

(Clippings on Carswell not in file.)

Books of The Times**It Only Hurts When You Laugh**

By WALTER CLEMONS

DECISION. By Richard Harris. 220 pages. E. P. Dutton. \$5.95.

Richard Harris has made a silk purse out of a banana peel. The nomination of a dim Florida jurist, G. Harrold Carswell, to the Supreme Court in January, 1970, and his rejection by the Senate 79 days later was the most ignominious fiasco, on the domestic front, of President Nixon's first two years in office. As political slapstick, the story would almost write itself. Highlights: the initial puzzled hush at announcement of the nominee's name ("Who?") is followed by revelation of his 1948 statement that "segregation of the races is proper and the only practical and correct way of life in our states" and his flickering memory of his role as incorporator of a golf club seeking to avoid desegregation in 1956. Next, muddle and peevishness at the White House, with hasty consultation of "The Federalist" and the Constitution, bear fruit in a document known as the Saxbe letter, in which the President advises the Senate that "advice and consent" means it has the right of consent, only, to his nomination.

Nationwide Hilarity

Many Senators aren't ecstatic over this lecture. But one of the faithful, Roman Hruska of Nebraska, tries to lend his President a helping hand with a wonderful argument: What if G. Harrold Carswell is mediocre, he asks—"there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they, and a little chance? We can't have all Brandeises and Frankfurters and Cardozos and stuff like that there." Nationwide hilarity.

It still looks as if the nomination may go through, until the White House makes the panicky last-minute blunder of trying to pressure waverers by claiming that Senator Margaret Chase Smith will vote favorably. This dire miscalculation (to be duplicated in 1971 over the SST) results in defeat, 51 to 45, followed by a gruesome display of Presidential temper and a low-comedy coda: a post-midnight call to The Arkansas Gazette from a woman identifying herself as "little Martha Mitchell," urging crucifixion of Senator J. W. Fulbright for his vote against Judge Carswell.

"Decision," which ran as a two-part article in The New Yorker last December, turns this grubby farce into a searching study of the threat the Carswell nomination posed to two branches of the government. Richard Harris makes us see that there was nothing at all hilarious about the Carswell incident, seen from the point of view of the Senate—which had just rejected the President's nomination of Clement F. Haynsworth to the Court and was of a mood to accept whatever name Mr. Nixon sent over next. "The Attorney General obviously believed that we had no

stomach for another fight," Mr. Harris quotes one Republican Senator, "and that we would accept any dog, so he took this opportunity to show his disdain for the Senate."

The nomination of a Southern "strict constructionist"—so far from strict in his interpretation of the Constitution, it soon developed, that nearly 60 per cent of his published decisions had been reversed, more than twice the average of his fellow judges in the district courts—was a crude political move. The President was prepared, Richard Harris harshly says, "to insult one branch of the government, the Senate, in order to lower the quality and lessen the integrity of a second branch, the judiciary as symbolized by the Supreme Court, in order to give unequal power to the executive—all for the purpose of bettering his own prospects for re-election."

What to do about it? Even Senators most outraged by the nomination felt there was little hope of defeating it. The core of Richard Harris's book is the heartening, slow-motion rise of indignation among Senators risking their political futures, matched by the rallying of thousands of lawyers. "Few lines of work make one less disposed to defy established authority than the law," Mr. Harris notes; but in this case the lawyers stirred—from Samuel Rosenman and Francis T. P. Plimpton in New York to small-town committees in the sticks. By the time the Senate vote approaches, the reader has had a bracing lesson in the ways things can get done and how things work; the role of Senate staff assistants and lobbyists, how to arouse Hawaii by telephone.

An Intricate Climax

The climax is too intricate to describe here: There were two votings, one on Monday on whether to recommit the nomination for reconsideration in committee (which would delay it forever) and a Wednesday final vote on confirmation. While the White House was concentrating on defeating the Monday motion, the anti-Carswell forces had secretly shrugged that one off as lost and were concentrating on Wednesday: They had suddenly realized that Nixonites could fulfill their obligations by voting in the President's favor on Monday, while remaining free to rebuff him on Wednesday, and so they invited their own defeat on Monday. Richard Harris's account of this maneuver—which wasn't visible to newspaper readers at the time—is icily, nerve-rackingly exciting, as is his spare account of the final Wednesday roll-call.

What a good reporter Richard Harris is, and what an exhilarating book he's written! "Decision" won't be enjoyed much at the White House, nor at the Department of Justice under present auspices. Elsewhere, yes.