

Issue now is approximately 99 percent politics and 1 percent factual. This is the second nomination we are considering for this vacancy in a matter of months. First, the Haynsworth nomination was rejected. He was insensitive. Now we are told Judge Carswell is mediocre and a racist. But let me say, with all the earnestness I can muster, as a junior Member of this body, the fate of G. Harold Carswell does not rest on the other side of the aisle. The fate of G. Harold Carswell rests on this side of the aisle. We will make the decision as our votes will make the difference.

I would remind my Republican friends—I quarrel with no one; I question no one's motives—but remind my friends on this side that Richard Nixon was elected President in November 1968, and that with that election came the right and duty to nominate Justices of the Supreme Court. That right has been once denied; perhaps soon twice denied, we have the responsibility, as Republicans; it is our responsibility, not the responsibility of the Senator from Indiana—and I do not question his motives. Let me repeat, in conclusion if this nomination should be rejected, I suggest to the President of the United States take his case to the people and that he leave the seat vacant until November. It may be easier to change the Senate than the U.S. Supreme Court—in fact it may be a prerequisite.

The VICE PRESIDENT. Who yields time

Mr. DOLE. I yield back the remainder of my time.

Mr. MANSFIELD. Mr. President, I respectfully request that the Sergeant at Arms be directed to clear the Chamber of all excess personnel, which does not include Representatives from the other body, fellow parliamentarians from France, I believe, or attachés who have official business on the floor.

Mr. SCOTT. Mr. President, I ask unanimous consent that the attachés attached to my office may be permitted to remain who have business in the Chamber.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. BAYH. Mr. President, I make a similar request relative to my staff.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. McCLELLAN. Mr. President, if exceptions are to be made, let us have exceptions for all the staff. I ask unanimous consent that any staff member of any Senator who is present in the Chamber may be permitted to remain on the floor. [Laughter.]

Mr. MANSFIELD. Mr. President, I object.

The VICE PRESIDENT. Objection is heard.

Pursuant to the unanimous consent request, the Chamber will be cleared of all unnecessary personnel, except those mentioned in the unanimous-consent agreement.

The Sergeant at Arms is directed to carry out this order.

The Chair would mention to the galleries that, due to the tremendous interest in this vote, there will probably be great attention on the part of everyone to follow it closely. The Chair would

caution the galleries, please, to be courteous and let the vote proceed without demonstrations.

The question is, Will the Senate advise and consent to the nomination of Judge G. Harold Carswell to be an Associate Justice of the Supreme Court of the United States?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON) is necessarily absent.

I further announce that the Senator from Rhode Island (Mr. PELL) is absent on official business.

On this vote, the Senator from Rhode Island (Mr. PELL) is paired with the Senator from Utah (Mr. BENNETT). If present and voting, the Senator from Rhode Island would vote "nay" and the Senator from Utah would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is absent on official business as observer at the meeting of the Asian Development Bank in Korea.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness and, if present and voting, would vote "yea."

On this vote, the Senator from Utah (Mr. BENNETT) is paired with the Senator from Rhode Island (Mr. PELL). If present and voting, the Senator from Utah would vote "yea" and the Senator from Rhode Island would vote "nay."

The yeas and nays resulted—yeas 45, nays 51, as follows:

[No. 122 Ex.]

YEAS—45

Aiken	Ellender	Murphy
Allen	Ervin	Pearson
Allott	Fannin	Randolph
Baker	Goldwater	Russell
Bellmon	Griffin	Saxbe
Bible	Gurney	Scott
Boggs	Hansen	Smith, Ill.
Byrd, Va.	Holland	Sparkman
Byrd, W. Va.	Hollings	Stennis
Cooper	Hruska	Stevens
Cotton	Jordan, N.C.	Talmadge
Curtis	Jordan, Idaho	Thurmond
Dole	Long	Tower
Dominick	McClellan	Williams, Del.
Eastland	Miller	Young, N. Dak.

NAYS—51

Bayh	Hartke	Moss
Brooke	Hatfield	Muskie
Burdick	Hughes	Nelson
Cannon	Inouye	Packwood
Case	Jackson	Pastore
Church	Javits	Percy
Cook	Kennedy	Prouty
Cranston	Magnuson	Proxmire
Dodd	Mansfield	Ribicoff
Eagleton	Mathias	Schweiker
Fong	McCarthy	Smith, Maine
Fulbright	McGee	Spong
Goodell	McGovern	Symington
Gore	McIntyre	Tydings
Gravel	Metcalf	Williams, N.J.
Harris	Mondale	Yarborough
Hart	Montoya	Young, Ohio

NOT VOTING—4

Anderson	Mundt
Bennett	Pell

The VICE PRESIDENT. On this question, the vote is 45 yeas and 51 nays. The nomination is not agreed to.

[Loud demonstrations in the galleries.]

Mr. MANSFIELD. Mr. President, if there are any further demonstrations in the galleries, I shall ask that the galleries be cleared.

Mr. CURTIS. Mr. President, I ask that the galleries be cleared.

The VICE PRESIDENT. The galleries will be cleared. The Sergeant at Arms will enforce the order.

Mr. MANSFIELD. Mr. President, I ask that the Chamber be cleared of all unnecessary personnel.

The VICE PRESIDENT. The Chamber will be cleared. The Sergeant at Arms is instructed to carry out the order. The galleries will be cleared.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the action of the Senate.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. CURTIS. Mr. President, I suggest that the galleries be cleared.

The VICE PRESIDENT. The Sergeant at Arms has been instructed to clear the galleries and the floor of all unnecessary personnel.

Mr. MANSFIELD. Mr. President, I wish to take this opportunity to thank each and every Member of this body on both sides of the aisle who contributed to the consideration of this nomination. Those who were in the forefront particularly may be singled out for their forthright and forceful presentations. I speak of those on both sides of the issue.

Notable, for example, was the effort of the distinguished Senator from Nebraska (Mr. Hruska). Clearly, he demonstrated the same strong and able advocacy on this matter that has characterized his many years of public service. The Senator from Mississippi (Mr. EASTLAND), the able and distinguished chairman of the committee and the rest of the members of the Committee on the Judiciary all handled themselves in such a manner as to assure a debate of the highest order.

The Senator from Indiana, the Senator from Massachusetts (Mr. BROOKE), the Senators from Michigan (Mr. HART and Mr. GRIFFIN), the Senator from Kansas (Mr. DOLE), the Senator from Florida (Mr. GURNEY), and many others deserve the highest commendation of the Senate. Their cooperative efforts were responsible for providing such a high-level discussion. We are most grateful.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into legislative session.

The VICE PRESIDENT. Without objection, it is so ordered.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had passed the bill (S. 980) to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate: