Talmadge	Tower	Young
Thurmond	Williams	Zorinsky

NOT VOTING—5

Abourezk	Hathaway	Metcalf
Bartlett	McIntyre	

So the motion to recommit was rejected.

(Subsequently the following occurred:)

Mr. BIDEN. Mr. President, I ask unanimous consent that my vote on the last vote be changed from "aye" to "no."

The PRESIDING OFFICER (Mr. MORGAN). Is there objection?

Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, I ask unanimous consent to change my vote from "aye" to "nay." I thought I was voting on confirmation, rather than recommittal.

The PRESIDING OFFICER. Is there objection? Without objection, the vote will be so changed.

(The foregoing tally reflects the above changes.)

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Griffin B. Bell?

Mr. CHURCH. Mr. President, I should like to put some questions to the Senator from Indiana, on the assumption that those questions might follow this vote.

Mr. ROBERT C. BYRD. Mr. President, all time has expired. I wonder if, in view of the fact that the Senator from Idaho wants to ask a few questions, we could get just a little time by unanimous consent?

How much time does the Senator need?

Mr. CHURCH. I should think that these questions and the answers could be accommodated in 10 minutes, 15 at the most.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. BAYH may have an additional 10 minutes—that there be not to exceed 15 minutes, to be equally divided between Mr. BAYH and Mr. MATHIAS.

Mr. BUMPERS. Is it anticipated there will be a rollcall vote?

Mr. ROBERT C. BYRD. Oh, yes, there will be rollcall votes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Who yields time?

Mr. HATFIELD. Will the Senator yield for a unanimous-consent request?

Mr. BAYH. I yield.

Mr. ROBERT C. BYRD. Mr. President, may we have order?

The PRESIDING OFFICER. Let us have order in the Senate.

Mr. BAYH. Mr. President, I ask unanimous consent that Mr. Ken Feinberg of Senator KENNEDY's staff be permitted the privilege of the floor during the remainder of this matter?

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. BAYH. I yield to the Senator from Idaho.

Mr. CHURCH. Mr. President, I have read the excellent brief prepared in support of the nomination of Judge Bell. I call the attention of the Senator from Indiana to that portion which deals with intelligence operations, accountability and control, beginning on page 1 and extending through page 2 and parts of page 3. I read from the brief:

> Judge Bell pledges to control intelligence operations under his authority in a manner which would protect the rights of American citizens while, at the same time, being careful to protect the security of the Nation.

Of course, that statement is so general that it needs further amplification.

On page 2, the subject of wiretapping legislation and warrant procedures is discussed. The brief reads:

> Judge Bell said that he believed that electronic surveillance could be conducted under some restraints where you would safeguard the rights of American citizens. As a general opinion, he opposes warrantless wiretapping of American citizens.

Under the criminal law, as I understand it, it is not possible to lawfully wiretap an American citizen without a warrant issued by a court, upon a finding that probable cause exists to believe that a crime has been committed or is about to be committed. In the course of our investigation of the intelligence agencies, we found widespread abuse in the electronic surveillance of young student groups who were not suspected of crime, but who were protesting against the war, which the Constitution entitled them to do. We found months of harassment conducted against Martin Luther King, Jr., not because he was suspected of crime, but for political reasons. We found other minority groups harassed unlawfully, not because crimes were being committed, but because they sought recognition of their rights under the law. All these improper activities were conducted under the guise of national security.

My first question is what the testimony showed with respect to Judge Bell's feeling about establishing a sufficient court test in this broad national security field that would adequately safeguard the liberties of the American people?

Mr. BAYH. First, let me say that I would like to speak from the standpoint of a personal conversation I had with Judge Bell, as well as the matter that is in the record. As the Senator knows, I happen to be one of the Senators who has been chosen to serve on the Select Committee on Intelligence with the distinguished Senator from Hawaii, our chairman. In that capacity, I was called on, as chairman of the Subcommittee on the Rights of Americans to give study to a wiretap bill that was reported out of the Committee on the Judiciary. We worked with the Senator from Massachusetts and several other colleagues and, I think, did a very credible job of strengthening the provisions of that bill. Because of this experience, I was concerned with Judge Bell's background.

His decision in the Brown case caused me concern. As the Senator knows, the law is unclear regarding warrant requirements for electronic surveillance in national security cases. There is the Zweibon rule, which I am more comfortable with, and I think the Senator from Idaho is more comfortable with, and the Brown rule, which Judge Bell wrote. In the conversation I had with him, I expressed concern over his unwillingness in the Brown case to provide the kind of protections that I thought were necessary. He was quick to point out that if he had to write that Brown decision today in light of everything that had happened, he would not provide for broad power to the Government as he did.

As I recall, we had no problem with Judge Bell's attitude as far as domestic cases are concerned. He recognized what the law is there—you need a warrant.

The only issue in question is in the international field, the national security field. The judge said that he would urge the President to work with Congress to provide proper safeguards by law against the kind of abuse that we have seen.

He went further, in response to my questions regarding surreptitious entry, mail opening, and other violations of the right to privacy. He stated that they should all be covered by the same warrant procedures.

Mr. CHURCH. The critical question, as the Senator knows, is not obtaining a warrant, but what standard the court will apply in granting a warrant. If it is simply an affidavit that the case falls within the broad purview of national security, the court's act is then purely ministerial, it means nothing. We must find a suitable standard. I recognize that the Senator from Indiana has been seeking such a standard. In my opinion, he greatly improved the original bill which came out of the Judiciary Committee last year by attempting to define a very narrow class of cases where electronic surveillance might be authorized without need of showing probable cause. I wonder if the Senator will tell me his general impression of Judge Bell's view, with respect to the need to write that kind of narrow standard into the law.

Mr. BAYH. I asked him specifically whether he thought the provisions of the bill to which I alluded, which was a product of the work of our subcommittee, assisted by the Senator from Massachusetts and the Committee on the Judiciary, was the kind of safeguard that he was talking about, and he said "Yes."

Now, generally, as I think the Senator from Idaho knows, I would feel much more comfortable, if we applied a standard of probable cause of crime across the board to electronic surveillance. I have to say, however, that, from a very practical standpoint, there is a narrow area regarding foreign intelligence, where it is difficult to apply that severe a standard. So in that bill, we required the same standard for foreign intelligence gathering as for domestic intelligence gathering, except where it could be proved that a person was an agent, of a foreign power, transmitting information in a clandestine manner to the detriment of this Nation's security. That person would be a spy. When you can prove somebody is a spy, even if he is an American citizen, if you can prove he is on the payroll of another government as part of their intelligence network, transmitting material and operating secretively

then I am prepared to establish a different standard.

The PRESIDING OFFICER. The time of the Senator from Indiana has expired.

Mr. MATHIAS. Do the Senators require more time?

Mr. CHURCH. Just 1 minute, if the Senator will allow me, to conclude this colloquy.

Mr. MATHIAS. I yield that time.

Mr. CHURCH. I take it, from what the Senator has said, that in his judgment Judge Bell, as Attorney General, will cooperate with the committees of the Senate in attempting to work out a standard of the kind the Senator has described, and that he will also work with the new Intelligence Committee for the purpose of writing basic charters which define the jurisdiction of the FBI, the CIA, and the NSA, which will take into consideration the recommendations of the select committee I chaired?

Mr. BAYH. Yes. In fact, I have to say that was one of the first questions I asked about, even before the hearings started.

I was concerned about the Brown decision and our job of drafting legislation.

If I were not convinced in my own mind that Judge Bell would establish that high standard and urge the President to follow his lead, I would not be standing here supporting his nomination.

Mr. CHURCH. I thank the Senator very much for his responses to these questions.

I conclude by saying, Mr. President, that I have reviewed carefully the objections raised by the distinguished Senator from Maryland. I believe that if this nomination were for the Supreme Court of the United States, I would have to cast my vote against it, mainly on the basis of the Bond decision. But since it is for the Office of Attorney General, and since the Attorney General functions at the pleasure of the President and under his general direction, I have concluded that my doubts should be resolved in favor of the President.

On that basis, I will vote for the nomination of Judge Bell.

ADDITIONAL STATEMENTS SUBMITTED ON BELL NOMINATION

Mr. TALMADGE. Mr. President, I received today a letter from Mr. Hal Suit of Atlanta with respect to the nomination of Griffin Bell to be Attorney General of the United States.

Mr. Suit, as he points out in his letter, was a journalist in Atlanta during the difficult years in Georgia and the South in which Judge Bell occupied a role of leadership and moderation. Mr. Suit describes Judge Bell as a "dedicated servant" who had the "moral courage to stand up and be counted among those who sought reasonable, practical and peaceful means of complying with Federal court decisions." Mr. Suit urged Senate approval of Judge Bell as Attorney General. I bring his letter to the attention of the Senate and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JANUARY 19, 1977.

Hon. HERMAN E. TALMADGE,
U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR TALMADGE: It appears from press reports that the Senate Judiciary Committee is going to recommend to the full Senate that Griffin Bell become the Attorney General of the United States. When Griffin Bell's nomination reaches the Senate, would you please enter the following statement on my behalf in the official Senate record:

As the Republican candidate for Governor of Georgia in 1970, I was defeated in the General Election by the man who is now the President of the United States.

While there may still be many areas of political disagreement between myself and President Carter, I do not disagree with his nomination of Judge Griffin Bell to serve as the Attorney General of the United States. Prior to entering the political arena in Georgia in 1970, I worked as a journalist in the state for more than 16 years and became familiar with and I believe knowledgeable about Griffin Bell's honorable service in former Governor Ernest Vandiver's administration and later as a distinguished member of the Court of Appeals.

I sincerely believe Mr. Bell contributed substantially toward helping resolve many of the difficult problems faced by the citizens of Georgia during the initial desegregation of the state's public school system.

During a time when it was politically expedient to keep quiet about one's views regarding the integration of Georgia's schools or to play the role of a segregationist demagogue, Griffin Bell had the moral courage to stand up and be counted among those who sought reasonable, practical, and peaceful means of complying with Federal Court decisions.

It would be dishonest to pretend I agreed with every decision rendered by the Appeals Court during Griffin Bell's service on that judicial body; it would be more than dishonest to pretend that intelligent and sincere men and women do not find themselves in honest disagreement on many controversial matters.

I respectfully urge the members of the United States Senate to unanimously approve Griffin Bell as the Attorney General of the United States because I believe he will conscientiously carry out the duties of that office as a fair, impartial, and dedicated public servant.

Sincerely,

HAL C. SUIT.

Mr. EASTLAND, Mr. President, I would like to say a few words on behalf of Judge Griffin Bell. The Committee on the Judiciary held full and complete hearings on this nomination, and the members interrogated Judge Bell in depth. In addition, the committee heard 37 witnesses both pro and con. We scheduled an extra day of hearings in order to hear some opposition witnesses who had not been scheduled. The committee voted to recommend that Judge Bell be confirmed as Attorney General.

I am not going into any detail on Judge Bell's background, as that is set out in the committee's report. I will say that the nominee served for 14½ years on the U.S. Court of Appeals for the Fifth Circuit.

Several areas were raised by some opposition witnesses which I shall touch on briefly.

First, was Judge Bell's civil rights record, and particularly the area of desegregation of schools. I will point out here that Judge Bell came before the committee with one attribute which no other nominee for this office has had in this area, a public record. Judge Bell's years on the bench have resulted in a full and complete record of opinions on this and other subjects.

Second, the opposition centered on certain opinions of Judge Bell, and witnesses included plaintiffs in some of the school cases. In rebuttal to these witnesses other black leaders testified on behalf of the nominee and recommended him highly. They included participants in the law suits and observers on the scene at the time.

Lonnie King, former president of the Atlanta chapter of the NAACP, contradicted the conclusions of opposition witnesses. A J. Cooper, mayor of Pritchard, Ala., also chairman of the Southern Black Mayors Conference, testified on behalf of Judge Bell. Mayor Cooper had been counsel in several lawsuits, including school cases, before Judge Bell, and described him as fair, willing to listen and change his views when given a solid legal peg on which to proceed. Mayor Cooper testified that Judge Bell was forceful in insisting that defendants comply with the law.

Other opposition centered around Judge Bell's service as a lawyer for Governor Vandiver from 1959 to 1961. Bell was appointed along with other lawyers to advise the Governor on the question of school desegregation. Judge Bell advised the Governor on how to keep the schools open and remain within the law. He was instrumental in establishing the Sibley Commission, led by a distinguished citizen of Atlanta, which met with black and white groups throughout the State and allowed the views of the people to be heard. The schools remained open. Bell testified that he was a moderating influence in this time and that he was proud of his accomplishment. This view was supported by Warren Cochrane, a black leader in Atlanta, who pointed out that Judge Bell had continually met with black groups, the first time such a thing had happened. He felt that Judge Bell, by his actions, furthered the cause of education, helped prevent violence, and began the movement to compliance with the law.

I feel that it is impossible to judge these actions without reference to the political tenor of the times. The testimony was persuasive on that issue. I feel that in a situation of great social tension, Judge Bell was a moderating influence on those who might have violated the law, and that he was attempting to change the prevailing attitude in Georgia because he was committed to the observance of the law.

Questions were raised during the hearing concerning Judge Bell's majority opinion for a three-judge court which upheld the right of the Georgia Legislature to deny Julian Bond his seat in that body. The question in the case was the power of the legislature to pass on the qualifications of its own members. Citing precedents involving the U.S. Senate, the court upheld the legislature.

he makes it, but I cannot go with him on this one.

Mr. BAYH. Mr. President, a moment ago, I just wanted to correct the record.

I am sure the Senator from Maryland would not intentionally misspeak. However, if we look at the Jaworski testimony, we will find, first of all, that Mr. Jaworski was serving as the chairman of the screening committee for the American Bar Association in the fifth circuit. In that capacity, he talked to a number of people in the fifth circuit, one of whom was Mr. Block. Mr. Block had been his immediate predecessor in the same capacity, and it was for that reason that Mr. Jaworski had talked to Mr. Block.

If one examines the hearings, he will find the names of several other individuals who also were consulted by Mr. Jaworski.

Mr. MATHIAS. Mr. President, does the Senator from Indiana wish to go forward with any other speakers? We have had several on this side.

Mr. NELSON addressed the Chair.

Mr. MATHIAS. Mr. President, I yield 10 minutes to the Senator from Wisconsin.

Mr. NELSON. Mr. President, I will cast a negative vote on the confirmation of the nomination of Mr. Bell because of my concern about where he will come down on certain vital decisions that he will have to make as Attorney General.

My reservations about this appointment are prompted by decisions made and positions taken by Mr. Bell in the past on important constitutional questions. Involved were major questions of civil rights, free speech, and rights of privacy. These issues run to the very heart of what this country and its Constitution are all about.

I have no doubts about Mr. Bell's integrity, intelligence, or dedication to public service. My objections are not personal or philosophical. Some of the same issues touching the same constitutional questions that were before Mr. Bell as Federal judge will be before him again in his capacity as Attorney General.

It is my hope that President Carter's judgment will be rewarded and all my doubts happily resolved when Mr. Bell deals with these issues in the future.

I am not unmindful that, particularly in the realm of politics, it is not possible to predict with any certainty from history how an individual in a different era, in different circumstances, with different responsibilities, will in fact perform in the future.

It is probably unnecessary for me to say that if this were a Republican Presidentical appointment I would vote against it as I did on two previous occasions involving two of the same issues at stake as in this appointment. Obviously, I cannot properly defend two standards for Presidential appointments, one for Democrats and another for Republicans. I voted against a Republican nominee for Attorney General because of my reservations about his position on civil rights questions and against a Republican nominee for Secretary of State because of my concern about his lack of understanding of constitutional rights in the area of wiretapping.

In fairness it must be said that in his 14½ years on the bench, Judge Bell wrote many opinions protective of constitutional rights. In many of the cases however, the record and the applicable law was clear. It is the difficult cases presenting novel or unresolved questions of law, which may best convey a sense of Bell's thinking and an indication of outlook he would bring to the Attorney General's office. I find two such difficult cases—Bond against Floyd and Brown against United States—to be particularly troubling.

In *Bond* v. *Floyd*, 251 F. Supp. 333 (1965), Bell wrote the opinion for the majority of the three-judge court, upholding the right of the Georgia House of Representatives to exclude Julian Bond because of his endorsement of a strong statement by SNCC criticising U.S. policy in Vietnam and the American treatment of minorities at home and abroad. The Georgia House excluded Bond on the ground that the principles of the SNCC statement which he endorsed indicated that he could not sincerely take the oath of loyalty to the Constitution which the Georgia House required. Bell recognized that Bond's first amendment rights were involved, but he concluded that the right of the Georgia House to pass on the qualifications of its members overrode Bond's constitutional rights:

We hold that the free speech issues should be resolved in the context of giving effect to the separation of powers principle, and our system of federalism the extent that it permits self-government to the states under the supremacy of the federal Constitution . . . .

Based on the content of the SNCC statement, Judge Bell found the Georgia House had a rational basis for its decision and that was all it needed. He also concluded that a legislator had less right to free speech than a private citizen noting that—

Mr. Bond's right to speak and to dissent as a private citizen is subject to the limitation that he sought to assume membership in the House.

The Supreme Court reversed, 9 to 0, 385 U.S. 116 (1966). The Court pointed out that Bond was willing to take the loyalty oath; that the State admitted that his expression of admiration for those who opposed the war and resisted the draft would not have violated the selective service laws. The Court went on:

The requirement (of an oath) does not authorize the majority of state legislators to test the sincerity with which another duly elected legislator can swear to uphold the Constitution. Such a power could be utilized to restrict the right of legislators to dissent from national or state policy to that of a majority of their colleagues under the guise of judging their loyalty to the Constitution.

The Court flatly rejected the notion that the State could grant its legislators less freedom than other citizens. Those seeking or holding office needed freedom to express themselves about important issues of Government policy; otherwise the representative would be effectively chilled from meeting his responsibilities.

In his apparent desire to uphold the State legislature's action, Bell designed a novel doctrine of first amendment law. No case before Bond, or since, has ever held that the State government can proscribe or limit speech under the justification of separation of powers. The argument is indefensible on its face. The first amendment protects freedom of speech against infringements by the Government. This protection applies as much to the action of the State legislature when it tries to exclude a member as it would when the State legislature passes a law. The first amendment certainly prohibits the legislature from punishing a person from exercising his first amendment rights. In general, regulation touching on first amendment rights must serve a compelling interest and be as carefully drawn as possible so as to leave the breathing room needed for first amendment rights to flourish. Bell certainly knew these general principles of the first amendment, and has written many opinions upholding first amendment rights.

It is hard to avoid concluding that Bell allowed his personal distaste for Bond's opinions to color his judicial judgment. After balancing Bond's first amendment rights against the State legislature's prerogatives, Bell proceeds to write a statement that is nothing short of astonishing:

The SNCC statement is at war with the national policy of this country: To make certain that every citizen stands equal before the law; to make certain that every citizen has a fair chance to benefit in the freedom and opportunities and bounties of this country; to export these same principles of democracy to the balance of the world wherever and whenever possible, even to the extent of lending military assistance where self-determination is denied in order that those denied may choose freedom if they so desire.

But the statement does not stop with this. It is a call to action based on race; a call alien to the concept of the pluralistic society which makes this nation. It aligns the organization with "* * * colored people in such other countries as the Dominican Republic, the Congo, South Africa, Rhodesia * * * It refers to its involvement in the black people's struggle for liberation and self-determination * * *". It states that "Vietnamese are murdered because the United States is pursuing an aggressive policy in violation of international law." It alleges that Negroes, referring to American servicemen, are called on to stifle the liberation of Viet Nam.

We all hope that the Carter years will be a period of domestic tranquillity. However, in assessing the qualifications of the chief law enforcement person in the United States, we must allow for the likelihood of future unrest and pay close attention to the attitudes of that person toward peaceful dissent. We must also recognize that first amendment rights of speech and assembly are implicated in many of the major tasks facing the Attorney General, such as the enactment of legislative controls on the FBI's gathering of domestic intelligence and the recodification of the criminal code. On this score, the Bond opinion is not reassuring.

In *United States* v. *Brown*, 484 F. 2d 418 (5th Cir. 1973), in the course of reviewing a criminal conviction, Judge Bell encountered the claim that the President had "inherent" authority to authorize

warrantless wiretaps against American citizens for foreign intelligence purposes. The fifth circuit had faced the question once before, in the case of *United States* v. *Clay*, 430 F. 2d 165 (5th Cir. 1970), and had withheld the President's right to authorize warrantless surveillance based on his status as Commander in Chief. In the interim, however, the Supreme Court had decided *United States* v. *United States District Court*, the Keith case, 407 U.S. 297 (1972), holding that the President had no inherent power to disregard the fourth amendment and authorize warrantless electronic surveillance in cases involving internal security. Despite the Keith case, Judge Bell upheld the doctrine of "inherent" Presidential power without the slightest consideration of the countervailing fourth amendment rights.

It is extraordinary that Judge Bell could fail completely to consider the analysis of the Supreme Court in Keith. Although the Keith case dealt only with internal security, the Court's balancing of fourth amendment rights against the reasons asserted by the Government for warrantless surveillance was clearly relevant to the issue of foreign intelligence taps.

In Keith the Justice Department advanced three reasons why a warrant should not be required in an intelligence tap: First, the purpose of the surveillance was to gather intelligence, not evidence for prosecution; second, the judicial expertise at evaluating threats to the security of the Nation was inadequate; and third, there was a danger of security leaks if this information had to be disclosed in Court. The Court rejected each of these, singly and collectively, as insufficient to justify overriding the target's fourth amendment rights. In reaching its conclusion, the unanimous Court made a number of statements suggesting that the fourth amendment rights of Americans could not be disregarded simply because the President invoked the justification of "national security:"

> If the legitimate need of Government to safeguard domestic security requires the use of electronic surveillance, the question is whether the needs of citizens for privacy and free expression may not be better protected by requiring a warrant before such surveillance is undertaken. We must also ask whether a warrant requirement would unduly frustrate the efforts of Government to protect itself from acts of subversion and overthrow directed against it.
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> * * * * *
>
> National security cases . . . often reflect a convergence of First and Fourth Amendment values not present in cases of "ordinary" crime. Though the investigative duty of the executive may be stronger in such cases, so also is there greater jtopardy to constitutionally protected speech . . . History documents the tendency of Government—however benevolent its motives—to view with suspicion those who most fervently dispute its policies.
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> * * * * *
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> These Fourth Amendment freedoms cannot properly be guaranteed if domestic security surveillances may be conducted solely within the discretion of the executive branch. The Fourth Amendment does not contemplate the executive officers of Government as neutral and disinterested magistrates. Their duty and responsibility are to enforce the laws, to investigate and to prosecute. But those charged with this investigative and prosecutorial duty should not be the judges of when to utilize constitutionally sensitive means in pursuing their tasks. The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy and protected speech.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NELSON. Mr. President, will the Senator yield 2 or 3 additional minutes?

Mr. MATHIAS. I yield the Senator 3 additional minutes.

The PRESIDING OFFICER. The Senator may proceed.

Mr. NELSON. In sharp contrast to Judge Bell's treatment of the issue, when the Court of Appeals for the District of Columbia faced the question of whether warrantless electronic surveillance in foreign intelligence cases could be squared with the fourth amendment, it carefuly considered the reasoning and effect of Keith and held that a warrant was required for a foreign intelligence tap against an American citizen, at least when there was no collaboration with a foreign power. *Zweibon* v. *Mitchell*, 516 F. 2d 594 (D.C. Cir. 1975).

I recognize that the Supreme Court has not yet ruled on the constitutionality of warrantless foreign intelligence wiretaps against American citizens. If Judge Bell had carefully analyzed the impact of Keith and concluded that foreign intelligence taps were different enough from domestic security taps to justify dispensing with a warrant, the opinion would have had some plausibility—although I would not have agreed. Handled as it was, however, Brown demonstrated a disturbing willingness to accede to the claim of Presidential power without careful analysis.

Judge Bell's statements about the issue of inherent Presidential power at his hearings before the Judiciary Committee were more encouraging. While he refrained from judging whether the constitutional power existed, he expressed support for legislation to establish a warrant procedure for all electronic surveillance in the United States to gather foreign intelligence. He also said that he would counsel President Carter not to assert any claim to inherent Presidential authority.

The PRESIDING OFFICER. The Senator's additional time has expired.

Mr. NELSON. Mr. President, will the Senator yield 2 additional minutes?

Mr. MATHIAS. I yield the Senator 2 additional minutes.

The PRESIDING OFFICER. The Senator is yielded 2 additional minutes, and he may proceed.

Mr. NELSON. Nevertheless, the Brown and Bond cases cannot be overlooked. They did not involve petty, peripheral or minor matters. Mr. Bell did not address these issues in some casual, informal environment. These cases were tried in formal judicial proceedings with arguments made and briefs filed. These decisions represented a carefully considered judgment of the merits. Fundamental first principles were at stake. Of all the rights shielded by the Constitution none are at parity with the rights of privacy under the fourth amendment or the right of free speech.

The question, in my mind, still remains—How, in the future, will Mr. Bell construe and interpret these constitutional rights when the occasion arises? Though I am encouraged by Mr. Bell's testimony before the Judiciary Committee, my reservations impel me to vote in the negative.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MATHIAS. Mr. President, I yield 10 minutes to the distinguished Senator from New Mexico (Mr. SCHMITT).

Mr. SCHMITT. Mr. President, I came to this Chamber this morning undecided as to the question of the nomination of Griffin Bell to be Attorney General. I have been listening to the arguments for and against with considerable interest, I think with the net result that I have been educated greatly by the distinguished Senators on both sides of the aisle and both sides of the issue.

I find, however, that the arguments for the nomination of Mr. Bell have, in my judgment, come out circuitous and seem to be an attempt to rationalize in not very convincing ways certain problems in the record that Mr. Bell has presented to us.

On the other hand, the arguments against the nomination, as much as I hate to be against things—I would much rather be positive in my actions as a Senator—nevertheless, the arguments against the nomination seem to be based solidly in fact, and seem to create a fairly consistent pattern of activity by Mr. Bell that mitigates against his future performance as Attorney General.

I emphasize that they seem to represent a pattern rather than isolated instances or isolated problems which can be rationalized away.

So, Mr. President, reluctantly I will not vote to confirm Mr. Griffin Bell as Attorney General, not because I do not want the President of the United States to have Cabinet members in whom he has complete personal confidence, but because I believe Mr. Bell's record does not demonstrate the required impartiality and adherence to ethical standards. I hope that we will all consider his record with the same nonpartisan wisdom that eventually came to bear on events surrounding the Watergate affair.

I am particularly concerned by first, his failure to disqualify himself as a judge in the school desegration case of Calhoun against Latimer in which he had originally been "of counsel" to the Governor of Georgia; second, his failure to disqualify himself as a judge in a test case involving the exclusion of certain ethnic groups from a private club while at the same time being a member of such clubs; third, his admitted error in judgment in the case of seating Julian Bond in the Georgia State Legislature; fourth his failure to report certain gifts as required by the Judicial Conference of the United States; and fifth, his general attitude toward ethical conduct, as reported in the record of the Senate Judiciary Committee, is not the attitude this