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## President Nixon's Opportunity

By JAMES RESTON

The central facts about the Supreme Court, despite all the turmoil, are the same today as they were before the Senate vote on Judge Carswell. All the Senate has said is that the highest court in the land deserves an outstanding man. Within this single reasonable principle, President Nixon is free to choose from a very large company of distinguished conservatives and is clearly in command of the situation.

Incidentally, the only thing wrong with the confirming process — giving some outside group the power to veto the appointment of dubs to influential jobs—is that it isn't applied elsewhere. What if the Supreme Court or some other Committee of Nine, had the authority to pass judgment on mediocre Senators or columnists? Would that be bad?

### A Moratorium?

What is needed now is a moratorium on talk about President Nixon's "defeat." He wasn't defeated, he was merely rebuked, and he may even have been rescued from giving the conservative cause a bad name.

But in any event, it is clear that we are still only at the beginning of the reconstruction of the Supreme Court, and this political controversy over the

Court, which has raged ever since Earl Warren's odd resignation, may help everybody think a little more clearly about what form that reorganization of the Court should take.

Mr. Justice Hugo Black is 84. Mr. Justice William Douglas, who has a mechanical pacemaker in his heart, will be 72 in October. Mr. Justice John Harlan, whose sight is grievously impaired, will be 71 next month, and Chief Justice Burger, and Justices Brennan and Marshall are in their sixties.

### The Present Danger

So, forgiving the ghoulish but inevitable facts of life, it is fairly clear that President Nixon, just going into the second year of his first four-year term and with very good prospects of a second four-year term, is going to have the decisive voice in the future personnel and even ideology of the Court, if only he will appoint distinguished Americans.

The danger now is that the anti-Carswell forces will go on crowing and the President and his Attorney General will get angry. For if this happens, the Court will get even more deeply involved in vicious political battles as it did when Franklin Roosevelt tried to "pack" the Court in the thirties. This would polarize and politicize the Court, and with all our

other troubles, who needs it?

President Nixon, fortunately, has said nothing since the vote. He made his power-play for Judge Carswell and it failed, but he has made a successful career of failing, and waiting, and starting again, and finding new allies among old enemies. And he can easily do it again.

He has kept whatever promises or leanings he took to the South at the Republican nominating convention in Miami Beach. He has fought for Judge Haynsworth of South Carolina and Judge Carswell of Florida, and can argue, if he likes, that he was defeated by the Eastern liberal conspiracy. No doubt this has some temporary advantages.

But this Agnew-Mitchell view of life, while picturesque and newsworthy for a while, isn't really equal to Mr. Nixon's dreams of a second term based on the equalitarian and even revolutionary ideals of the 200th anniversary of the Declaration of Independence in July of 1976. It is fun for the moment, but only if you don't inhale it, and the President is too strong now, despite the Carswell embarrassment, to rely on such tactics.

Actually, what the country needs now is a reorganization of the Court which is much more serious than merely the

replacement of one Associate Justice. It needs a mandatory retirement clause at 70, as Earl Warren has suggested. It needs not fewer changes but more changes in the next few years, but not the kind of changes Mr. Nixon has offered us.

### The Big Challenge

The present crisis in the Supreme Court, if it were seen not as a political challenge but as an opportunity, could be used by the President to start a long-delayed and desperately needed retirement system, not only for the Court, but for the legislative and executive branches of the Government as well. They are long overdue.

But this will take time. It will take generosity and perspective by the President, and respect for the sincere views of those few Senators of his own party who felt that Judge Carswell was unfair to the Court, to the Presidency, and even to the conservative cause.

The future, however, is clearly in the President's hands. He can lose it only if he insists that the Carswells are good enough for the Supreme Court, and that the Senate must confirm his judicial nominees, even if they are not very good. The interesting question now is not the President's next appointment, but the President himself.