

# Nixon Ends Court Checks With the Bar Association

By FRED P. GRAHAM OCT 22 1971

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WASHINGTON, Oct. 21—The Nixon Administration abruptly terminated tonight its agreement to check the judicial qualifications of potential Supreme Court nominees with the American Bar Association before formally appointing them to the Court.

Citing premature "unauthorized disclosures" of the names of individuals under consideration for the Supreme Court appointments, Attorney General John N. Mitchell informed the bar association by letter to-

*The text of Mitchell letter is printed on Page 24.*

night that "the only fair and proper course" is to return to the Nixon Administration's earlier practice of checking with the association after nominations have been announced.

The letter from Mr. Mitchell followed numerous expressions of chagrin from the Administration in recent days over the newspaper leaks about names referred to the bar association and over additional publicity about the A.B.A. officials' reported dismay at the quality of potential nominees.

However, the letter was released only minutes after the President bowed to an A.B.A. committee's disapproval of the two top candidates whose names he had submitted for

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# President Ending Court Checks With Bar Association's Panel

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evaluation of judicial qualifications.

Instead, Mr. Nixon nominated two men who are widely respected in the legal profession, and who are likely to win the bar committee's highest rating—Lewis F. Powell Jr. and William H. Rehnquist. This appeared to have put the committee in the position of having lost the battle and won the war.

In his letter Mr. Mitchell said that the leaks came "despite the best efforts of the committee," but he said that nevertheless they "can be particularly unfair to a person whose name may have been referred to your committee but who may not be nominated to the court."

Inevitably, he said, "there will always be speculation that his or her fellow lawyers found something negative in the subject's character or professional qualifications, and there is no way that the subject can counteract it."

The relationship between the Nixon Administration and the bar association, a relationship denounced by pundits and Democrats a year ago as a "sweetheart" arrangement, has clearly turned sour now.

Last week, during a White House strategy session on what to do about the association's reservations about the quality of Mr. Nixon's proposed nominees, Mr. Nixon used a four-letter word to suggest what to do about the A.B.A., and his remark has become the quote-of-the-week in gossip Washington.

Bar association officials, on the other hand, have grumbled that the Nixon Administration bungled the abortive nomination of Representative Richard H. Poff by not floating a "smoke screen" of other names to cushion him from the pressures that eventually drove him to withdraw his name.

## Leaks by Panel Denied

They also insist that people in the Government, and not the A.B.A. Committee on the Federal Judiciary, are responsible for the leaks of information about candidates. They are therefore bitter about such attacks as Senator James O. Eastland's charge today that the A.B.A. group demonstrated "a low standard of ethics" by acting as "a sieve, which leaks the President's intentions to the press."

The deterioration of this relationship was faced with ironies that, in retrospect, appear to be the almost inevitable by-product of such partnerships between Government and private groups.

For it became clear that the partnership was not based upon an identity of interest, but that each hoped to gain in some way that, as it turned out, was not necessarily in the interest of the other.

## The Early Nominations

When President Nixon made his early Supreme Court nominations he did not follow his recent predecessors' custom by asking for a quick evaluation from the bar association committee before naming nominees. But after his nominations of Clement F. Haynsworth Jr. and G. Harrold Carswell drew opposition from many lawyers and failed in the Senate, Attorney General John N. Mitchell announced last summer that he would obtain the committee's evaluation of any potential nominees before he recommended their names to the President.

The first irony came when the bar association which had been accused of being a patsy for any any candidate served up by a President, suddenly got tough. Critics who branded the group a "rubber stamp" committee were quick to note that its chairman is Lawrence E. Walsh of New York, who previously served as Mr. Nixon's personal representative at the Paris peace talks.

The bar committee had been evaluating candidates since the Eisenhower years, and had never brought itself to label a person "not qualified" who had been nominated to the Supreme Court by a President.

But recently the bar association supplemented its yes-or-no grading system to insert a middle category: "Not opposed." The creation of this category of "minimally qualified" nominees steeled the committee to contemplate actually not giving a President's Supreme Court selection the bar association's approval. Moreover, the committee had been sorely embarrassed when it gave its approval to Judges Haynsworth and Carswell, only to see both rejected by the Senate.

## Magnet for Criticism

The second irony came when the bar committee, in the course of testing legal opinion, became a magnet for criticism against potential Nixon nominees. The names of candidates inevitably became public knowledge when the committee solicited lawyers' thoughts, and at last critics had a focus for their complaints. Telegrams, statements and letters of criticism were showered on the committee, and then leaked to the press.

Another irony arose when President Nixon, having chosen to pick the A.B.A.'s brains on his potential nominees, felt that the bar association was usurping the Government's constitutional prerogatives when the committee concluded that his choices wouldn't do.