President Nixon and Regional Philosophy

By Peter V. Smilde

Following the rejection of the Carnewill nomination by the Senate, Attorney General Nixon announced on April 9 on nationwide radio and television that he reluctantly concluded that it is not possible to get confirmation of a judge on the Supreme Court of any man who believes in the strict construction of the Constitution as I do, if he happen to come from the South; and, "the South is entitled to proper representation on the Court."

To certain citizens of the southern states this statement may have a ring of appeal, despite its misleading implications. If the statement be taken at its face value, the philosophy that prompted Mr. Nixon to make it could have grave consequences for the immediate future of the Nation's highest court, and for the American people.

The U.S. Constitution contains no mandate whatsoever that the composition of the Supreme Court reflect a regional balance or preference in the nine members who serve on it. Article III, Section 1 is explicit: "The judicial power of the United States shall be vested in one Supreme Court ..." Article III, Section 2 states: "He (the President) shall nominate, and by and with the advice and consent of the Senate, shall appoint ... judges of the Supreme Court ..." Article III, Section 1 further states: "The judges of the Supreme Court shall hold their offices during good behavior." They shall be compensated for their services, not to be diminished during their tenure. The Constitution is otherwise completely silent about any requirement or preference concerning regional selection or political or judicial philosophy of the Justices.

A majority of the 95 Justices who served on the Court since its inception obviously were influenced initially by the President who appointed them, sharing common political and professional beliefs. The Frankfurter-Rosevelt-Fortas-Johnson friendships, for example, are well known, as is the political debt of General Eisenhower in 1952 to Governor Earl Warren of California. Following the Fortas resignation in May 1969 after a stormy hearing before a national magazine, the news media and special interest groups have then it upon themselves to launch a massive inquisition of Judges Haynsworth and Carmichael. Their investigation was led by relative remoteness of both men from the President. Chief Justice Warren Burger, as many recall, was a personal acquaintance of Mr. Nixon for many years and was well known in Washington political circles prior to his appointment. Thus, the question can be raised: Doesn't President Nixon have any friends in the southern states?" See Nixon, page 3

LAW BRIDGE TO JUSTICE

LAW DAY USA 1970

The significance of Law Day 1970 and the main theme exalt the principles of justice. By definition, justice is that principle of rectitude and just deal which forbids the murder of man with either or both branches of the maintenance or administration of which there is no other such as that just. Thus, as we keep in mind these principles here must be the realization of the justice that continues to be extended to every phase of American life and help eliminate those problems that confront our nation.

Justice is not only the fair dealing of men with one another, but also deeply involves those who make it as well as those who seek their enforcement. Enforcement of laws is only one step toward achieving justice. These laws which must be as the industries of treason, the securities of property, the dignities of discrimination, and yet have the same common denominator the desire the basic rights that have been bestowed upon them by the Constitution to over the Constitution. Although there is disagreement with existing status, the democratic process by which we must be the one to make the necessary corrections of such problems.

The call for law and order along with the strict construction and interpretation of our Constitution is as meaningful today as it was at the birth of our nation. It is evident that if progress is to be made and law accomplished, the bridge must be able to bear the weight of those who are willing under the law to cross and help those who offer.

Can there be a Utopia? Can "equal" be attainable? These questions may gain a qualified affirmative vote with basic justice. The accomplishments of man and nation in the 20th century have had a phenomenal effect on the world not only in war or peace but in all other respects that are of more substance.

Thus, in the words of the President, "We the People ... in Order to form a more perfect Union, establish Justice, insure domestic tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to our ourselves and our posterity, shall establish this Constitution ..."

Reflections

By BILL PROCTOR

Graduation and the Bar Examination were the corner. However, before we as members of the class of '70 can look toward the future, we must pause a moment and look back. I suppose we have found innumerable steps of our way in Law School. It seems hard to believe that the graduation day was dreamed 3 years ago is rapidly approaching.

Approximately 56 of us stormed the doors of NCUC Law School on the corner. However, before we as members of the class of '70 can look toward the future, we must pause a moment and look back. I suppose we have found innumerable steps of our way in Law School. It seems hard to believe that the graduation day was dreamed 3 years ago is rapidly approaching.

By JOHNNY TAYLOR

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THE BARRISTER
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GEORGE H. MANNING
Editor
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JOSEPH IACOVITTI
Business Manager
WAYNE PETTWAY
Advertising Manager

REPORTERS
PETER SMILEY, JON J. TAYLOR, RAYMOND SITAR, AND WILLIAM PROCTOR.

Editorials—

“A House Divided Against Itself Cannot Stand.”

This famous quotation declares to those concerned, where division settles among a group of individuals there cannot be the fulfillment of desired goals. Our student body is not an exception to this quotation.

Whereas the students pursue the study of law, they must also be aware and involved in the activities of the student associations, not for personal gain, but to lend their talents and ideas to a well-rounded program. The various activities during the course of the year need the cooperation of not just a few, but of all the students who are willing to lend their time and effort. Some activities are criticized within the student program; however, without financial assistance or the energetic spirit of the law students, nothing can be accomplished successfully.

However, the student who do not wish to be involved or participate in the various organizations; this is understandable within reason, but as to those who alienate themselves from the group in general and the association of such students; they are only making their personality worse and lives harder.

The Lawyer And The Juvenile Court
By GEORGE MANNING

Although most law schools include subjects and courses which to some extent touch the juvenile offender, there is nothing in the structure that prepares a lawyer for representing his client in the juvenile hearing. There must be incessant reading within and without the seminar to prepare the future lawyer and those already in practice, for their roles in preparing a defense for the juvenile offender.

Recent decisions have expounded rulings that will make many changes in the proceedings for offenders under the age of 18. (North Carolina law classifies one under 16 as a juvenile.) The most significant of decisions handed down by the court is the case of IN RE GAULT, 387 U.S. 1, (1966) which drastically changed the entire juvenile proceeding throughout the United States. The court there made it clear that an accused juvenile offender must be protected by the Due Process Clause under the 14th Amendment, thus insuring his right to counsel and the privilege against self-incrimination. Though most juvenile courts have been considered “therapeutic tribunals” most states have revamped their statutes to make the necessary guidelines for the protection of the juvenile’s rights.

The Juvenile Court comes within the jurisdiction of the District Court. The proceedings are held on a non-judicial basis and in a closed hearing; however, the juvenile court is given an opportunity for counsel, but this privilege is very rarely used because of the informality of the proceedings.

Thus, the issues confronting counsel in this type of proceeding, which is non-judicial, are what are his duties and responsibilities to his client and what, if any, is his duty to the school? In most instances, those who come before the court are not involved in a serious offense but are facing a fiscal, economic problem or trouble with the school authorities. Therefore, the lawyer must be knowledgeable of the situation and of his presentation before the court. He must also be aware of the new legislation in the various jurisdictions and the problems of the juvenile in our ever-changing society in order to render the best possible legal service.

THE BARRISTER

THE DEAN’S CORNER

The school year of 1969-70 opened on a happy note on September 15, 1969. That Monday morning get-acquainted meeting was a bright and friendly one. We looked forward to a good year. Four days later, we faced our first obstacle.

The spirit of the student body during this period was tremendous. The fact that not a single class was missed as a result of the tragic fire stands as a monument and image of vision, and spirit of these students. It is also a reminder that this generation of law students is willing to face the task and to bear the burden of becoming a great lawyer.

This column is not entirely annual programs have been carried on the immediate past. Our question is where do we go from here? Other law schools, the Community Churches, and individual friends have responded generously to our needs. The State has added funds as that we are in the process of re-ordering books which were destroyed and the problem of the law library is practically complete.

Our legal education seminar on Title VII of the Civil Rights Act of 1964 — October 12-13, 1969 — was a success. The students’ seminar on Moratorium Day was informative and educational experience. It is the sincere hope of the Dean’s Office that we will have more of these types of programs throughout the school year in the future.

Such programs are invaluable because in three short years, you cannot learn all you need to know in just the fifty-minute class period.

On November 7-8, 1969, our moot court team journeyed to Norfolk, Virginia where they participated in the Seventeenth Annual National Moot Court Competitions.

The student body gave a surprise recognition ceremony for the installation of the new Dean of the Law School. The Dean and his family were greatly pleased by this magnificent gesture on the part of the student body.

It should be especially noted that the faculty of the Law School has been greatly impressed with the enthusiasm and the espirt de corps of the students throughout this school year. In spite of the inconvenience and hardships occasioned by the repairs to the building, the basic law school programs have been carried on in high manner.

The second national issue of the NCCU Law Journal is due off the press soon. Subscribers and IDAHSV members will soon receive their copies.

The Law Day Committee has worked in yeoman-like fashion to make this Law Day a memorable occasion. I know that the students and the alumni will enjoy this special Law Day celebration.

Our task is to have all of the alumni return to the Alma Mater. The Dean and the faculty hope that this occasion will be the beginning of a closer and more cooperative alliance between the school and the alumni, as well as greater cooperation of the law student and the community.

The legal research project which the Law School, in conjunction with the Foundation for Community Development, should serve as a bridge to this

See Dean’s Corner, page 4
Mr. Nixon And Regional Philosophy

(Continued from page 1)

states whom he deems qualified to serve on the Court? Human nature being what it is, every Judge (or Senator, for that matter) has at least one skeleton in his moral closet. A certain attachment to the President, on the other hand, may gracefully obscure an inevitable deficiency from the hypocritical scrutiny of political and professional zealots. The Portas removal and Haynsworth, and Carewelle rejections are basically symptoms of the same psychotie malaise, irrespective of the merits of the original contentions against these men. But we must also recognize certain other factors.

The present Impasse has been created, none-the-less, by the ineptitude of a President (and his advisors) who announced less than a year ago that he would not use the Court for the purpose of a recalled racial, religious or geographic balance. The bland statement of April 9, therefore, is not only unexpected but also a historic setting unprecedented and preposterous.

There exists scant evidence that any of the 95 Justices have reflected specifically regional or geographic philosophies in their judicial opinions. One may argue that a specifically regional, political or judicial philosophy does not exist at all and may, in fact, never have existed. Political irrationalities are always the tools of certain individuals to entice groups or masses of men. Such expression is basically antagonistic to the American judicial temperament which the Supreme Court invaribly has shared. During the past thirty years and during various stages prior thereto, the Supreme Court has been fervently concerned with taste, human rights which exist quite apart from the daily self-seeking activities of politicians. 28 of the Justices since 1789 have hailed from southern states—predominantly Tennessee, Kentucky and Virginia. (Excluding Texas), many of the outstanding civil rights opinions of the past two decades have come from the pen of Justice Hugo Black of Alabama. Two of the most pernicious anti-human, anti-civil rights opinions of the 19th century, on the other hand, were written—respectively by a northern Democrat and by a northern Republican—(Fred Scott v. Sanford, 1856, and Plessy v. Ferguson, 1896). The vigorous dissent in Plessy came from Justice Harlan, a Republican from Kentucky. The list can be multiplied to prove that the Justices of the Supreme Court have not expressed any so-called native or regional political philosophies in their opinions, nor have they been encouraged thereto by any President.

Although the Supreme Court has been a powerful instrument for legal and, consequently, social change during the past thirty years, it is hardly in the nature of the American character to expect a reformation to unto mod and impractical philosophies or to desire a lack of progress from the important civil rights gains that have been made since 1896. As a lawyer Mr. Nixon should know that strict constructionism of an 18th century document is and has been neither possible nor feasible in a hyper-modern communications—minded, industrial civilization. One can argue that an attempt at strict constructionism of the U.S. Constitution in the 1970's will, in fact, destroy this implicit abstractness that is present and will not preserve it, as has been the laborious task of the past two decades. Many statutes cases and constitutional provisions construed by the Court are themselves products of intense political, social and economic conflict. The Court has a duty to continue to clarify constitutional issues where the Constitution is not explicit, such as in the areas of appointment, economic rights, the exercise of religious and sectarian beliefs, obscenity and the rights of the accused, whenever a lower court refuses to acknowledge a specific, human grievance. Hopefully the legitimate need and complaint of the individual will continue to outweigh the amorphous, less rational interest of the larger society. Any attempt, however, to undo the basic civil rights legislation of the past twenty years can only be tolerated if he is in the next Supreme Court.

Thus Mr. Nixon may take a proper cue for his next Supreme Court nomination by means of a long look at the accomplishments of the yest and a realist evaluation of the present. In doing so he must realize that a Supreme Court Justice can not reflect the immediate political philosophy of a President. This President is in favor of that Justice is to honor the mandate to uphold and to expand the U.S. Constitution. (Cl. C. J. Marshall in McCullock v. Maryland, 1819.)

Ironically the recent conduct of the Senate in the Haynsworth and Carewelle nominations is indirectly a reflection of Mr. Nixon's own political philosophy. The President believes in a strong, independent Congress, and the Senate has willingly fixed its muscle while not succumbing entirely to outside pressures. Although the enactment of specific code of judicial qualifications may not be desirable, the Senate probably will continue to look askance at any nomination that has a purely political coloring and with which Mr. Nixon himself can hardly identify as President of the United States.

Thus far the Supreme Court has managed to transcend political frustrations and petty sectional interest. No President has the right to demand that the Court suppress its own political frustrations and ambitions if both President and Court are to retain the respect of a majority of the American people. Only the President is in a position to end the present feud between the two. The Court itself, in the final analysis, if the Court is to function as an independent though influential branch of the Federal Government in the proper historical and constitutional perspective, whether the next or a future nomination from a southern state is really immaterial.


c

THE BARRISTER PAGE THREE

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FACULTY NOTES
By RAYMOND SITAR

The Law School welcomed four new professors this year who bring a wealth of knowledge from varied backgrounds:

Mr. Nathaniel Adams is a graduate of Howard University where he received his B.A. and LL.B. Admitted to practice in Washington, D.C., he received his L.L.M. from the National University before moving to Florida A&M University where he taught until last year. He is married and the father of two children.

Mr. Robert A. Williams is a recent graduate of Howard University and received his J.D. from the University of Virginia Law School. Admitted to practice last June, he is associated in his father's law firm in Danville, Virginia. He still enjoys the bachelor life.

Mr. Nicholas A. Smith is a graduate of the University of Tennessee receiving both undergraduate and law degrees. While only on a part time teaching basis, Mr. Smith is also working on his doctorate at Duke University.

Mr. Arnold H. Loewy is a graduate of Boston University receiving both undergraduate and law degrees. As a visiting professor here this spring, he is a professor at the University of North Carolina full time. Prior to coming to UNC, he received his LL.M. from Harvard University and taught at the University of Connecticut. He is married and the father of two girls, ages 5 and 3.

-Reflections-
(Continued from page 1)

...son proved your point in May. If there was a generation gap, you turned it into a credibility gap — people couldn't believe all those Ca's. Oh well, number's almost over, only 2 semesters more.

...Fall is here, ask to the grind. Enter the Black John Wayne or should I say Butch Cassidy. Hey, man, he's right out of law school. Think he knows anything? Naw, probably just dicking the draft. Those remarks were heard after introduction of one of the new faculty members. Don't worry, Butch, those seniors in Federal Jurisdiction think you know your stuff even if you are from Danville.

Rumor has been going around that with all those ex-instructors from Florida here, maybe the schools' name should be changed to Florida A&M, at Durham. Gee, Mr. Adams, the weather's not as warm here. Oh well, I guess it beats Chicago.

"Assistant Dean" Reese, we promise to leave our impressions in your mind. May the thoughts that the class of '71 will be like the class of '57 — keep you awake at night.

Good luck on the Bar Examination and with Uncle Sam class of 1970. Remember we are the "FIRST" class to graduate from North Carolina Central University Law School.

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LAW WIVES OF NCCULS

The 1966-79 school year saw the increase in membership of the Law Wives and the expansion of its services and the fulfillment of the many purposes of the organization.

Though the purposes of the Law Wives are manifold, they have found the time to promote the social unity among its members and extend their assistance and support to the many students in the law school. The activities have not been limited to the campus, but have extended themselves within the community to those who have been less fortunate.

The coffee served during the exam period and social affairs during the course of the year for the husbands have been quite enjoyable and appreciated. Not only these acts of kindness have they made possible, but a Christmas party for children at the Edgemont Community Center and the recent program on drug abuse have kept the wives busy in addition to their usual chores.

Further testimony of their activities can be gleaned from the fact that the Law Wives aided in the cleaning of the building after the fire, held a bake sale, prepared a basket for a needy family at Thanksgiving and sponsored the Barrister's Wives Tea.

-Dean's Corner-
(Continued from page 2)

...goal.

The more exposure one has and the more one participates in these supplemental educational programs, the more proficient he will become in analyzing basic legal situations.

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