

Advise and Reject

By Tom Wicker

IN THE NATION

History is open to interpretation, but Elliot Richardson appears to be the first Cabinet officer since Secretary of State William Jennings Bryan in the first Wilson Administration to have resigned on a matter of principle. Ironically enough, Mr. Richardson might well have been, instead, the first Cabinet nominee since Lewis Strauss in 1958 to have been refused confirmation by the Senate.

Mr. Richardson won Senate approval only after his crucial pledge to appoint an independent investigator with complete authority to look into the Watergate affair. When Richard Nixon ordered him to violate that pledge, Mr. Richardson resigned rather than so dishonor himself.

This sequence of events derived from the crucial but often neglected power granted by the Constitution to the legislative branch in the form of the Senate's right to "advise and consent" on Presidential nominations to high office. The power of confirmation thus conferred has often been no more than a rubber stamp, but not in the Nixon years.

It has yet to be demonstrated that Harry Blackmun is superior to Clement Haynsworth, the first Nixon nominee rejected by the Senate for the Supreme Court; but clearly Mr. Justice Blackmun is a considerable improvement on the second man whose name Mr. Nixon sent to the Senate, G. Harrold Carswell, who also was rejected. When two other high court seats became vacant, moreover, the Senate's demonstrated willingness to fight helped move Mr. Nixon away from a ghastly list of inferior candidates to two far more qualified men, Justices Powell and Rehnquist.

Early this year, the battle of a few Senators and some press critics against what was thought to be the easy confirmation of the well-meaning but weak L. Patrick Gray 3d as director of the F.B.I. resulted not only in his ultimate withdrawal but in some major breaks in what was then the embryonic Watergate scandal. The temporary director who followed Mr. Gray, William Ruckelshaus, later played a major role in further Watergate developments, particularly the disclosure of the break-in at Daniel Ellsberg's psychiatrist's office and the discovery of seventeen wiretaps of dubious legality on newsmen and Administration officials. Whether Mr. Gray would have acted as Mr. Ruckelshaus did is highly questionable.

When Mr. Richardson's nomination to be Attorney General arrived in the Senate last spring, the Judiciary Committee went to great lengths to delay confirmation until he agreed to elaborate ground rules for a special, independent Watergate prosecution. Those

ground rules, when openly violated by Mr. Nixon in discharging Archibald Cox, forced Mr. Richardson's resignation. That, in turn, alarmed and outraged the country as it had not previously been by the Watergate scandal—a reaction soon felt by both Congress and the White House. That reaction assures that an independent investigation will be carried on in some manner as yet to be determined.

Meanwhile, both houses of Congress, due to the new 25th Amendment, have before them Mr. Nixon's nomination of Gerald R. Ford to replace Spiro T. Agnew as Vice President. Both houses must confirm it. This offers either or both the opportunity to hold Mr. Ford as a political hostage to be exchanged for White House cooperation in the Watergate matter; but since Mr. Nixon probably does not much care whether he would be succeeded by Mr. Ford or by House Speaker Carl Albert, who is now first in line of succession, the real importance of the Vice-Presidential vacancy may be that it gives Congressional Democrats some bargaining power in seeking Republican votes for impeaching Mr. Nixon.

Over in the Senate, moreover, the situation of last spring has been re-established; when Mr. Nixon sends up a new nominee for Attorney General (in fact for any high office that may also become vacant), the Senate in its current mood clearly will not confirm until it exacts a price in Watergate cooperation from the White House.

All this to some extent derives from the unusual historical circumstance that, despite his two national victories, Mr. Nixon has not been able to bring in a Republican Congress; and from the lamentable fact that Richard Nixon is personally disliked, and bitterly so, in the Democratic party and in Congress.

Nevertheless, the power of confirmation is specified in the Constitution, and in the last five years Congress has shown what a substantial power it can be when wielded with determination. There is no doubt a danger, even, that an overweening Congress might deny some President the necessary leeway to set up a coherent Administration; but the natural divisions that always beset Congress will usually guard against that.

A more promising possibility is that recent experience may cause Congress to take the confirmation power more seriously. It long has been routine to force nominees to divest themselves of entangling financial interests; insuring high standards of official character and public service ought to be just as much a goal of those who can advise, and who must consent.