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Mr. GRAVEL. Mr. President, I do not think I ever heard a more eloquent statement of the facts of this most unusual case. I am honored to hear a statement, not from Senator BROOKE, but from Ed BROOKE, the man, who poured out his heart here for over an hour. I am honored to follow him, because all I can humbly do is merely take up in a brief fashion the points that he so lucidly brought forth.

Mr. President, I rise to speak against the confirmation of Judge Carswell to a seat on the Supreme Court of the United States.

Like my colleagues, I gave long and hard thought to the earlier nomination of Judge Haynsworth. I studied the three major arguments used against him—the arguments of civil rights, judicial ethics, and judicial stature. For me, these arguments were not persuasive against Judge Haynsworth.

The same arguments are now being used against Judge Carswell and this time I find them compelling.

Let me elaborate briefly.

First, the civil rights argument.

To me, the Haynsworth matter was not in any fundamental way a civil rights issue. Scattered points were raised, but they were not, in my mind, convincing. However, in my judgment the Carswell nomination presents us squarely with a civil rights issue. The man said, at the mature age of 28, that he believed in white supremacy. I can understand a politician seeking office in the South 20 years ago paying lip service to segregation. But, Mr. President, I cannot accept, nor understand, an American putting forth the view of white supremacy, regardless of where he comes from, in this Nation.

I certainly do not believe that a man's views, once expressed, should haunt him forever. Nevertheless, I do think there should be ample evidence in word and deed in the intervening years that these views have changed. Proof of the "redemption theory" is obviously required in this case in view of his extreme statement of 20 years ago. But Judge Carswell's actions in ensuing years, up to the present day, have merely shown an ability to express these same beliefs in more subtle and sophisticated ways.

Many felt the issue of judicial ethics in the Haynsworth case to be conclusive. I did not. Nor do I find it so with Judge Carswell; that is, if we are talking only of the use of his position for personal financial gain.

The matter of ethics, however, transcends monetary considerations. There are other ways to misuse one's position.

There are other modes of ethical misconduct.

I find deeply disturbing Judge Carswell's use of his judicial position to delay and frustrate orders of higher courts in matters of desegregation.

I find equally abhorrent, his lack of judicial temperament displayed by open hostility to civil rights workers and their counsel who came before his court seeking justice.

I find totally unacceptable his personal activities in effecting the transfer of a municipal country club from public to private ownership, with the result of denying black citizens access.

The ethics of this conduct has far greater implications to society than the question of the ethics of financial gain that surrounded consideration of Judge Haynsworth's nomination.

Finally, there is the matter of judicial stature. Probably most would now agree that in Judge Haynsworth we were presented with a jurist of some considerable stature. This is not to be said of Judge Carswell. Neither supporters nor detractors have found any legal opinion of the nominee which advanced the field of law in any notable way.

Not all jurists need be recognized scholars. But undistinguished persons should not be appointed to the highest court in the land.

It should be noted, too, that the academic legal community, which remained generally silent or mildly favorable to the Haynsworth nomination, is painfully appalled at the prospect of elevating Judge Carswell to the Supreme Court.

Each of us may give this fact a different weight, but I find it significant that in a community that is generally very protective of its own, the faculties of many of our leading law schools have felt strongly enough about the matter to actively oppose Judge Carswell's nomination.

In conclusion, I am compelled to vote against the nomination of Judge Carswell, because of his civil rights record, because of his misuse of judicial power, and because of his nonexistent judicial stature.

I believe President Nixon has exercised poor judgment in this nomination. I think it is incumbent upon the Senate to exercise its good judgment.

Certainly the fact that the Senate in the past 18 months has had a role in

denying two Supreme Court nominations should not diminish our efforts to secure a nominee of superior caliber.

I would hope that, if we had to reject 10 qualified persons for this high office, we would not tire in our search. Each nominee must be considered on his own merits. We should start anew each time.

I hope that the Senate will deny confirmation to Judge Carswell.

Mr. BROOKE. Mr. President, will the Senator yield?

Mr. GRAVEL. I yield.

Mr. BROOKE. I certainly know what agonizing the distinguished Senator from Alaska has gone through in reaching his ultimate decision in this very important confirmation. I think perhaps even more difficult was the Senator's decision in the Clement Haynsworth confirmation. I know at that time the distinguished Senator gave in-depth consideration to that nomination; that he listened very attentively to the debate. I know that, personally, even though I do not believe he is a lawyer by profession, he read opinions and did all he could possibly do before reaching his conclusion. As I recall, because of that consideration, he did ultimately vote for the confirmation of the nomination of Judge Haynsworth.

I think certainly he has given the same in-depth consideration to the confirmation of the nomination of G. Harrold Carswell, and I know that he has spent considerable time in reviewing the record of Judge Carswell's decisions and opinions. I am sure that to him, like others who have stated their opposition to this confirmation, it is a painful task as well.

I just want to say, Mr. President, I know it takes great courage on his part. It is not something that a man enjoys doing. But it is a responsibility that he has undertaken, and he has made his decision and has so spoken.

I think perhaps one of the most important things that the Senator from Alaska (Mr. GRAVEL) has said today is that even if the names of 10 nominees are sent to the Senate for confirmation and they are not of the highest quality, the Senate should not hesitate in the rejection of those nominations.

If you reject candidate A because you do not feel he has the qualifications for the office, and then candidate B is submitted and you vote for confirmation because you feel you voted against candidate A and therefore you owe it to the administration, or to the President, or

It does not look good to reject candidate B, are you really living up to your responsibility?

How can you justify it? The Senator from Alaska is saying that if you reject candidates A, B, C, D, E, F, G, H, I, and J, and if candidate K is presented and he lacks the qualifications, we ought to, just as strongly and just as courageously, and without any political considerations at all, reject candidate K.

I do not know, Mr. President, that I could say it better than the distinguished Senator from Alaska has said it; and I think that that is one of the most important matters that has been raised on this floor in this debate. I have heard the very argument to which the Senator has directed his remarks. I have heard colleagues say, "How can you go against the President twice?"

But is that the question before us, whether we are going against the President twice, three times, or 10 times? As the Senator from Alaska says, we are not going against the President any time. We are not here battling the President. I support the President of the United States. I am sure that the Senator from Alaska supports him. We would be in serious difficulty if we did not support the President. He is our President, and we respect him.

But we do not have to agree on everything that the President says or does, or even confirm every nominee to the Supreme Court whose name he submits. The President himself has admitted that he did not know some of the things that have come out about his candidate before he submitted his name to us. Our responsibility is to delve deeply into the background ourselves, independently of the executive branch, to find out what the facts are upon which we can base our decision. If we are merely to say "yea" to the President's nominee, then we are not living up to the responsibility that the people, under the Constitution, have given to the Senate of the United States.

So for one to argue that we should merely go along because we did not go along before is, in my opinion, a very weak, and very poor argument that should not be heeded by the Senate.

I did not fail to go along with the President when he first submitted Mr. Haynsworth's name. I do not think that the Senator from Alaska went along with him when he submitted his name. The Senator voted according to the merits of the case, and he made his decision on that basis. I, too, voted according to the merits of the case as I saw them, and based my decision upon them; and we came out in opposition to each other.

That is perfectly all right. That is what it is all about. That is why we are here. That is why the Senator is a Democrat and I am a Republican.

We are not here to "go along" with anyone. I am sure the Senator would agree with that.

We are not here to go along with anyone. I do not think we went along before, or did not go along. I do not have any less respect for the President because I happen to disagree with what he believes as to the qualifications of this or that particular candidate.

You know, the most important thing that might come out of this debate is that not only this President, but every President to come, will spend even more time than Presidents have spent in the past looking into the total man and the qualifications of their nominees to the Supreme Court of the United States; and that every Attorney General and every Justice Department will make more exhaustive investigations than have ever been made before; and that, when the nominations get to us, we will have a choice of riches rather than a choice of poverty, Mr. President, so that we might be asked to judge only upon the highest quality that the legal profession has to offer in this land.

If that is the result of this lengthy debate and an ultimate rejection of this candidate, then, in my opinion, it will have served a most worthwhile cause. And if it takes us 10 candidates to do it, then let us take the time for 10 candidates. I do not think there is anything more important.

We have plenty of time, Mr. President. We have spent far more time on far less important issues in this body, even in the short period of time that I have been here, than this issue deserves.

Mr. GRAVEL. Mr. President, will the Senator yield at that point?

Mr. BROOKE. Yes. I just want to say to the Senator from Alaska that I have great respect for both of his decisions, not only because on this decision we happened to come out the same way, but I have respect for him on his other decision as well. I have respect for any man, as long as he makes his decisions based on what he actually believes, in his head and heart, is right.

I am very happy to yield to the Senator from Alaska.

Mr. GRAVEL. Mr. President, I think the Senator has brought out the essential point very well, which was that since the President handed down this nomination, certain facts have been brought forward that he was not aware of, that might have caused him not to have selected Judge Carswell for the position.

I think the constraints of the office and the operation of the political system that we have conspire somewhat to prevent the President from stepping forward at this particular point in time and saying, "I think I made a bad decision; I change my mind; I wish to withdraw his name." I think that now the mechanism is in operation the Senate can act, and the Senate can reject this nomination.

I would hope that the President would not use the force of his office and the influence at his disposal, upon the members of the Republican Party who sit in this body, to elicit their votes in support of this nomination. I would hope that he would fall back to a more dormant position, so to speak, and let the facts permeate this body; and I am sure, with full knowledge of all the facts, that we will arrive at a conclusion which will correct what I think was an unfortunate error in judgment.

I should like to take a moment to address myself to two particular points of the argument that has been made over the last week. The first is summarized on

the first page of the report of the Committee of the Judiciary. That is that the reason why many Senators are opposing Judge Carswell is because he is a southerner.

I think the fact that I have made a decision different from my prior decision with respect to a southern gentleman, the fact that I have fairly decent credentials with respect to votes affecting the South, and the fact that, in all sincerity, I have deep affection for the South and individuals from the South, is proof that at least in my mind there is no regard as to which part of this country Mr. Carswell comes from.

I would hope that if the nomination is not confirmed by the Senate, the President again would go to the South and choose a person with a name, a southern name; a southern gentleman, a man who before his profession has shown some distinction. So I would hope that my vote on this nomination would lay that allegation to rest.

The second point of the argument on the front page of the report of the Committee on the Judiciary relates to a constitutional conservative. I think there are many misplaced views in this regard. I think the inference in this instance is that we will have a judge who will sit on the Supreme Court of the United States who will be able to perform some extraordinary feats in laying to rest the scourge that is abroad in this country in the way of crime and in the way of individual pillage. I think that that almost begs the question to the point of being ridiculous. Certainly if Judge Carswell had a record of being such a distinguished jurist, it would be apparent to all; but the burden of proof in this document is directly to the contrary. Distinguished scholars in the area of torts have come out and said that Judge Carswell used almost insulting language.

Distinguished scholars in the field of criminal law have put statements in the public records to indicate that Judge Carswell made statements that would be insulting to an individual. How could anyone hope that a person with so little to offer in the field of experience would grace the Supreme Court of the United States and render some service toward the great problems that face the Nation in the area of crime?

I think both of these areas have been adequately answered in this brief document. I think I have made my point as lucid as I am able to.

Mr. President, I yield the floor back to the Senator from Massachusetts, if he wishes the floor; if not, I yield the floor.

Mr. BROOKE. Mr. President, I again thank the distinguished Senator from Alaska for the opportunity to engage in this short colloquy with him. He has performed a service to the Senate both by his statement and the material he has placed in the Record. We have both addressed ourselves primarily to one issue involving the qualifications of Mr. Carswell to sit on the Supreme Court of the United States.

As this debate continues, I expect to have an opportunity to discuss some of the other issues to which the Senator has referred; namely, the overall question of

legal competency for this high post. I think that perhaps some of the people in the country might be rather confused in that here is a man who already has served as a U.S. attorney, which requires confirmation by the Senate; a Federal district court judge, which requires confirmation by the Senate; and a member of the circuit court of appeals, which requires confirmation by the Senate. They might wonder why this debate has not taken place earlier and how a man can arrive at practically the pinnacle of the legal profession without a similar debate. I question it myself, Mr. President.

I think that perhaps in the future we are going to have to take a much harder look at the responsibility we enjoy in the Senate for confirmation of U.S. attorneys, the confirmation responsibility we enjoy for Federal district court judges, and the confirmation responsibility we enjoy for members of the circuit court of appeals.

I think that, quite rightly, much of the law is interpreted at lower levels than the Supreme Court. Decisions are important in the Federal court, and several Presidents have shown an inclination to nominate to the Supreme Court only those members—or at least some members—who have served in one of the lower Federal courts.

It would appear to me that in the past—and I do not want to make this an indictment of our system—many times U.S. attorneys have passed pretty swiftly through the committee, after a look into their basic qualifications and into their honesty and integrity. The Judiciary Committee certainly has enough work to do, I am sure, and perhaps to a minor degree more is done with Federal district court judges and circuit court of appeals judges. When it gets to the Supreme Court, it seems to me that we say, "Wait a minute. Let us really take a look." I think that perhaps in this colloquy we are pointing out the necessity to say, "Let us really take a look at the U.S. attorney level and at the Federal district court level and at the circuit court of appeals level as well as the Supreme Court of the United States level." Then, of course, we would have more of a record to go on if someone is elevated to the High Bench.

There was very little in the Carswell case for the Senate to go on in previous confirmatory procedures, because very little testimony and evidence had been brought to light. I would hate to feel, even as important as the Supreme Court is, that we felt that any of our Federal courts were unimportant to the degree that we might pass judgment on nominees for those courts with very little in-depth investigation and scrutiny and hearings before the committee and debate before the Senate.

I know that we have so much to do that we cannot debate as fully every Federal district court judgeship that comes before us for confirmation, but we might want to look more closely at what the Justice Department does in its investigation. We reply pretty heavily upon the Justice Department for information

on nominees for the Federal judiciary and for the U.S. attorney offices. We in the Senate do not have any investigative staff to look into this ourselves, other than individual staffs, and, of course, the staff of the Judiciary Committee, which certainly is not a large staff—not large enough to send out investigators all over the country for the many posts we have to fill in the Justice Department and in the Judiciary. But we might want to take a closer look at our practices and our procedures in the future, to forestall the circumstances with which we are laboring at the present time in the G. Harrold Carswell case.

I just bring this matter up to the Senate in this form because of the statements made by the distinguished Senator from Alaska which provoked this thought.

Mr. GRAVEL. I think the members of the fourth estate share as much credit for discovery in these particular proceedings as the Senate, the entire Justice Department, and all the arms of the Government. Some of the key items were discovered by individuals of the press corps in their search to make a proper evaluation in meeting their responsibilities to the public at large.

I think it is fortunate that here, again, they play a role concurrent with the Senate, and that is, that as we debate these issues, the public at large becomes informed.

It is very difficult to endorse or defeat the nomination of a person who has no particular credentials one way or the other. The only thing about Judge Carswell that seems to stick out is the racist issue, and I think it sticks out with great preponderance.

Mr. BROOKE. Mr. President, will the Senator yield at that point?

Mr. GRAVEL. I yield.

Mr. BROOKE. Mr. President, the Senator refers to the statement of Judge Carswell in 1948. Now this statement was never revealed by the Justice Department. It was revealed by no arm of Government at all. In fact, to the best of my knowledge, the statement came to light only because of the—shall I say, digging in by a member of the press who went down into the records in Florida in the fifth circuit, and in the morgues of newspapers for that year, and came up with this statement.

Are we going to have to rely upon the perseverance and ability of the press totally for information—and very important information, I might add—concerning a judicial nominee?

Is that going to be the basis upon which we make our judgments?

Can we not have an independent investigative source of our own that would be thorough enough to reveal such information as this reporter came up with, which has created such doubts in many Senators' minds, which you and I have already indicated we find offensive and which even Judge Carswell himself has said he finds obnoxious?

I cannot believe that Judge Carswell would volunteer that information, but, when he was confronted with it, he could

not quite recollect whether he had made the statement or not. I think the record indicates that.

Mr. GRAVEL. That really is the area that triggered my decision. Obviously, as the Senator stated earlier, it was in his best interests at this time, of wanting to become a Justice of the Supreme Court, to recant the statement. It is clear that he could have a sincere change of heart at this particular time, and I am prepared to accept that. But, in accepting that sincerity, I am compelled to go back over the years, and over that particular time, as to the acts and things he has done to indicate a change of mind. Perhaps there would be one item, or one statement disavowing his 1948 speech, or perhaps some particular court case, so that he could stand up and say, "Well, I changed my thinking and here is proof of it." But, the contrary is true. There is no sequential chronological change since this statement was made in 1948. It

was not a statement about integration, or nonintegration, it was white supremacy. That is a good deal different in my mind.

Mr. BROOKE. I said earlier, as the Senator will recall, that I had searched in all sincerity for any evidence whatever to support the contention that Judge Carswell had had a change of mind or heart on these strong and deeply felt beliefs between 1948, when he admittedly made the statement, and 1970, when he appeared before the Judiciary Committee. I said that I searched in vain. Did the Senator from Alaska find any evidence at all, even a scintilla of evidence, that there had been any change at all on the part of the judge?

Mr. GRAVEL. I found no evidence that there has been a change. I found ample evidence that there has been a continuation of those beliefs, and that those beliefs have sort of changed—as one does as he adds years to his life—into something more subtle and actually in a sense, more diabolical.

Mr. BROOKE. The golf course case, which I discussed in some detail, as the Senator will recall, is not the only evidence I found in the record which would indicate that not only had he not changed but that those beliefs were still with him during the period 1948 to 1970.

Mr. GRAVEL. Let me elaborate on that. I think the chain is more complete than that.

Mr. BROOKE. Oh, yes.

Mr. GRAVEL. The statement was made in 1948. But in 1953 he served on Seminole Boosters, Inc., which clearly is discriminatory, and the statement there in the charter which from all appearance he drew up. He affixed his signature at the top. His signature was also part of the attestation. That was in 1953. There was also the golf course, which is the Capital City Country Club, and that was in 1956. Then in 1966 the sale of a piece of property which was initially signed by his wife but, I might add, he had to sign it also in 1966.

Thus, not as an attorney but as a lay person, I occasionally sign documents that I do not particularly read, and I

have been scolded by members of the bar for doing such things. I can only infer that Judge Carswell, when he signed the deed conveying that parcel of land in 1966—not in 1948, not in 1953, not in 1956, but in 1966, he signed it with knowledge of that clause, a clause which had been stricken down earlier.

Mr. BROOKE. Let me reply to that. I want to say to the Senator that I certainly would agree with him that there is a sequence of acts, deeds, from 1948 to 1970 to support that contention.

I addressed myself today to only one, and that was the golf course case. I did not want to take the floor of the Senate for any prolonged period of time, as I want to share the floor with my other colleagues who wish to discuss this matter. But I intend to take the various items and cases in the future and discuss them one by one. I think that I can probably make a greater contribution to this debate by doing it in this manner, and I am very much pleased that the distinguished Senator from Alaska understands that we do not want our colleagues to think we are talking about only one isolated case upon which we are making our judgments that, indeed, Judge Carswell has not changed from 1948 to 1970, or had changed, whichever way one wants to look at it. On the contrary, we found much evidence that there had been no change. I think it is important that we develop these one after another so that our colleagues will have the entire record upon which to base their opinions out in the open.

I thank the Senator from Alaska.

Mr. GRAVEL. I thank the Senator from Massachusetts.

Mr. President, I yield the floor.