and politics. Sometimes their stories stand alone. Yet often in the immensely complex world of government, an event calls for many of the virtuosos to come together as an orchestrated whole. Such a case is this week's cover story on President Nixon, pegged to the Senate's rejection of Supreme Court nominee Judge G. Harrold Carswell.

When the news broke on Wednesday, the correspondents were already deep into their reporting. Simmons Fentress was at the White House to gauge the presidential reaction and future course. Neil MacNeil, chief congressional correspondent, was busy interviewing Kentucky's Marlow Cook and other crucial Senators. John Austin, who covers Congress with MacNeil, focused his reporting on Indiana's Birch Bayh, leader of the Carswell opposition. Dean Fischer, the bureau's legal expert, was in the Justice Department interviewing one of Attorney General John Mitchell's key aides. John Stacks was soon probing Senate attitudes toward the nomination of another Southerner to the Supreme Court. Throughout,

News Editor Edwin Goodpaster relayed instructions and guidance on the needs of the editors. And Hugh Sidey, Washington bureau chief since January 1969 and our chief President watcher since 1960, assumed the baton of overall command.

By the time the typewriters began pounding in New York, the editors had 35 different reports from which to work. Edited by Senior Editor Laurence Barrett, the story fell into three parts. The cover on President Nixon and the vote's significance for his embattled Administration was written by Associate Editor Ed Magnuson and researched by Deborah Murphy. The box on the lives and careers of Judge Carswell and the other rejected nominee, Clement Haynsworth, was written by Contributing Editor Peter Stoler. The second box on the Senators at the center of this historic confrontation was written by Associate Editor Keith Johnson. Both were researched by Genevieve Wilson. Says Sidey: "This was an old-fashioned power conflict between Hill and White House—the classic Washington struggle. It had emotion, eleven-hour suspense, marvelous characters like Martha Mitchell, and a whole stageful of bit players. In the end, with the application of shoe leather and hard sense, the story almost reported itself."

The Cover: Portrait in watercolor and tempera by Bob Peak.

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THE NATION

AMERICAN NOTES

Physician, Heal Thyself

Juvenile delinquents are easy to identify once they have gone astray, but spotting and helping potential offenders is a poignant problem for parents and police alike. A New York specialist in psychosomatic medicine, Dr. Arnold Hutschnecker, has now come up with a startling plan for preventing delinquency. It involves nothing less than the mass psychological testing of every American child between the ages of six and eight in order to weed out future criminals.

"Corrective treatment should begin at that time for all those tested children who show delinquent tendencies," recommended Hutschnecker, who was practicing internal medicine when Richard Nixon went to him for periodic physical checkups in the early 1950s. After-school counseling would be mandatory for young children; older, hard-core youths might be packed off to special camps. To reinforce their better traits, Hutschnecker suggested, "there are Pavlovian methods, which I have seen used effectively in the Soviet Union."

Dr. Hutschnecker's Orwellian proposal has stirred strong criticism from many experts who argue that there is simply no scientific way to test a future criminal with any degree of accuracy. Said Caleb Foote, a University of California law professor and criminologist: "The idea of predicting future criminal careers by testing six-year-old children is unworkable, discriminatory and unjust to the thousands who would erroneously be labeled precriminal." Last year Dr. Hutschnecker called for "a kind of mental-health certificate" that would be required of young people applying "for any job of political responsibility." His idea of sanity credentials left unresolved Juvenal's question about who would guard the guardians, but it raised an intriguing possibility: Why not make the anti-lunacy license mandatory for psychiatrists as well?

Acid by Accident

Because of its special hallucinogenic potency, LSD holds a particularly sinister terror for most Americans. Acid has been the villain in several bizarre and well-publicized incidents: there was the hoax that six Pennsylvania students were blinded by staring at the sun while stoned, the near death of a 5-year-old New York girl who innocently munched

an LSD-laced sugar cube from the family refrigerator, the suicide of Art Linkletter's daughter Diane, 20, after a bad trip. Now a new chapter has been written in the grim folklore of LSD. Somebody slipped some acid into the potato and corn chips at a swinging singles party in the Marina del Rey section of Los Angeles, and nearly 40 of the 200 guests tripped out.

When sheriff's deputies arrived, the scene resembled a Bosch vision of hell. "Some of them were staring," said one. "Some were unusually happy. Some were sick. People were screaming. Some said the walls were moving. One man cried that his hands were getting bigger and bigger. It looked like a madhouse."

Psychiatrist Louis Lunsky, who treated many of the trippers, called the Marina del Rey incident the first documented case of mass hallucinogenic poisoning. "The frightening thing is," he adds, "that it could happen again." These days, if an American escapes being hijacked in an airplane, mugged in the street or sniped at by a man gone berserk, he apparently still runs the risk of getting accidentally zonked by the hors d'oeuvres at a friendly neighborhood cocktail party.

The Outlaws of 1970

This month a superior court judge in Fayetteville, N.C., put his pen to an order declaring that three prisoners who had escaped from the Cumberland county jail were outlaws. Outlaws? In 1970? As it happens, North Carolina is one of a handful of states where outlawry remains in existence. Once a man is made an outlaw by court order in North Carolina, he is literally outside the protection of the law. Any citizen may try to capture him and, if the outlaw resists, the citizen may legally kill him on the spot.

Bobby Deaver, a Fayetteville lawyer who has written on the history of outlawry in the *North Carolina Law Review*, argues that the statute should be rescinded before "irreparable injustice occurs which could reflect on the dignity of the laws of North Carolina." The very concept of outlawry—though it is technically a legal procedure—recalls the dismal frontier days of vigilantes and lynch mobs, when angry citizens were allowed to take the law into their own hands and too frequently did. Fortunately for the three North Carolina prisoners, all were peaceably recaptured within three days of the judge's ruling.



BIRCH BAYH



EDWARD BROOKE

The Seventh

THE enormity of the defeat was shattering enough. At a time when a confluence of pressures was already upon him, Richard Nixon experienced the most serious reversal of his young presidency with the Senate's surprise rejection of his second nomination to the Supreme Court. The setback was a sharp blow to the President's national prestige, especially since he had only a week before raised the Senate vote to the level of a test of wills by denouncing senatorial opposition to his presidential prerogatives. The Senate's action at least called into question the viability of his Administration's so-called Southern strategy, and it raised serious doubts about the usefulness of his Attorney General, the architect of that strategy and the man who has twice recommended losers to the President. Moreover, the defeat showed that Nixon's White House, far from being the dust-free, efficient machine that so many had expected it to be, is not only increasingly embattled but in many ways remarkably prone to malfunction.

Still, the President could have absorbed the blow quietly, picked a more suitable candidate for his third try at the court and hoped that the affair would eventually blow over. Instead, displaying signs of the zest for political roughhousing that was his hallmark in the 1940s and '50s, Nixon decided to slug it out with the Senate. The conflict that he thus launched could have greater impact on his Administration



MITCHELL & THE PRESIDENT IN OVAL OFFICE*

Crisis of Richard Nixon

—and on the country—than the Senate's rejection of Clement Haynsworth Jr. and George Harrold Carswell.

Twenty-seven hours after the vote on Carswell last week, Nixon faced reporters in the White House press briefing room. Beside him was Attorney General John Mitchell, his presence apparently an indication of Nixon's continued trust in him. The President's jaw was taut. His eyes were angry, his words clipped. "I have reluctantly concluded," he declared, "that it is not possible to get confirmation for a judge on the Supreme Court of any man who believes in the strict construction of the Constitution, as I do, if he happens to come from the South." He accused his opponents not only of regional prejudice, but of "hypocrisy" and of subjecting Haynsworth and Carswell to "vicious assaults on their intelligence, on their honesty." He said that he would be forced to nominate a judicial conservative from outside the South, thus denying that section of the nation its just representation. Later, in a written statement, he gave Southerners his "assurance that the day will come when men like Judges Carswell and Haynsworth can and will sit on the high court."

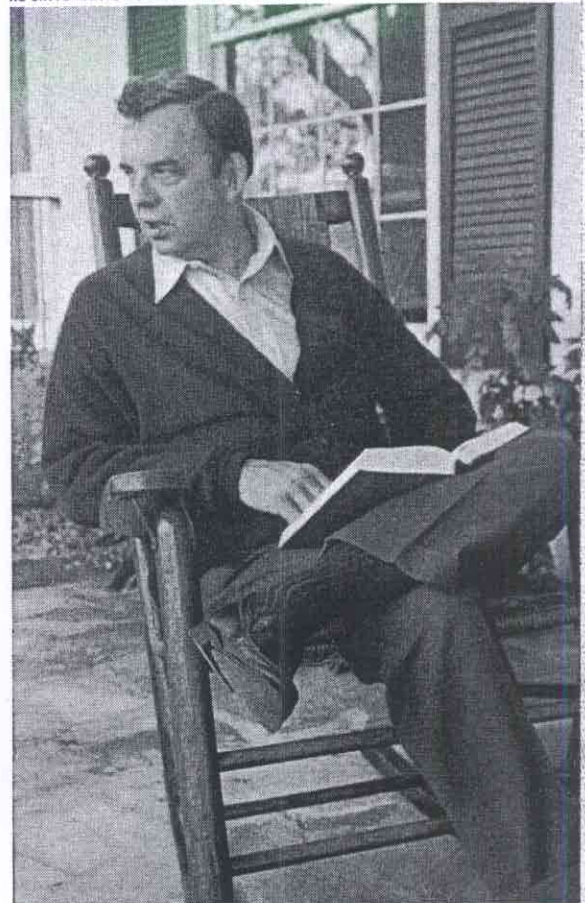
The implication of political retribution in this year's congressional election, the playing on the South's latent persecution complex, the conversion of a dispute over the qualifications of two individuals into a confrontation between the Executive and Legislative branches,

the harshness of the President's tone—all these were the ingredients of a potentially historic breach. If the President persists in his course, the schism could rival Woodrow Wilson's deadlock with the "little band of willful men" in the Senate who opposed U.S. participation in the League of Nations. It is also reminiscent of F.D.R.'s campaigning against Senators who had opposed his plan to pack the Supreme Court with Justices friendly to New Deal legislation.

The current fight is a clear departure—and could become an enduring one—from Nixon's lowered-voice policy. It raises the pitch of political debate and tends to divide the nation, which he has vowed to "unite" and lead "forward together." Implicit in the conflict over Haynsworth and Carswell were factors of race and class. To many, the Supreme Court since the mid-1950s has become a symbol of disconcerting social change. The court has been both heavily attacked and stoutly defended; another prolonged controversy could further damage its prestige.

The new bitterness could also affect Nixon's policies on other issues. After a

* Though the President here seems to be unhappy to all appearances—and in this case had good reason to be so—some who have worked with him say that his turned-down-mouth expression is really one of concentration on the matter before him. When he is really displeased, they say, his most characteristic expression is a tight smile, accompanied by excessive politeness.



CARSWELL AT HOME

period of relatively good fortune and success in dealing with both a Democratic Congress and the general public, his problems have begun to accumulate rapidly. With the Senate battle, in fact, Nixon could be headed toward a sequel to his 1962 memoirs, *Six Crises*. The continued toll of inflation on the voter is earning him bad marks. At the same time, the fear of recession is prevalent, and it was not assuaged by last week's announcement that in March the unemployment rate rose to 4.4%, the highest since Nixon took office. Labor turmoil in eleven major industries threatens the country's stability. The conflict over school integration is growing worse rather than better, partly because of the Administration's ambivalence about how integration should be enforced. Despite Nixon's election promise to conduct a "war" on it, crime continues to increase inexorably.

In foreign affairs, new fighting in Cambodia threatens an expansion of the war—and at home, dissent about the war is blooming once again with the spring. The Senate last week approved, 72 to 6, a resolution calling for a Soviet-American freeze on deployment of both offensive and defensive strategic nuclear weapons. As the U.S. resumes arms negotiations with the Russians, the Administration wants a free hand in the bargaining rather than back-seat driving from Capitol Hill. And as if all this were not bothersome enough, a new Louis Harris poll, taken just

before the Carswell rejection, discloses this week that Nixon's popularity rating has dropped to 52%—one of the lowest in his presidency. Harris reports that regional breakdowns indicate that Nixon's Southern strategy has proved popular in Border and Deep South states, but is costing him support in the industrial Northeast and the Midwest.

What Nixon needs now is Congress's cooperation, especially on his proposed new budget. His frugal spending plans have been jarred by hastily prepared pay raises for federal employees that resulted from the Post Office strike. Yet his attack on the Senate last week produced hostility that he can ill afford. The President's accusations, after all,

hit not merely the 51 Senators who voted against Carswell. In the vote on Haynsworth and in the two tests on Carswell, a total of 61 Senators opposed the Administration.

Predictably, Nixon's statement caused a furor. It was in no way diminished when Spiro Agnew followed up on a CBS interview with an accusation that the Senate had allowed itself to be taken in by "the worst snow job of any legislative body in history." More than two dozen Senators signed a letter charging that the President had "completely mistaken" the Senate's action and pledging that they would support a Southerner of Nixon's philosophical persuasion if he met "the high legal, judicial

and ethical standards which we believe are required." Tennessee Democrat Albert Gore introduced a resolution accusing Nixon of an "assault on the integrity of the Senate." Agnew's riposte was that Gore was "trying to crawl out of a difficult situation."

Even some Republicans who had stood with the Administration were discomfited. James Pearson of Kansas, who voted for both nominees, said: "I do not recall a single discussion or comment, either public or private, by a single Senator, which would warrant the President's conclusion." Minority Leader Hugh Scott was privately furious at the Administration's handling of the case. Publicly, he said: "The Senate is

Four Crucial Nays: Why They Did It

MOMENTS before voting began on the Carswell nomination, Robert Dole of Kansas turned his back on Vice President Agnew to speak directly to his fellow Republicans on the left side of the Senate chamber. Dole looked squarely at Marlow Cook of Kentucky, who had led the unsuccessful fight to confirm Clement Haynsworth. "The fate of G. Harrold Carswell rests on this side of the aisle," Dole said. "We will make the decision, as our votes will make the difference." Cook stared straight ahead. When his name was called to vote, he replied firmly: "No."

Given his championship of Haynsworth and the fact that he is a freshman Senator from a border state that has Southern proclivities, Cook seemed to be oddly cast in his defiant role. At the start, he wanted to stay and vote with the Administration on Carswell but, after long hours of Judiciary Committee hearings and his own examination of Carswell's record as a judge, Cook concluded that Carswell flunked the test of legal competence.

"He didn't pass the standards that I'd set with Judge Haynsworth," Cook, 43, told TIME Correspondent Neil MacNeil. "I'm a lawyer. I'd wanted to be one all my life, ever since I was a kid. The Supreme Court is something to me which is so awe-inspiring that I want to dedicate myself to seeing that the court gets back to the greatness it once had."

By Cook's account, he did not finally make up his mind until the eve of the vote, after the second of two visits to the White House. The first time, he talked with the President over coffee for more than an hour, explaining, lawyer to lawyer, his reservations about Carswell. Nixon explicitly asked him for his vote. Cook would not promise it. Said Nixon: "I understand, and if you have a problem on this you'll just have to go your own way." Next day Cook was back at the White House for a presentation of Medals of Honor—all of them awarded posthumously—to Viet

Nam war heroes. Cook heard Nixon praise "the excellence of these people, the high degree of their efficiency." That did it. Said Cook: "Driving back, I thought to myself, what we are saying here is that these boys gave their lives—and we sitting up here are going to put on the Supreme Court someone from whom we don't demand a high degree of efficiency and excellence. It may sound corny, but that's what happened."

Another lawyer who favors a strict-constructionist court, Freshman Democrat William Spong of Virginia, went through a similar process in arriving at his anti-Carswell decision, though there was no emotional conclusion like Cook's experience at the Medal of Honor ceremony. Spong, too, had voted for Haynsworth, and he had also started out for Carswell. "I agree with the President that there is the need of a Southerner on the court," Spong said. But Carswell's printed opinions as a district court judge turned out to have been reversed, when appealed, nearly three times as often as those of his colleagues, according to a Ripon Society survey. Spong added: "I spent the Easter recess reading the statistical data on his reversals, and opinions he had rendered on contracts and other matters with

which I was familiar as a lawyer." He concluded: "The South has been patronized in that the President offered a nominee who was less than qualified."

Spong and Cook felt strong pressures from home to vote for Carswell. For Vermont Republican Winston Prouty, it was the other way round. He is generally an Administration loyalist; he stuck with Nixon on the ABM issue when most Northeasterners did not, and he supported the Haynsworth nomination. But the Senator faces a difficult reelection campaign against former Governor Philip Hoff, a liberal Democrat who had zeroed in on the incumbent as a Nixon rubber stamp. Moreover, the mail from Prouty's Yankee constituency ran heavily against Carswell, and the state bar association plumped for a no vote.

Prouty found no satisfactory answers from pro-Carswell colleagues to his questions about the nominee. "I thought we would be doing the Administration a favor by recommitting, giving Carswell a chance to dispel some of the doubts about him," he said. Once the recommitment motion had failed, he concluded, he could not support Carswell on the final vote. Said Prouty: "It was a

WALTER BERNETT



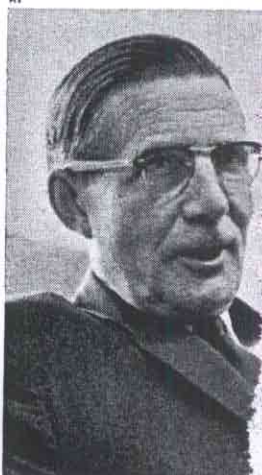
COOK OF KENTUCKY

DAVID BURNETT



SPONG OF VIRGINIA

AP



PROUTY OF VERMONT

anxious to support the President. I stand ready to help muster that support and urge the nomination of an individual with impeccable credentials."

That the Administration could not persuade a majority of Senators of the qualifications of either Haynsworth or Carswell was the nub of the entire fight. Unquestionably, there was some truth to the argument that a number of current and past Justices were no jewels of judicial wisdom. Doubtless, some Democrats were glad to embarrass the Administration and would have behaved differently toward men of similar caliber who were nominated by a Democratic President. Certainly the fact that both judges are Southern conservatives

evoked opposition from blacks, liberal intellectuals and trade unionists, inducing some Senators to be more skeptical than they otherwise would have been. Yet Northern liberals by themselves did not have the votes to defeat Nixon's selections. In the 51-to-45 tally against Carswell, decisive votes came from Southerners, Border-state Senators and middle-of-the-road Republicans. A total of 13 Republicans voted against Carswell, 17 against Haynsworth. After last November's rejection of Haynsworth, the Senate generally was eager to assent to the next choice and thus avoid another unpleasant battle.

This feeling, together with the belief that Carswell was less controversial than Haynsworth and had none of the business entanglements that defeated the first nominee, made the Administration coolly confident that it would win when Carswell's name was put forward on Jan. 19. Indeed, such key Republican Senators as Minority Leader Scott and Whip Robert Griffin, both of whom had turned against Nixon to oppose Haynsworth, were dutifully backing Carswell. The hard-core opponents waged mainly a delaying action, waiting to see if an arguable case against him would develop.

Opposition Mobilizes

And develop it did. Two newsmen turned up the fact that Carswell had made a white-supremacist speech 22 years ago; Carswell recanted. Then it became known that he had been an incorporator of a Tallahassee golf club that went from public to private status in an apparent attempt to avoid desegregation; before the Senate Judiciary Committee, Carswell obfuscated the issue, bringing his candor into question. Critics pointed out that his decisions had frequently been reversed on appeal; there was little to be said in rebuttal. Some of the nation's leading legal scholars and practicing lawyers questioned his judicial skills. On top of that, Senator Roman Hruska argued in Carswell's defense that mediocrity should perhaps be represented on the court.

As the criticism built up, the Carswell opponents, particularly Massachusetts Republican Edward Brooke and Indiana Democrat Birch Bayh, saw a slim chance to defeat him. Continuing to stall, they subjected the loyalists to a kind of drop-by-drop water torture, engineering one-by-one announcements of new anti-Carswell Senators. Then, last month, Brooke, Bayh and others hit upon a device that they thought would allow troubled Senators to sidetrack the nomination without taking the full heat of voting against it. They proposed sending the matter back to the Judiciary Committee for further study—and there it would almost certainly die. By March 24, Republican Robert Griffin of Michigan warned Nixon that the Democrats needed to pick up only a dozen Republican defectors to carry that vote. From then on, the pro-Cars-



PRO-CARSWELL DEMONSTRATION IN TALLAHASSEE
A shattering defeat, a slugging reaction.

well Senate leaders and Administration liaison men met daily in the White House to plot strategy.

Adversely affected by the high-pressure tactics that it had employed in the Haynsworth fight, the Administration countered with subtle moves. It coaxed such influential Republicans as Delaware's John Williams and Kentucky's John Sherman Cooper, both of whom had opposed Haynsworth, to announce for Carswell three days apart in order to gain maximum publicity. The Carswell camp, including Kansas Republican Robert Dole, persuaded a majority of the Judiciary Committee Senators to announce that they did not want the nomination returned to the committee. The notion that voting for recommitment would demonstrate a lack of political courage was effectively spread.

Making the Wrong Fight

Still, the nomination's backers felt that they needed a clear indication that the President was wholly behind his nominee. The way Nixon chose to show his support left no doubt at all—but it probably did more harm than good. He contended that the real issue was whether the Senators wished "to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitution with the power of appointment." Well aware of their own constitutional authority to "advise and consent" on appointments, many Senators resented the statement.

Nevertheless, by the time the recommitment roll call was held last Monday, the Administration had retrieved enough straying Republicans to win handily. The motion was defeated 52 to 44, with only eight Republicans for it. To most observers, that vote seemed the end of any serious threat to Carswell.

While the White House and its allies were concentrating on the recommitment move, Bayh and Brooke were taking

difficult decision—one of the most difficult I have ever had to make."

The final crucial vote against Carswell came from another New England Republican, Maine's formidably taciturn Margaret Chase Smith, who had opposed Haynsworth. Though Mrs. Smith indicated before the vote that she was unhappy with Carswell's contradictory testimony about his role in incorporating a segregated Tallahassee country club, one of her close confidants let the White House know that she was "all right" on Carswell. Just before the Senate vote, Mrs. Smith learned that Administration operatives, particularly White House Aide Bryce Harlow, were using her favorable stand to lobby Republican waverers. The Congress has no fury like Mrs. Smith's when she feels that her senatorial independence has been violated. Seething, but outwardly as serene as the fresh rose she wears each day, Mrs. Smith sat quietly until she too could say "No." Asked for her motive, she would only say: "My vote speaks for itself."

Thus, for wildly different reasons—lawyerly doubts, reverence for the Supreme Court, political pressure back home, personal pique—a Southerner, a Border State Senator and two Yankees cast the key votes against Carswell. Once again, out of its diversity, the Senate had spoken.



SMITH OF MAINE

counts on the straight up-or-down vote on the nomination, scheduled for Wednesday if recommitment failed. They found that some Senators had indeed bought the concept that recommitment was a gutless way out, and preferred voting directly on confirmation. Among them were Oregon's Republican Robert Packwood, Hawaii's Republican Hiram Fong, Connecticut's Democrat Thomas Dodd. If all the other 44 anti-Carswell votes held firm and those three could be persuaded to vote no, that would close the gap to within one vote of a 48-48 tie (four legislators would be absent). Bayh was sure that Illinois Republican Charles Percy would provide that vote.

The Administration had won its battle—but it was now in danger of losing the war. "The White House had shot its wad on recommitment," Bayh explained. "They called in all their IOUs on that one. They cranked up for the wrong vote." He was confident not only of pinning down the tie vote but also of scratching out one more anti-Carswell ballot. Majority Leader Mike Mansfield agreed to call for a vote on the nomination immediately after the recommitment move lost. The motion required unanimous approval. A perplexed and wary Hruska, floor-managing the Carswell drive, objected.

The Administration strategists quickly assembled in Hruska's office right after the recommitment vote to reassess the situation. They looked at that eight-vote margin and compared notes on which pro-Carswell Senators they might lose. To their consternation, they detected the same potential slippage that Bayh and Brooke had sniffed: the possible loss of Republicans Packwood, Fong and Percy, plus Democrat Dodd. That would not be fatal, since Vice President Agnew would break the tie in the Administration's favor, but it was highly dangerous. "We knew then that we were in trouble," one strategist recalls. The White House men scanned the Democrats who had voted for recommitment, hoping that they might be able to swing one of three Southerners: Arkansas' William Fulbright, Virginia's William Spong, Tennessee's Albert Gore. Further soundings made that unlikely, and the doubts proved well founded.

What really worried Nixon's men, however, was the realization that three Republicans remained uncommitted. Maine's Margaret Chase Smith and Kentucky's Marlow Cook had been with them on recommitment; Vermont's Winston Prouty had opposed them. They knew that none of the trio was high on Carswell. But each was reluctant to cast the decisive vote that would kill their President's choice. Further, the three Republicans seemed linked. Though their motives were different (see box, page 10), they were thought to look to one another for mutual support. Dole told Nixon: "If Mrs. Smith would vote with us, maybe Cook would. Then Prouty would have to." Nixon invited Mrs. Smith to the White House for a talk

the day before the final vote. He made a low-key pitch, handling her gingerly. She was noncommittal.

By that morning, the White House was getting desperate. Liaison men under Bryce Harlow began telephoning every Republican who might waver. They tried to convince each one that he was the key to victory for Carswell: "You're the one. You make the difference." Incredibly, some, like Maryland's Charles Mathias, had been ignored until then. There was now great alarm in the White House, and the President was frantic for information. Senator Dole called Nixon Tuesday night. "How does it look?" the President asked. "Rough," said Dole. "It hinges on two Senators, Mrs. Smith and Marlow Cook."

The Boomerang Gamble

On Wednesday morning, the day of the vote, Nixon got worse news. Cook called Harlow to say that he had decided to oppose Carswell. Cook had relayed the same news to Mrs. Smith and Prouty—so that each would know the situation. Relieved that the matter would not be decided by one vote, Prouty told Cook: "It is my intention to vote no." The White House reacted recklessly. Calls went out to such Republicans as Mathias, Cook, and Pennsylvania's Richard Schweiker, reporting that the Administration had Mrs. Smith's vote.

Just 20 minutes before the roll call was to begin, Schweiker got his White House plea—and promptly told Ed Brooke. "I raced into the cloakroom to find Mrs. Smith," Brooke recalled. "She wasn't there. I raced down to the Senate dining room and found her." Mrs. Smith, livid at the unauthorized—but not inaccurate—use of her name, called Harlow, who admitted that the calls had been made. Brooke rushed onto the Senate floor and spread the word that Maggie Smith was not yet in the Administration's camp.

Though the issue seemed decided, no one could be absolutely certain that all of the votes would be delivered on the roll call. Spectators were crunched into every inch of the galleries and scores of senatorial aides crowded the floor aisles as Vice President Agnew, fumbling, announced that "the question is on the nomination of George Howard Carswell." The clerk called "Aiken," and Vermont's senior Senator immediately answered "Aye." Then bells rang throughout the Senate side of the Capitol, signaling the start of the roll call, and the chamber fell silent.

The first gasps came when Cook voted no. The gallery obviously was overwhelmingly against Carswell. Oregon Republican Mark Hatfield dramatically extended a thumbs-down gesture to the clerk when his name was called. Prouty's "No" drew scattered applause, despite rules against such expression. When Maggie Smith delivered her negative vote, apparently motivated by anger at the White House, everyone knew it was all over. Agnew's official announcement

The Bitter

It's a relief. This has been an agonizing experience for me, my family and my friends.

COMING on the heels of his rejection by the Senate for elevation to the U.S. Supreme Court, Judge G. Harrold Carswell's statement could be seen as an attempt to mask his obvious disappointment. In fact, there is every reason to believe that the statement was sincere. For Carswell, as for Judge Clement Haynsworth Jr. before him—both men who were thrust from the relative obscurity of their positions into national prominence and scrutiny—the nomination fight was a bitter trial that affected lives, family and friends.

In the first weeks after his nomination

WAYNE WILSON—LEVITON-ATLANTA



THE HAYNSWORTHS IN GREENVILLE

by Nixon to the court, Carswell, pleased by his new fame, welcomed the outside world into his well-ordered life. He opened his house to newsmen and treated them with his customary Southern affability. But then, as the opposition to his appointment grew, he reasserted a claim to privacy. Members of his family and intimates helped provide protection by setting up a 15-hour-a-day command-post type of operation to shield him from visitors and telephone callers, and telling all but his closest friends that the judge was unavailable. "He became something of a recluse," commented a friend, Malcolm Johnson. "He was a prisoner in his own home."

Normally gregarious, Carswell withdrew into a virtual state of siege. He rarely went to the court house, took no new cases, worked on old ones at home. He gave up his leisurely, chatty lunches at Angelo's, a Tallahassee restaurant. He and his wife Virginia, who is described by acquaintances as

Trial of G. Harrold Carswell

"a cheerleader type," began to turn down many invitations to parties and dinners and limited their social engagements to bridge games with close friends. "We were not used to being in the limelight," says Carswell's daughter, Mrs. Ramsay Langston, 24. "We wondered if it was ever going to be over."

Last week about 25 friends and family members gathered in the living room of Carswell's white brick house overlooking Lake Jackson to watch a pair of television sets that brought them the news of the judge's defeat. "It was like a wake," said one woman. After the Senate vote, Tallahassee Postmaster Peyton L. Yon Sr., one of Carswell's favorite bridge partners, walked over to the judge

Mrs. Clifton Lewis, one of the city's most outspoken liberals, described his limitations: "Harrold wants everybody to be happy and grow roses and have a football ticket." Journalists at work in the state capitol press room let out a restrained cheer when the wires moved a bulletin on Carswell's defeat.

Carswell quickly announced that he would keep his seat on the Fifth Circuit Court of Appeals. Presumably he will return to the pleasant round of hunting trips, parties and football games that he pursued before Nixon's nomination made him a national figure. He has a good precedent for such a course in the conduct of other rejected nominees.

Federal Judge Homer Thornberry

AL SATTERWHITE—CAMERA 5



CARSWELL FAMILY IN TALLAHASSEE

and shook his hand. "I sure am glad we didn't lose you to Washington and glad we'll keep you in Tallahassee," he said. The Carswells accepted his consolation, then retired to their bedroom to compose themselves before driving downtown to face newsmen.

Publicly, Carswell expressed no bitterness at his rejection, but his friends did. Florida Lieutenant Governor Ray Osborne, who had organized a "Citizens for Carswell" committee, was angry. "Once again, a Southern conservative has been persecuted by the pseudo—and I emphasize pseudo—liberals who want the Supreme Court packed with their own kind," he said. Others defended Carswell against the charges of racism and mediocrity. "I've hunted with him and have never heard him express one word of racial bias even privately," said Carswell's friend, Attorney Robert Fokes. "I think he would have made a good judge," said former Florida Governor LeRoy Collins, an erstwhile Southern liberal. Others were not so sure.

of Texas, whose 1968 nomination collapsed when the Senate refused to confirm Abe Fortas as Chief Justice, accepted his fate with equanimity, returned to his Fifth Circuit Court bench, and talked jokingly of writing a book about his experience. Judge Clement Haynsworth, who suffered from conflict-of-interest charges after he was nominated, has also survived his ordeal. Declaring that "what happened last fall is dead and buried behind me," Haynsworth has resumed his intensely private way of life in Greenville, S.C., dividing his attention between his court cases and his prizewinning camellias. He has also discovered that being a Supreme Court nominee, even a failed one, has improved his social life. A cousin reports that "because of what they did to him in Washington," Haynsworth has been invited to a great many more parties and dinners than ever before. Perhaps for the same reason, he is accepting the invitations.

of the count drew shrieks, cheers, applause and a few boos. The Vice President called for order, then directed that the galleries be cleared. Mansfield rose to move that the President be informed "immediately" of the outcome. Nixon, surprisingly, was neither watching television nor listening to the radio at the big moment. An aide brought him the news. The President telephoned Carswell in Tallahassee, Fla., and told him: "I'm disappointed, but I hope you'll see fit to remain on the bench."

What really had killed the Carswell nomination? Despite Nixon's attempt to portray Carswell as the victim of reverse bigotry on the part of anti-South Senators, the rejection actually reflected a widespread conviction that Carswell simply did not measure up to the stature of men the Senators wanted to see added to the Supreme Court. Even many Southerners felt insulted that Nixon had chosen Carswell to represent them. "I'm voting for the guy," said one Southern Democratic Senator, "but it's great to see the Republicans stewing in their own juice. They made this bed." Most Southerners voted for Carswell, but some who did, like Sam Ervin, an expert on the Constitution, declined to work very hard for the nomination.

The Administration's Southern Strategy

Many Republicans, too, were dismayed at the choice Nixon had given them. One who pressed most actively for confirmation began to explain how rough his task had been. "When you try to defend a mediocre racist," he said—and then he broke into laughter at how ridiculous that sounded. Maryland's Mathias thought at first that Carswell might "be getting a bum rap" from the kind of legal scholars who look down on lawyers who have not "been to Harvard," but decided to vote no after examining Carswell's record. Minority Leader Scott, influential with liberal Republicans, left most of the vote-hustling to aides.

Actually, Nixon's humiliation over two consecutive defeats was largely self-inflicted. The ease with which Warren Burger won confirmation as Chief Justice belies Administration claims that most Democrats and Republican liberals would automatically team up to block any Southern judicial conservative. At the time of the Burger appointment, Nixon said that to avoid controversy over Supreme Court nominees he would name men whose credentials were beyond challenge. He also declared that he would never use his appointment power to achieve a racial, religious or geographical balance on the court. He later not only abandoned that in favor of a sectional approach, but narrowed his criteria to select two men who appealed mainly to conservative whites.

These latter appointments were part of the Administration's Southern strategy—an attempt to appeal not only to Southerners and conservatives throughout the country, but also to the many

whites who are upset by black crime, youthful radicals, busing to integrate schools, and the "coddling" of criminals by the courts. Attorney General Mitchell effectively counseled this strategy as Nixon's presidential-campaign manager. It helped gain Nixon enough Southern states to ensure victory despite the candidacy of George Wallace.

Ever since they became law partners in 1967, Mitchell and Nixon have been fast friends and kindred spirits. It was Mitchell who gave one of the pushes that helped to force Justice Abe Fortas off the Supreme Court by advising the then Chief Justice, Earl Warren, of a financial indiscretion committed by Fortas. The resignation convinced Nixon of the danger of appointing anyone so close to himself that it would encourage charges of cronyism, as in the case of Fortas and Lyndon Johnson.

Limited Options

In setting forth his requirements after the Burger appointment—a Southerner from the federal bench, a Republican, a strict constructionist, under 60 and someone Nixon did not personally know—the President limited his options. This ruled out judges on the higher state courts, which often possess talented jurists, men from the South's best law faculties, and U.S. Senators. Even so, the President could have come up with acceptable nominees if he had not relied so completely upon—and been served so poorly by—Mitchell.

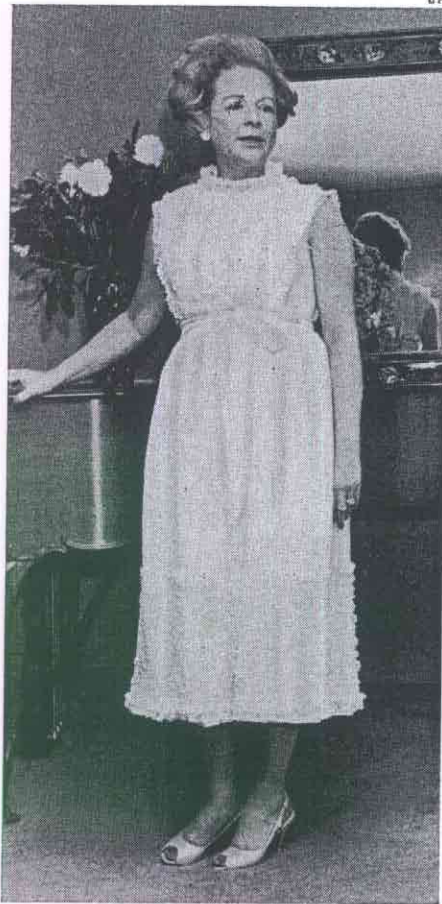
While the Attorney General undoubtedly thought that he was offering just what the President wanted, his choices were needlessly weak, as are his relations with Capitol Hill. The nuances of Capitol Hill procedures escape him. The necessity of maintaining the best possible relations with all factions is foreign to his nature. Because of his own distaste for liberals of both parties and because his ranking deputies are conservative, his communications with the Republican liberal wing are practically nil.

Mitchell's department was just as insensitive in selecting the Supreme Court nominees. Mitchell originally assigned his deputy, Richard Kleindienst, to compile a list of some 150 potential Justices. Applying Nixon's guidelines, he reduced the list to about 30 names. Mitchell then helped prune it to just five, including Burger, Haynsworth and Carswell. He decided that Burger was best and recommended him for Chief Justice. When Fortas resigned, Mitchell asked another assistant, William Rehnquist, to study Haynsworth's legal record. Since Fortas had been tainted by his financial interests, the FBI carefully probed Haynsworth's business background. It turned up some potentially damaging financial interests of the judge—but Mitchell dismissed them as not improper. The Senate later disagreed.

In Carswell's case, there were no stock complications and the investigation centered on his legal qualifications. Rehnquist reviewed all of Carswell's judicial

opinions and found nothing objectionable. But the FBI missed the white-supremacy speech and Carswell's role in the Tallahassee Golf Club. Mitchell recommended Carswell's nomination, unconcerned that there was nothing outstanding in his judicial record.

More significant, neither Mitchell nor the White House made any attempt to sound out key Senators of either party before announcing the appointments. Many conservatives admire the Attorney General, but their votes were almost automatically assured on both nominations. In the late stages of the Carswell campaign, Mitchell confidently left for a two-week vacation on Key Biscayne. Kleindienst took over—and thus he could



MARTHA MITCHELL AT HOME
Shattering all protocol.

wind up a scapegoat if the President decides that someone in the Justice Department must be blamed for bungling the Carswell matter.

Mitchell's performance in getting nominees approved has not been aided by his outspoken wife Martha. Shattering all protocol, she telephoned the wives of several Senators, including Betty Fulbright, to implore them to get their husbands to support Haynsworth. Last week, after Fulbright had voted against Carswell, she startled editors of the anti-Carswell *Arkansas Gazette* by telephoning the newspaper at about 2 a.m. to declare: "I want you to crucify Fulbright and that's that." A native of Pine Bluff, Ark., she claimed that "Mr.

Fulbright does not represent the state." Mrs. Mitchell had earlier told guests at a Women's National Press Club dinner that she had watched her husband reading background information on Carswell and that he had looked up at her, smiled broadly and declared: "He's just too good to be true." Late last week the Justice Department announced that Mitchell had hired a press secretary for Martha.

Nixon has compounded the possibility of mistakes in his court selections by insisting that he should not himself get to know the appointees. He explains that he wants to judge them objectively and keep them at arm's length so they will not feel obligated to him. Nixon has not sounded out the American Bar Association on his Supreme Court nominations, although this is routinely done for all lower federal judges.

The Senate Judiciary Committee asks for A.B.A. review after Supreme Court nominations are made. The prospects are judged either "qualified" or "not qualified." The committee has never found a nominee unqualified for the high court.

The Haynsworth and Carswell fiascoes and the possibility that more vacancies may soon develop because of the advanced age of three members of the court urgently suggest that the selection process be improved. The bar association is willing to be more helpful and might be used by the President as a warning system, though he need not be bound by its ratings. The A.B.A. itself needs to improve its review procedure, and last week its officials offered to do just that.

The Ninth Member

The indications are that Nixon will not change his selection system or his reliance on Mitchell. After last week's vote, the President took his Attorney General for a two-hour dinner cruise on the yacht *Sequoia*, met with him again the following day at the White House. They were apparently discussing not only Nixon's statement about the Senate, but also the next nomination. As photographers entered the office, Nixon was overheard saying, "You've met the other fellow?" Replied Mitchell: "Yes, I have."

Nixon said that he would make another nomination soon. It could well come in a matter of days. It is known that two Northern judges are already undergoing FBI checks. One of them, Harry Andrew Blackmun, 61, an appeals-court judge from Rochester, Minn., and a long-time friend of Chief Justice Burger, met with Mitchell last week. Blackmun was considered the likeliest choice. Also being checked is Federal District Judge Edward T. Gignoux, 53, of Portland, Me. Both are Harvard Law School graduates. Appointed to the federal bench by President Eisenhower, they are considered strict constructionists.

From the point of view of the Supreme Court's efficiency, the nomination

—and confirmation—of the ninth member cannot come too soon. The court has deferred work on numerous cases for want of manpower and because the odd, tie-breaking vote has been lacking. The seat has been vacant for eleven months. Further controversy poses another kind of risk. Though the court has never been as far removed from politics as idealists would like it to be, it depends heavily on political processes and its prestige and moral force to work its will. Its funds come from Congress. Muscle to compel compliance with court decisions comes from the Executive Branch. On highly charged issues, the court's real power can be measured by the degree of esteem in which it is held by society at any given moment.

Attacks on the court, particularly by Wallace and Nixon during the 1968 campaign, lowered that esteem. To be caught in a continuing election-year crossfire can only make its position more vulnerable. A number of conservatives have been talking about impeaching William O. Douglas for ideas that many regard as radical. Though impeachment is a congressional prerogative, Agnew in the CBS interview last week tied the rejection of Carswell and Haynsworth to Douglas' fitness. He suggested that "we take a look" at Douglas' views and then "see whether they are compatible with the position he holds."

Those remarks, coupled with Agnew's attempt to blame the Senate votes on "the liberal media" and "organized labor and civil rights activists," have an ominous ring, just as the President's statement does. The words not only may foreshadow a more abrasive campaign this year than might otherwise have been expected, but represent a failure by progressive elements within the Administration to hold ground against the steadily growing influence of what might be called the Mitchell-Agnew axis.

Increasingly, the President seems isolated from other schools of thought and other individuals once close to him. HEW Secretary Robert Finch has been battered in the racial dispute. Liberals and moderates on the White House staff, such as Daniel Patrick Moynihan, Leonard Garment and William Safire, are slipping. In retreat with them is the notion that the Administration must conciliate, must seek new ways to retrieve the disillusioned and the disinherited.

The entire Haynsworth-Carswell episode—from the nominations through Nixon's angry protests—underscores that failure of leadership. Instead of accepting the Senate's rebuke gracefully in the realization that he may have needlessly contributed to the impasse, Nixon reverted to mundane politics, trying to coax partisan advantage from adversity. The times obviously demand much more than that. The nation's embattled institutions, including the Supreme Court, the Congress and the presidency, need to gain all the respect they can muster. The Senate recognized that need last week; the President did not.

FOREIGN RELATIONS A Triumph for Brandt

Since his election last year as Chancellor of West Germany, ruggedly handsome Willy Brandt has been hailed as one of Western Europe's most charismatic and skillful statesmen. Last week he lived up to his reputation. The long-time Socialist mayor of West Berlin flew into Washington for two days of talks with President Nixon and made a persuasive case for continued U.S. support of his efforts to ease cold-war tensions. He also assured himself of a role in any further discussions about the future of the Continent.

Brandt spent the early part of the



BRANDT AT CAMP DAVID
Starting from realities.

week inspecting West German troops training with U.S. forces in Texas. Tanned by the Texas sun and rested after 2½ days in the seclusion of Camp David, Brandt alighted from a blue Mercedes with his attractive Norwegian wife Rut, to be greeted on the White House lawn by President Nixon. Cannons boomed out a 16-gun salute, and the red-jacketed Marine band struck up the traditional *Deutschlandlied*. The Brandts were also feted at a gala White House dinner and entertained by the redoubtable Pearl Bailey. To the tune of *Hello, Dolly*, Miss Bailey belted out "Hello, Richard" in honor of the evening's host, added a chorus of "Hello, Willy" in honor of the guest.

But Brandt's visit was more than pomp and ceremony. Pressure has been building in the budget-conscious Senate for further reductions in the present 310,000-man level of U.S. troops in Europe. Brandt was concerned that premature troop cuts might undermine his efforts to negotiate a mutual force reduction with the Warsaw Pact nations. Speaking before the National Press Club, he argued that the efficiency of the NATO alliance depended upon a continued U.S. military presence on the European Continent. Said Brandt, in his excellent, lightly accented English: "There is no security for Europe without the United States."

On this question, Nixon and Brandt see eye to eye. Despite the pressure for reductions, the President has already agreed to maintain existing troop levels in Europe at least through mid-1971. Last week he took special pains to lay to rest Brandt's chief worry about his U.S. visit—that he would return home with, in his words, "less G.I.s and more money to pay." At Camp David, Nixon's adviser for national-security affairs, Dr. Henry Kissinger, assured the Chancellor that the U.S. would make no further reductions until after a review of NATO strategy, due to be completed in May, established what troops were needed.

Ostpolitik. With this thorny issue out of the way, Brandt and Nixon held two meetings at which each had a chance to take the other's measure. Both were impressed with what they saw. Nixon brought Brandt up to date on U.S. efforts in Asia and the Middle East. Brandt briefed Nixon on his *Ostpolitik*, or Eastern policy, and later gave newsmen a concise explanation of the rationale behind his attempts to improve relations with Eastern Europe. "Just as NATO is a reality, as West Berlin with its relationships with the Federal Republic is a reality," said Brandt, "so is the Warsaw Pact, so are the two states in Germany, so are the frontiers of Poland. We have to start from these realities if we want to improve relations with the Soviet Union, seek reconciliation with the Polish people, and mitigate the distressing division of our country." Nixon and Brandt also discussed Britain's impending entry into the Common Market and the impact of an enlarged European Economic Community on U.S. interests; the Chancellor was receptive to the idea of an outward-looking European union.

Though no major agreements were reached during the discussions, no major differences developed, either, and Brandt in particular had good cause to be pleased. He had come to Washington to impress upon both Nixon and Congress the necessity of greater cooperation between the U.S. and Germany. As he left Washington to view the Apollo 13 launching at Cape Kennedy, with Administration assurances still ringing in his ears, he had good reason to believe that he had succeeded.

RACES

Ain't Nobody

Gonna Touch King Claude

In his three years as Governor of Florida, rambunctious Republican Claude Kirk Jr. has made an antic art of what he calls "confrontation politics." Kirk frankly describes himself as a "tree-shakin' son of a bitch," and he has proved it repeatedly in headline-grabbing performances that range from the 1967 Jacksonville rally, at which he faced down Black Nationalist Rap Brown, to his performance last January on the steps of the U.S. Supreme Court, where he appeared waving a petition against recent desegregation rulings.

Last week Kirk put on his most spectacular tree-shaking performance ever. Within six furious days, the Governor 1) "overturned" a court decision on

identical nomination and disclosures that much of Kirk's high living was bankrolled by contributions to his "Governor's Club." Last week, when Manatee school officials prepared to increase busing among the county's 17,000 students in order to meet a federal judge's April 6 deadline for improving the racial balance in elementary and junior high schools, Kirk decided to make good on his threat to suspend state school boards that complied with federal busing orders. Taking the law into his own hands, he imperiously declared that "forced busing is illegal in Florida."

In his DC-3, Kirk flew from Tallahassee to Bradenton, where he and a handful of aides set themselves up in the two-story brick school headquarters as Manatee's new board of education—not just for the day, but for "tomorrow and tomorrow and tomorrow."

turn to Bradenton—but not before giving an impromptu press conference in a corridor of the Tallahassee Memorial Hospital, where his German-born second wife Erika was giving birth to a son, their second child. Defending his stand, Kirk demanded "my day in court"—but not just any court. "I want to be in the Supreme Court on Friday or Saturday or Monday to get law on the subject of busing," he said. Alluding to President Nixon's recent speech recommending local options in carrying out desegregation (TIME, April 6), he declared that "the President of the United States is against forced busing and I'm against forced busing." As for the marshals, Kirk jeered: "Ain't nobody gonna lay a hand on Claude Jr. Anybody who lays a glove on a sovereign is committing an illegal act. There is nobody who can bodily force the head of a sovereign state into court."

His harangue ended, King Claude flew back to Bradenton, where he arrived at the administration building at 4:30 p.m. in the triumphant company of 70 Florida lawmen. He repeated his demand for a Supreme Court hearing, warning this time that the situation threatened "grave danger of loss of life." Later, marshals were allowed to enter the building to serve subpoenas on nine of his men. A few hours after that performance, Kirk, his aides, his troopers and his plainclothesmen all deserted the place and there was little likelihood that they would be coming back. Fed up with the Governor's grandstanding, Judge Krentzman formally cited Kirk for contempt and told him to get out of the way of the busing plan or face fines of \$10,000 a day.

Open Season. As Kirk's wild week came to a close, even many Floridians who agreed with his stand on busing wondered about the rationality of his tactics. Observing that "megalomania has no place in a statehouse," the Miami *Herald* called for the Governor to be "removed from office as unfit to serve."

By his own lights, of course, Kirk was shrewdly playing on the ambiguities in the Administration's policy on desegregation. In defying the courts, he claimed to be acting in the spirit of Nixon's March 24 statement—and who was to say he was not? Health, Education and Welfare Secretary Robert Finch last week sought to "clarify" the President's position by insisting that there would be "no backward motion" in integration, and he predicted that the number of black students in classes with whites (now 1,200,000) would double next fall. Yet even as Finch spoke, the Department of Justice filed a "friend-of-the-court" brief in a North Carolina desegregation case, suggesting that a federal judge had committed "an abuse of discretion" in ordering busing to achieve desegregation in Charlotte and Mecklenberg County. That kind of undercutting of the federal courts could make it open season for would-be tree shakers all over the South.



KIRK WITH PLAINCLOTHESMEN AT MANATEE SCHOOL HEADQUARTERS
Master of an antic art.

school busing by unilaterally declaring it "a horrible illegal act," 2) twice dismissed the duly elected school board of sleepy Manatee County on Florida's Gulf Coast, 3) ignored federal court orders to answer contempt charges, 4) ordered his men to resist federal marshals "with force," 5) installed himself as Manatee school superintendent, and 6) made a direct and lofty appeal for justice to the U.S. Supreme Court.

Governor's Club. The cause of Kirk's Samsonian ire was the Supreme Court's January order directing "immediate" desegregation in a number of school districts in Florida and four other Southern states. Although he is almost a liberal (by Florida standards) on racial matters, Kirk also knows an issue when he sees one. His voluble but futile protests had been doing wonders for his local political standing, which had sunk to a low ebb after his bumbling attempt to win the 1968 G.O.P. vice-pres-

After the Governor failed to show up in court to answer possible contempt charges, Federal Judge Ben Krentzman fired Superintendent Kirk, reinstated the local school board and reaffirmed his busing order. Kirk thereupon fired the local school board all over again, and sent a team of aides to take over the Bradenton school headquarters. The U.S. Attorney in Tampa responded by dispatching an assistant and three federal marshals to Bradenton. When they reached the school headquarters, they were met by a local sheriff and six deputies. After several tense moments of badge-to-badge confrontation, Kirk's aides locked themselves in an empty office. A dozen state troopers arrived to back up the deputies, and the Feds retreated to a local Howard Johnson restaurant, where they lamely claimed to have technically "arrested" Kirk's men.

Outraged that anyone would dare arrest his minions, Kirk decided to re-