



*William Raspberry*

## View of Nixon's Choices

"IT APPEARS once again that President Nixon has sought to turn the tables on his critics by submitting the names of two apparently qualified lawyers to the Senate.

"The President knows that racists stand little chance of confirmation; nonetheless, he remains faithful to his Southern strategy by appointing conservatives who at least wear the cloak of legal acceptability."

This statement from a press release distributed yesterday by the congressional Black Caucus, pretty well sums up the situation for blacks and liberals who

oppose the nominations of William Rehnquist and Lewis Powell Jr. to the U.S. Supreme Court.

For neither man can successfully be attacked as either a racist or a legal incompetent. What makes them unacceptable to blacks — and attractive to Southern whites — is that their view of the law is "conservative."

Expose a nominee as a sheet-wearing nightrider or a legal idiot, and you've done your country the favor of protecting its highest tribunal from a man who ought not sit there. But attack him on the basis of his conservatism, and you lay yourself open to charges of playing politics and opposition for the sake of opposition.

And yet, why is it that black people have been so outraged over the prospect of racist and/or incompetent justices on the Supreme Court? It is their fear that such people would interpret the Constitution in ways inimical to the best interests of blacks.

**BUT ISN'T THIS** precisely what the people we call "conservative" are likely to do?

The difference is more of style than of substance, as the Black Caucus statement makes clear:

"How would a conservative Court affect the future of civil liberties in America? Who among us would stand to suffer most from a narrow interpretation of civil rights and civil liberties?"

"That Messrs. Rehnquist and Powell might be men of higher intellect and standing than those previously named could mean very little to the millions who view the Court as their only and perhaps last protector . . . Their presence on the Supreme Court would . . . contribute to an interpretation of the law that could operate in a punitive, if not vindictive, manner toward the black and the poor, the have-nots in our society."

But saying that doesn't make the fight against confirmation very much easier. A lot of us, in the Senate and out, had come to expect the nominations of thinly disguised bigots and had raised defenses against that eventuality.

At least one line of that defense would be to call in question the propriety of the very nominations. The Senate's role would be to slap the President down—for the third and fourth times—for his efforts to demean and politicize the Supreme Court.

**BUT THE** President, more through luck than anything else, wound up appointing better men than he had planned, rendering the obvious defense inappropriate. There will be a confirmation fight, of course, but it will be at once more gentlemanly and (for blacks and liberals) more difficult to win.

When the nominee was Carswell, an implicit part of the attack was that President Nixon had no moral right to burden the Court

with a man whose judicial expertise and racial attitudes were unacceptable.

But there can be no gain-saying the right—moral or otherwise—of Mr. Nixon to appoint Powell and Rehnquist. Nor has the Black Caucus any intention of fighting it that way.

The point the Caucus hopes to sell during the Senate hearings that start today is this:

"If the President has the right and the responsibility, as he has indicated, to nominate conservatives and strict constructionists to the Court, then we who oppose his judicial philosophy and its implications also have the right and responsibility to oppose those nominations."