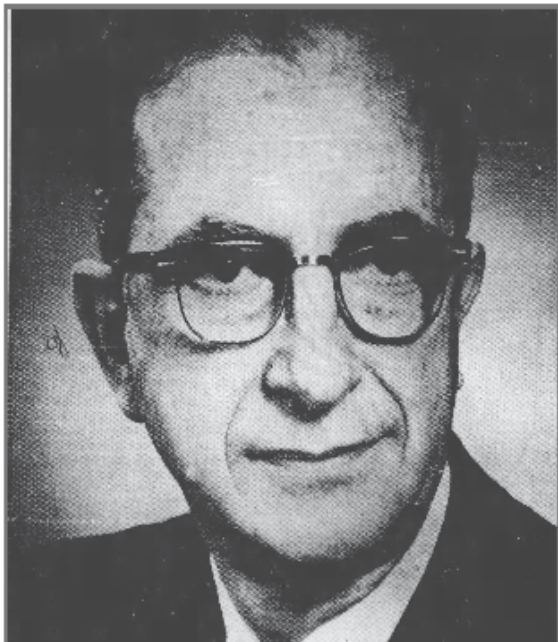


The appointment of U.S. District Court judge for the Eastern District of North Carolina in 1959

Introduction and summary

To be appointed as the E.D.N.C. District Court Judge in 1959, Algernon Butler had to navigate intraparty jockeying among rival contenders, risks that a Democrat might be nominated in part because of the weakness of the North Carolina Republican Party at the time and opposition from a critic regarding the race issue.

This paper curates and provides some commentary and context on documents contained in the Algernon Butler archives at Wilson Library in Chapel Hill, the Simeon DeLapp archives at Duke University, the President Eisenhower Library as well as newspaper accounts of events.



Algernon Lee Butler



Judge Donnell Gilliam. E.D.N.C. judge from 1945-1959



Charles R. Jonas. The sole Republican congressman from North Carolina in 1959. He was married to Butler's cousin. Jonas supported the Butler nomination throughout.



Asa Spaulding of Durham. President of N.C. Mutual Life Insurance Company which was the largest black owned insurance company in the world. He was also an important figure in the civil rights movement. Spaulding and Butler did not know each other prior to 1959. He was asked to support the Butler nomination after racial based grievances were brought by Alexander Barnes. Spaulding passed along favorable third party reports to the Justice Department followed by unfavorable third party reports which he later disassociated himself from.



Senator Samuel Ervin (D-NC). He would have preferred a Democrat be appointed but ultimately did not oppose the Butler appointment or seek to delay having the position filled until after the 1960 general election.



Alexander Barnes. A Republican who was a critic of Butler and the nomination based on the race issue. It seems likely he was recruited by Wade Marr. Barnes did not have much evidence and lacked support from others.



William Cobb. Republican State Executive Chairman. He called a meeting in Durham in February 1959 to determine who the state party organization would recommend to the Eisenhower Administration but was in Africa during the meeting. He changed the process to solicitation of support in writing rather than in person voting and communicated the outcome to the Eisenhower Administration.



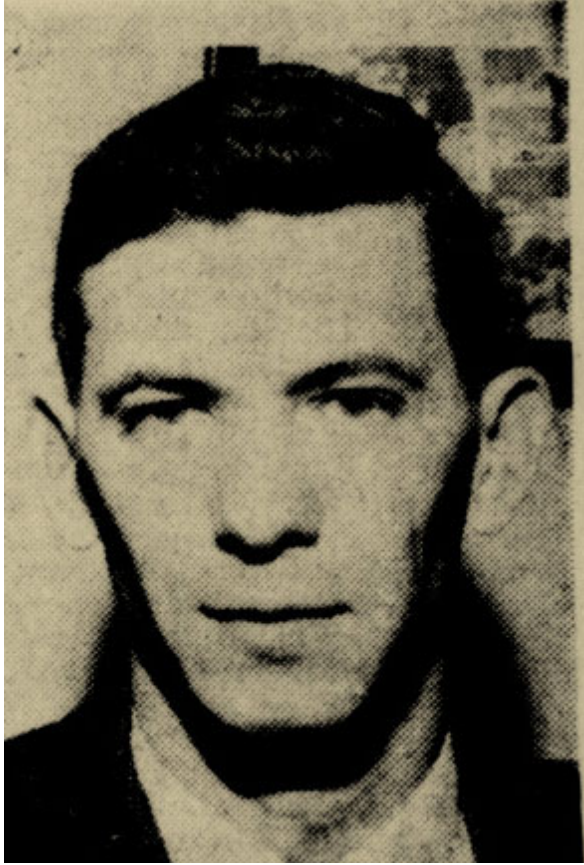
Sim DeLapp. A long-time person of influence in North Carolina Republican politics and supporter of Butler.



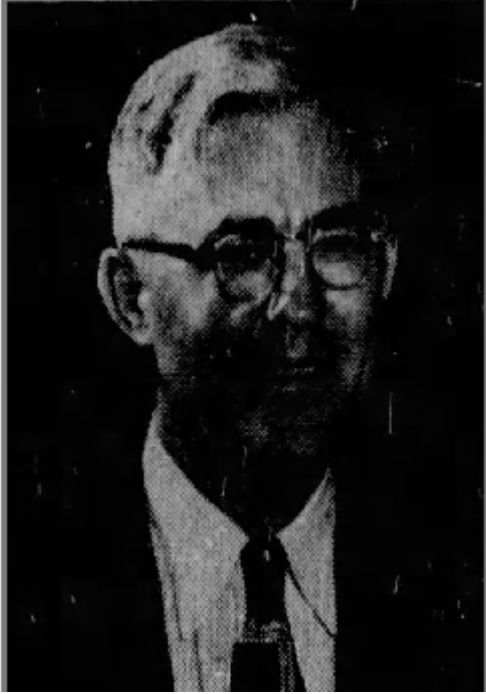
Dr. Helen G. Edmonds. A black female Republican professor of history who had seconded Eisenhower's nomination in 1956. She was asked to support Butler after the Barnes allegations surfaced and did so with vigor.



W.T. Outland, Thomas J. Moore and Eisenhower at the Republican National Convention in 1952. (Outland supported Eisenhower for the nomination as did DeLapp, Jonas and Butler whereas Gaskill and Wilkinson supported Senator Robert Taft). The five members of the Second Congressional District Republican Party Executive Council initially supported Moore's thirty-year-old son but then moved their support to Butler at a critical juncture.



Thomas M. "Mickie" Moore. Moore was a thirty-year-old attorney seeking the appointment. Although not successful, he was named bankruptcy referee in 1960 by Butler and served as bankruptcy referee and judge until his death in 1991.



Julian Gaskill. Gaskill was U.S. Attorney for the E.D.N.C. and Butler's chief rival for the appointment.



Wade Marr. A Raleigh attorney and Gaskill supporter. He wanted to be named Clerk of Court for the E.D.N.C. if Gaskill was appointed. It was suspected and alleged that Marr is who solicited Alexander Barnes to criticize Butler.



Joel Johnson. He supported Butler and gathered information and worked behind the scenes in support of the nomination. Johnson was the Republican candidate for the U.S. Senate in 1956 and was defeated by Sam Ervin.



John Wilkinson. An attorney and supporter of Gaskill but was not anti-Butler.



Kenneth C. Royall. A former secretary of war from eastern North Carolina. He had been fired for failing to desegregate the Army. He was a Democrat and wanted a Democrat appointed. He supported Butler with a letter to the U.S. Senate once the nomination occurred.



Attorney General William Rogers. The Department of Justice was in charge of the nomination for the Eisenhower administration. Within the Department of Justice, Deputy Attorney Generals Clive Palmer and Lawrence Walsh were in charge of this appointment.



Lawrence E. Walsh. Walsh was the Deputy Attorney General who helped get Butler confirmed by the U.S. Senate.

On January 22, 1959, the sole U.S. District Court judge for the Eastern District of North Carolina announced he would be retiring shortly. Judge Donnell Gilliam had been appointed by President Truman in 1945. He was sixty-nine years old and in failing health. On April 9, 1958, he had collapsed in the courtroom.¹ Gilliam officially retired on March 16, 1959 and died on March 6, 1960 just short of his 71st birthday.

In 1959, Republican Dwight Eisenhower was in the White House and responsible for appointing federal judges subject to U.S. Senate confirmation. The U.S. Senate was composed of 50 Democrats and 45 Republicans at the time. Within the executive branch, the appointment was handled by the Justice Department. The U.S. Attorney was William Rogers. Deputy Attorneys General Lawrence E. Walsh² and Clive Palmer worked on this nomination. The two U.S. Senators from North Carolina, Sam Ervin and Everette Jordan were Democrats. Ervin hoped that President Eisenhower would consider appointing a Democrat to the position.³ Ervin cited to the example of the Republican President Taft appointing a Democrat to the same position in 1909⁴. The notion that Eisenhower would appoint a Democrat was met with vigorous opposition amongst Republicans.⁵ Republicans frequently mentioned the President Taft 1909 example in a negative manner. There was also discussion about seeking to delay an appointment until after the November 1960 general election on the theory that a Democratic might occupy the White House and make the appointment.⁶

Because the U.S. Senators were Democrats, the North Carolina Republican party played an important role in relation to the appointment. In 1959, the North Carolina Republican Party was weak and had been for most of the 20th century. Its candidates rarely won office and as such it was considered a dead-end street for aspiring politicians. This seems to have heightened the attention and excitement given to this rare opportunity to place one of their own into a position of power.

Almost immediately upon Gilliam's announcement, a frenzy of activity was initiated for the \$22,500.00⁷ a year position. Along with the position itself, the judge had the ability to appoint a \$10,000.00⁸ per year clerk of court position and the position of federal probation officers.⁹ Federal District Court judges also appointed U.S. Commissioners. Some of the intensity of the appointment process came from supporters hoping for the secondary appointments. Although not mentioned in news reports, the position of bankruptcy referee was

¹ The News & Observer, March 7, 1960 (page 1).

² Walsh had previously served as a U.S. District Court judge in the S.D.N.Y. and would later serve as President of the American Bar Association and serve as the independent counsel in charge of the Iran-Contra investigation.

³ The News & Observer, January 29, 1959 (page 2).

⁴ Judge Henry Groves Connor served from 1909-1924.

⁵ The News & Observer, February 1, 1959 (page 14)-"One veteran Republican politician said if President Eisenhower named a Democrat to the post he would kill his party from Raleigh to the coast".

⁶ The News & Observer, January 30, 1959 (page 3).

⁷ Inflation adjusted this would be \$205,000 in 2022.

⁸ Inflation adjusted this would be \$91,000 in 2022.

⁹ The News & Observer, January 24, 1959 (page 16).

also an upcoming appointment in 1959.¹⁰ The bankruptcy referee position was a part-time position and paid \$5,000.00¹¹ per year. Algernon Butler was considered a leading candidate to replace Gilliam.¹² Butler was educated at Duke and at the University of North Carolina. He was a fifty-three year old lawyer from Clinton, North Carolina. He was active in the community, a churchman (Episcopal), in the bar and in politics. He served in the North Carolina General Assembly in 1931. His uncle¹³ was a U.S. Senator from North Carolina from 1895-1901. His father had been a contender for the same judgeship during the Coolidge administration in 1925 when Isaac Meekins was appointed instead. His family had been Republican leaders in Sampson County for many years.¹⁴ He was “close friends”¹⁵ with sitting Republican House of Representative member Charles R. Jonas. Jonas was the only Republican member of Congress in North Carolina. The two had both graduated from UNC law school in 1928. Jonas’ wife and Butler were first cousins.¹⁶ Jonas had supported Eisenhower for the Republican nomination in 1952.¹⁷ In late January 1959, Jonas ruled himself out for the position since he believed the position should be filled by a resident of the Eastern District and because the Eisenhower administration had a policy to not name any sitting Republican congressman to appointive office for fear the vacant position might be filled with a Democrat.¹⁸ He described Butler as an “outstanding prospect” for the post.¹⁹ On February 5, 1959, Jonas explained “I’m sorry I ever got involved. I’ve got enough other problems without getting mixed up in a patronage squabble over an Eastern District judgeship. He is a top-grade lawyer, a close friend, and would have no difficulty in qualifying for the post.”²⁰ The News & Observer reported that Jonas stoutly maintained that he is not a ‘patronage czar’ and has been embarrassed by all the interest in what he will or will not do with respect to the judgeship. “And I am sick of being hounded by newsmen...I’ve got too much other work to do.” Despite this protestation, Jonas continued to be active in the effort to have Butler nominated.

Another prominent Republican option was E.D.N.C. U.S. Attorney Julian Gaskill. Gaskill was supported by Attorneys John Wilkinson and Wade Marr. Gaskill and Wilkinson had supported Robert Taft for the 1952 Republican presidential nomination.²¹ Marr hoped to become the E.D.N.C. Clerk of Court if Gaskill was appointed.²² Marr was said to go “half wild over the matter”.²³ On the hope that a Gaskill appointment would create a vacancy of U.S. Attorney,

¹⁰ Joseph Cheshire IV was due for re-appointment in 1959 after having been re-appointed for a six year term in 1953.

¹¹ Inflation adjusted this would be \$45,000 in 2022.

¹² The News & Observer, January 28, 1959 (page 1).

¹³ Marion Butler

¹⁴ The News & Observer, August 9, 1959 (page 6).

¹⁵ The News & Observer, January 24, 1959 (page 16).

¹⁶ The News & Observer, March 7, 1959 (page 3).

¹⁷ The Durham Herald-Sun, July 12, 1952 (page 3).

¹⁸ The Charlotte Observer, January 28, 1959 (page 3).

¹⁹ The Charlotte Observer, January 28, 1959 (page 3).

²⁰ The News & Observer, February 6, 1959 (page 5).

²¹ The Durham Herald-Sun, July 12, 1952 (page 3).

²² The News & Observer, January 28, 1959 (page 20).

²³ See letter from Sim DeLapp to Al Butler dated April 29, 1959. Duke Archives.

jockeying commenced for that position as well.²⁴ Other possibilities for the District Judge appointment were Claude R. Wheatley²⁵, Thomas M. Moore, M.B. Prescott and Paul West.

Butler collected endorsements from as many judges, lawyers, bar organizations and other individuals as possible. The endorsements were addressed to either Jonas or Attorney General Rogers or North Carolina Republican Executive Committee Chairman William E. Cobb or Representative Alton Lennon or President Eisenhower or Senator Ervin. Copies of the various endorsements and support were sent to Butler. Butler was very proactive and involved in the nomination process.

Butler's attempts to be nominated were assisted by Sim DeLapp of Lexington, North Carolina. DeLapp was a lawyer and former chairman of the North Carolina Republican Party from 1942-1950. In 1959 he held the position of Legal Counsel to the North Carolina Republican Executive Committee. DeLapp was reported to be an old friend of former New York Gov. Thomas E. Dewey dating back to the early days of Dewey's Presidential campaign in 1948.²⁶ DeLapp was an early supporter of Eisenhower for the Republican nomination in 1952 (his North Carolina campaign manager until the Convention) and was claimed by one newspaper piece to exercise more power in determining how the patronage plums fall from Washington than any other man or combination of men.²⁷ Another newspaper account described him as "probably a key man" in relation to patronage appointments in the Eisenhower administration.²⁸ On January 23, 1959, DeLapp wrote Attorney General Rogers a private letter where he handicapped the potential candidates and extolled the virtues of Butler and said of Gaskill "...has never been regarded by his friends or his enemies as a man of any unusual ability." Throughout the process, DeLapp worked on Butler's behalf. He did not shy away from negativity regarding Butler's opponents and was insistent that the appointment should go to a Republican.

On January 26, 1959, North Carolina Republican Executive Chairman Cobb issued the following memo:

Dear Executive Committee Member:

As you probably know, the Eastern Federal Judgeship will soon be open. It is appropriate that we make a recommendation for this vacancy in conjunction with the State Executive Committee meeting beginning at 10:00 A.M. at the Washington-Duke Hotel in Durham, North Carolina, on February 14, 1959.

The method for selection has been established by a earlier meeting of the Executive Committee: the Secretary is to call a meeting of all the lawyers who are also members of the State Executive Committee. These men will serve as a nominating committee and consider candidates strictly on qualifications. That is, they will nominate several people in order of preference, the number one man being that which they consider best qualified

²⁴ See letter from Attorney Ottis James Reynolds to P.B. Lockerman dated January 31, 1959.

²⁵ The News & Observer, January 24, 1959 (page 16).

²⁶ The Charlotte News, January 30, 1953 (page 1).

²⁷ The News & Observer, February 28, 1954 (page 12).

²⁸ The Charlotte News, January 30, 1953 (page 1).

to meet the requirements of a Federal Judge. The number two man will be the second best qualified, etc. It is urged that Congressman Jonas be consulted by this committee.

The final step is to present these nominations to the members (laymen and lawyers) of the Executive Committee living in the area covered by the Eastern District, which is roughly Wake County East. This group will then select one of the nominations from a political preference point of view, keeping in mind that the further down the list of nominations that they go the less likely will be the acceptability of the candidate. It is urged that this selection be made by secret ballot. The order of events follow:

10:00 A.M. General Executive Committee Meeting

Immediately following—Lawyers nominating meeting conducted by the Secretary—Mr. Kenneth Thomas.

Immediately following—Meeting of the Eastern District Members of the State Executive Committee conducted by the National Committeeman, Mr. Ed Broyhill, or in his absence, State Legal Counsel, Mr. Sim A. DeLapp

In the absence of the State Chairman, the National Committeeman or the National Committeewoman²⁹, should recommend to the Justice Department the name selected by the above procedure.

On January 29, 1959, Jonas wrote to Butler:

I understand no official word has been received by the Department of Justice concerning the contemplated retirement of Judge Gilliam. I previously recommended you for a special appointment and will of course recommend you strongly for the permanent judgeship.

I think you are following the proper course and believe it will pay dividends in the end. Justice does not like to see a scramble for these judicial positions. A lot of attention will be given any recommendation that might be obtained from the American Bar Committee that operates in North Carolina. I recommend you find out who is on that committee and see how they feel about you. I am sorry I cannot inform you of the committee members but I think Ed Cannon could give you that information. My recollection is that Frank Winslow of Rocky Mount is on it but I am not sure who the other members are.

With all good wishes to you and the family

On January 30, 1959, The News & Observer, ran a story about the appointment entitled “Hodges Favors Maneuver To Get Democratic Judge”.³⁰

²⁹ The National Committeewoman was Mrs. Louise Rogers.

³⁰ The News & Observer, January 30, 1959 (page 1).

If North Carolina's two U.S. Senators make an effort to block confirmation of a Republican appointee to the Eastern District Federal Judgeship, they'll have the support of Governor Hodges.

In fact, he may have urged the senators to make such a maneuver, the Governor indicated yesterday.

Two or three people in Eastern North Carolina had called him, Hodges said, asking that he contact Senators Sam Ervin and Everett Jordan about getting 'a good Democrat' appointed to succeed Judge Don Gilliam.

"I have already written a letter saying I hope we could get a Democrat, and that if we couldn't get it now, maybe later." Hodges said.

"It would seem to be a logical thing that either party would play, were it in power."

President Eisenhower will appoint the successor to long ailing Judge Gilliam whose retirement becomes effective on March 12.

Governor Hodges wasn't sure whether he had written both Tar Heel senators about the vacant judgeship. "I think I did, though it may have been just to Senator Jordan..." he said.

Senator Ervin said Wednesday he was trying to ascertain whether President Eisenhower would consider appointing a Democrat to Judge Gilliam's post.

Should the Tar Heel senators succeed in blocking Senate confirmation of a Republican, President Eisenhower's choice for the judgeship would be serving on an interim basis until 1960 when the Democrats hope to recapture the White House. A Democratic president undoubtedly would name a Democrat to the \$22,500 a year judgeship.

Ervin and Jordan have a precedent, set by Republicans, if they choose to fight confirmation of a GOP judge.

When President Truman, in 1948, chose Wilson Warlick of Newton for the Western District Judgeship, the Republican 80th Congress held up the appointment. Warlick wasn't confirmed by the Senate until 1949. By then the Democrats had regained control of the Senate in the November election of 1948.

Any attempt by the Tar Heel senators to block the Republicans choice for the Eastern District judgeship may be averted by political horse trading some observers believe.

Legislation, now pending in Congress, to create a roving federal judgeship for North Carolina might offer grounds for a settlement. There is speculation that Ervin and Jordan might not object to the appointment of a Republican if they had some assurance that the roving judgeship would be created, and that a Democrat would get either that job or the Eastern District post.

Algernon Butler, a Clinton lawyer and former State legislator, is considered the leading GOP candidate to replace Gilliam. Butler's friendship with Rep. Charlie Jonas, the State's lone Republican congressman, is to his advantage. Jonas has said the appointment should go to a resident of the Eastern District.

On February 3, 1959, Butler wrote to Jonas:

I appreciate your letter of January 29th and all of your efforts in my behalf. I am gratified at the endorsements which I am receiving throughout the State. I enclose photostatic copies of two fine endorsements from Superior Court Judges. I have received numerous endorsements from lawyers as well as several bar associations.

A great majority of Republican leaders in North Carolina have tendered me their support, including Sim DeLapp, Frank Patton, A.L. Ferree, Hobert Morton and Mrs. W.P. Few. Sim DeLapp informs me that Mr. Broyhill and Mrs. Louis G. Rogers will also endorse me.

I hope that the meeting of the Executive Committee in Durham on February 14th can be held on a high and dignified plane. It would be most unfortunate if anything should occur that might offer fuel to the Democratic contention that the Republican party cannot offer fit and competent men for this position. I note a news dispatch from Don Oberdorfer in the Charlotte Observer on January 31st quoting Senator Ervin to the effect that "he would refuse to block the appointment of a qualified Republican to a North Carolina Federal Judgeship."

With respect to the Standing Committee on Federal Judiciary of the American Bar Association, I wrote Francis E. Winslow of Rocky Mount, who is the North Carolina member of that committee, in behalf of Ed Stanley³¹. In his reply he explained the function of his committee as follows: "I must tell you, however, that the function of our Committee is strictly limited. Only in the last few years has the American Bar Association been consulted at all in the matter of judicial appointments. The practice has now become fixed that no nomination is sent to the Senate without clearance from the Bar Association through this committee. However, we would be overstepping the bounds and probably jeopardize the gains which have been made, if we made any effort whatever to initiate a campaign for any prospective candidate. The Administration and the Senators still play their historic roles, and Mr. Stanley's friends, at this stage, should direct their efforts toward Washington rather than the Bar Association. Our role is strictly a screening process."

Welch Jordan of Greensboro is doing all he can in my behalf, and I am sure he will write to Mr. Winslow. Welch has also discussed my qualifications with Kenneth B. Thomas of Hickory who is Chairman of the Judicial Committee of the Republican State Executive Committee. Bill Cobb has written the committee members advising that all of the lawyers who are members of the state committee will serve as a "nominating committee and

³¹ Ed Stanley was a Republican who was appointed as M.D.N.C. District judge in 1957.

consider candidates strictly on qualifications. That is, they will nominate several people in order of preference, the number one man being that which they consider best qualified to meet the requirements of a Federal Judge. The number two man will be the second best qualified, etc. It is urged that Congressman Jonas be consulted by this committee”.

I am amazed that the Department of Justice has received no official word concerning Judge Gilliam's retirement. Everyone has assumed that he notified the department simultaneously with his announcement to the press. In any event, his retirement is accepted as a fact and apparently our executive committee will make a definite endorsement on February 14th unless the matter is settled prior to that time.

Please give our love to each member of the family.

On February 4, 1959, DeLapp wrote to Republican National Committeewoman Mrs. Louise G. Rogers and copied Jonas, Butler and Broyhill:

You will recall that in my telephone conversation with you we both agreed that a meeting of the kind called in Durham can have no possible good effect on the Republican Party of North Carolina. I did not know at the time that I talked to you that Judge Gilliam had not actually sent in his resignation and that he announced that he would do so sometime in March. To me that makes it seem completely foolhardy to allow this meeting to take place. As of now there is actually no vacancy. If anything would antagonize me if the situation were reversed, it would be to see a bunch of candidates in the Democratic Party aspiring for a judicial position before one of our Judges had resigned. The matter of confirmation is a very important one, and we certainly must not do anything which would cause Senator Ervin or Senator Jordan to be more anxious to hold up any confirmation. Frankly, I think it would just look bad for us to meet and vote on a Judicial appointment under any circumstances and particularly under these circumstances. I am sure that the Department of Justice would rebel at the thought, and I think you and Mr. Broyhill should take the bull by the horns and announce that since there is yet no vacancy and since a Judicial appointment is not one to be voted upon by party leaders, that the meeting is called off. You can word the statement more carefully, but it should by all means be done.

I am delighted to see Congressman Jonas come out so strongly for Mr. Butler. With you and Mr. Broyhill both for him, that ought to settle the matter completely.

On February 5, 1959, Butler wrote to DeLapp:

I deeply appreciate all your efforts in my behalf. Since our last telephone conversation I have talked with Ed Broyhill and Mrs. Rogers. Mrs. Rogers is hopeful that Bill Cobb can be contacted and arrangements made to prevent the possibility of an unseemly contest before the executive committee.

I was pleased to see in the Greensboro Daily News of February 3rd an announcement by Charlie Jonas that he will support me. I believe that the announcement will have the effect of increasing and consolidating my support. However, the announcement has not

appeared in any of our eastern papers and I am afraid it is not known by the members of the executive committee in the eastern district. Some of my friends here feel that a copy of the clipping should go to them. For your information I enclose photostatic copies of endorsements from two Superior Court Judges, and also a letter from Frank Patton to Jonas. A.I. Ferree, Hobert Morton, Mrs. W.P. Few and many other Republican leaders have tendered me their support. I shall appreciate your advice with respect to what information should go to Kenneth Thomas' committee and the manner of getting it to them.

In our recent telephone conversation you asked if I had gotten a copy of two letters written by you. I have only received a copy of your letter to Mrs. Rogers. I shall be happy to have a copy of the other letter to which you referred for my file. Please advise me from time to time what should be done in my behalf. I have a number of Democratic and Republican friends who stand ready to do whatsoever they can.

On February 6, 1959, the Executive Committee from the First Congressional District met and voted 8-0 to support Julian Gaskill.

On February 6, 1959, Thomas M. Moore of Wilson was submitted to the Republican Executive Committee by member W.T. Outland.³² Outland was an acquaintance/friend of Moore's father Thomas J. Moore. Thomas M. Moore was thirty years old at the time. Moore and his father began practicing law together in October 1954 after two years of service in the JAG Corp. Moore graduated 10th in a class of 80 at UNC in 1952 and was a member of the law review. Moore's resume at the time befitted his six years of experience as a lawyer. Attached to Moore's resume were a letter of recommendation from a Professor dated 1952 and letter from his commanding officer in the Procurement Law Division from 1953. Thomas J. Moore had been active in Republican politics for thirty years and ran for a seat in the U.S. Congress in 1944. Thomas J. Moore had been ousted as Wilson County Republican Chairman in 1954 in an intraparty dispute about a postmaster patronage issues.³³ Thomas J. Moore was a member of the Republican Executive Committee that would make the recommendation to the Eisenhower administration. It seems likely that Moore controlled or had a strong influence over the votes on the Executive Committee that came from the Second Congressional District.

On February 9, 1959, Jonas wrote to Butler:

I do not know how to advise you about going to Durham. My own view is that Bill Cobb made a mistake in calling for a meeting. He is in Africa and I am trying to reach him to advise him to call the meeting off.

There is no vacancy yet. No papers have come from the Judge to Justice and I understand now that he has only announced he is planning to retire in March.

³² The Wilson Daily Times, February 9, 1959 (page 1). Also, see letter from Outland to Kenneth Thomas dated February 6, 1959.

³³ The Wilson Daily News, May 22, 1954 (page 1).

To have an Executive Committee meeting to recommend an appointment of this kind, when there is not even a vacancy, seems foolish and ridiculous to me. It can have no effect except to give the Democrats ammunition to shoot at us. Moreover, it is contrary to Administration policy to base judicial appointments on recommendations of political committees.

If Cobb fails to call off the meeting, I hope the members who assemble will be willing to defer any action at least until there is an actual vacancy. I would also like to see the Republicans adopt some other procedure, with respect to judicial appointments at least. Times have changed and a party endorsement might even have some adverse effect. The Attorney General does not object to receiving endorsements from Republicans but he does object to being put in the position of recommending a judicial appointment on the basis of action by a political organization. We might as well accept this as Administration policy and act accordingly.

On February 9, 1959, Joel A. Johnson³⁴ wrote to Butler:

I am not trying to be too conspicuous in my efforts. I think I can aid your cause more by trying to maintain friendly relations with the others.

On February 10, 1959, DeLapp wrote to Outland:

I have received your letter with reference to the experience of Thomas M. Moore and his desire to be United States District Judge for the Eastern District of North Carolina.

You know me well enough to know that I try to be honest and straightforward about all these things. I do not think that any attorney who has less than an A rating in Martindale has any chance to be appointed a United States District Judge. It has always been my understanding that an A rating is absolutely essential. I notice that Mr. Morris³⁵ has a B rating. While this is no reflection on his ability because there are many lawyers rated b in Martindale who are excellent attorneys, it seems to me that it does eliminate him.

As you probably have already surmised, I have endorsed Al Butler for the position. Al is an outstanding lawyer and has always been a credit to the party and as you know has been with me on many occasions.

I hope under these circumstances that you will feel the obligation of supporting Al as I have.

On February 11, 1959, DeLapp wrote to Butler:

³⁴ Joel Johnson was from Johnston County, North Carolina and was the Republican Candidate for U.S. Senate in 1956 when he lost to Senator Ervin. Johnson publicly supported Butler. Johnson also had connections with Gaskill supports and members of the black community. He would at times pass along information to Butler during this process. Johnson was an Eisenhower supporter in 1952 and was at fellow Eisenhower supporter Thomas Dewey's side when Dewey put Taft supporter Senator Everett Dirksen "in place" after Dirksen "spouted off" according to a draft letter Johnson wrote to Dewey on July 26, 1959.

³⁵ Typographical error in original—should say "Moore"

I hope that the letter which Congressman Jonas has written to Mrs. Rogers, a copy of which I have just received, will have the effect of postponing the meeting at Durham. As soon as you learn whether or not it has been postponed, I would suggest that you get in touch with either me or with Hiram Ward, my partner, because Ward and Gene Snyder are both attorneys and are on the Executive Committee of this county and should be present if the meeting is actually held. There is always the danger that the various members will feel that they have other things to do and will fail to attend the meeting. We do not want this to happen in our county. I am quite sure that the only thing that will make them come to Durham will be your interest. So if it is postponed, let us know so that it will not be necessary for them to be there. As I see it now, the only problem you have is securing Bar Association endorsements. The Democrats in the east are probably withholding these in order to force the appointment of a Democrat. Here is where Mrs. Rogers and Bill Cobb and Mr. Broyhill and Colonel Jonas and even I can be of some value to you. Please know that I am always available and that I do everything I can whether you ask me or not.

On February 13, 1959, Butler resigned from the Republican State Executive Committee for the Third Congressional District since he would be considered by the committee for the appointment.

On February 14, 1959 the North Carolina Republican Executive Committee met at the Washington-Duke Inn in Durham. Executive Director William Cobb was not able to attend because he was in Africa on business at the time. Kenneth Thomas (Jonas' campaign manager) presided over the secret meeting and clashed with Gaskill supporter John Wilkinson.³⁶ At the meeting the Gaskill forces seemed to have the upper hand but in the end the showdown between Gaskill and Butler was postponed since there was no "official" vacancy. Thomas seems to have been doing the bidding of Jonas and DeLapp.³⁷ A resolution was unanimously passed requesting the North Carolina Republican chairman call a meeting of members of the executive committee residing in the Eastern Federal District for a consideration if and when a vacancy occurred. Both Butler and Gaskill were at the hotel but neither attended the meeting. The News & Observer reported that Jonas and Butler got on an elevator together.

On February 18, 1959, Jonas wrote Mossette L. Butler (Al Butler's brother):

It was a grand surprise to see all of the Butlers in Durham. I am sorry our paths do not cross more frequently and that our children actually do not know each other. We all should try to remedy this situation before it is too late.

I have repeatedly stated that, irrespective of Al's superior qualifications for the judgeship, he deserves it because of the mistreatment accorded Major Butler many years ago. I shall certainly do everything I can to bring about his appointment.

³⁶ The News & Observer, February 15, 1959 (page 2).

³⁷ See letter from Welch Jordan to Butler dated April 21, 1959: "I got the impression that Ken had supported you and had helped head off a floor fight at the last meeting of your political compatriots."

With best regards to you and all the family

On February 18, 1959, Gaskill supporter John A. Wilkinson sent the following memorandum to all members of the North Carolina Republican Executive Committee:

A copy of this letter is being sent to most members of the Executive Committee in the Eastern Judgeship Area. I have had a chance to talk to very few of you since the Executive Committee meeting in Durham Saturday morning, and I know there is bound to be some confusion about what went on during the meeting, before it and after it; therefore I write this letter.

First, a little about background. While in Durham I heard from a few sources some criticism of the method of recommending Judicial appointments. The statement was even made to me by someone that is supposed to be extremely well informed that that it would be better if there were no system of recommendations. I suspect that all of you heard something like that said. Of course, this system was set up not in the belief that it could eliminate rivalry or contest, but that it would direct such rivalry into an organized channel. It was set up on account of past unfortunate experience here and in other states and was not lightly adopted. It is appropriate to observe that some of those persons who are now seeking to abolish it were the very same ones who were so enthused in its behalf before they found out that they could not control it. It is said that selection for Judicial office ought to be outside politics. That is silly! While it is true that this Administration has not paid much attention to the wishes of the Republican Party in many of its appointments, still it has not hesitated to make purely political appointments for the Judiciary. Unfortunately, we have to go no further than the appointment of Earl Warren who heads the Judicial system of the United States.

We have a system set up by the Plan of Organization and those who are now seeking to bypass it were the very first to try to use it up to the hilt. (All of you know who tried to contact you first and what was said to you).

Everyone who was present Saturday heard the point made that no vacancy existed. I never got an opportunity to speak on this question, being muzzled by the motion for adjournment. I later learned that this tactic originated completely outside the Committee. It has no sense in it. Of course, the State Chairman, Bill Cobb, was well aware that the vacancy had not as yet occurred. This system was designed to take care of the necessities of this particular situation because it is extremely important that a Judge be named as quickly as possible and I am certain the Justice Department would want to fill the vacancy the next day after Gilliam's retirement became official, if that were possible. The interpretation that no action can be taken until the incumbent has formally stepped down makes no sense if it is to be strictly construed on all occasions. Obviously some latitude should be left for the discretion of the Party Organization. The use of this "gimmick" was simply an attempt to prevent the procedure outlined in the Plan of Organization from ever being used in the matter of the Federal Judgeship in Eastern Carolina. The point made by Ray Jennings that the appointment of the lawyers Committee was in violation of

the Plan of Organization was also completely without merit, as was pointed out to me by Mrs. Margaret Vogt. The Plan of Organization gives the power of appointing committee to the State Chairman and the Directors of the various Congressional Districts. The Lawyers Committee had been set up under such power.

However, when I went out with Jennings I was confronted with a very ticklish situation. Number One: I did not know for certain that I could force the Committee to reconvene because I knew that even some of those friendly to my position were confused. Second, I saw that the important thing was to make certain that no recommendation went from the Republican Party in North Carolina without prior action by our Eastern Executive Committee. That was, and is, the all-important point. I was anxious to convene the Lawyer's Committee originally only because under Cobb's letter and in the absence of other authority it was the only way we could get the matter acted upon by our Eastern Committee. I knew that if the Executive Committee was permitted to adjourn without a meeting of the Eastern Committee being provided for then it would never be called, but that the appointment would be made without any attention being paid to the Plan of Organization and some excuses would be made along the lines that there was no authority to convene the Eastern Committee and that it was not practical to call a meeting of the whole Executive Committee to obtain such authority. Therefore, I was willing to agree with Jennings that action go over until Gilliam's actual retirement (though I hated to do that) and I was willing that the Lawyer's Committee's action be dispensed with because I did not consider it necessary for our purposes and, as a matter of fact, even potentially dangerous, (though it was certainly legal-not void as Jennings claimed). I was willing to make this concession to get a unanimous action of the Executive Committee directing the meeting of our Committee and directing further that subsequent action be in accord with the Plan of Organization. This act constituted a victory for everything that I had been fighting for.

How is it said that this whole Committee will only have one vote, that Broyhill will have one, and that Mrs. Rogers will have one. This is nonsense. The Plan of Organization discloses no such set up. The Committee is the controlling body. The Officials of the State Organization may meet with it and may even undertake to influence its action, but they are not independent of it and its action is officially binding on them.

Of course, the Eisenhower Administration doesn't have to go by the recommendation of the North Carolina Organization. That would be so even if every Republican in North Carolina agreed on what ought to be done. But the North Carolina Republican Organization is bound by it, at least until the Plan of Organization is changed. And if the Eisenhower Administration is to pay no attention to the recommendation of the party in a matter as important as this, then I for one want the world to know it.

No attacks have been made by me on other candidates. I shall make none. However, all of you know the reverse is not true, but that Gaskill has been attacked on every conceivable ground by those backing other candidates. It is said he favors Democrats over Republicans. To anyone who knows Julian Gaskill and how he has fought the battles

of the Republican Party in Wayne County for thirty years, this is so silly as to not be worth a reply. But if any of you don't know that, then let me assure you that I know as much about Gaskill as any of his critics and probably more about what has been going on in his office. You can be sure of this, if there were any truth in those statements, I would not be supporting him. As a matter of fact, a number of the Democratic lawyers have been complaining about him because they say he has been showing too much deference to Republicans. A more serious attack is made upon him on the grounds of a lack of legal ability and standing. This is based chiefly upon the fact that he is rated a "B" in the Martindale-Hubbell legal listings. It is said that the Department of Justice will not appoint to the Federal Judgeship any person who is not listed as an "A".

I have checked on this rumor and I am happy to tell you that it is pure baloney. In the first place, no lawyer from a large city is rated at all. Less than half of the legal profession is in an area where ratings are possible, but in small cities and towns where the rating system is used only about twenty per cent of the practicing attorneys are as high as a "B". Who is Martindale-Hubbell? It is a private organization that sells its legal catalogue to lawyers for a profit. It is designed not to be an absolute rating of ability, which is obviously impossible to obtain, but only to serve as a rough guide for lawyers in sending business that is referred by them to lawyers in another state or another section about whom they know nothing. The suggestions that the Justice Department would give such an organization the right of veto over its appointments is ridiculous. I was prepared, should this matter have come before the Lawyers Committee, to explode this whole Martindale-Hubbell rating and I will be so prepared when our Eastern Committee is called into session.

However, in regard to Julian Gaskill's competency and standing as a lawyer, let me call a few facts to your attention. He does not live in a Republican County, but, on the contrary, he went to a County where there was not a single Republican lawyer. He went there as an active Republican—as active as it is possible to be. And in the fact of that he built up a good practice. His income was well into five figures at the time he was appointed United States Attorney and the acceptance of his position constituted at the time a financial sacrifice for him. Let me also remind you that the very first action by anybody in connection with this Judgeship was unanimous endorsement of the Wayne County Bar for him. This Bar is one of the largest and most able in Eastern North Carolina and it is composed exclusively of Democrats. Nobody knows his ability as well as his brother attorneys. They did not hesitate to out themselves solidly on record. I make this further prediction: That at the time of our meeting he will have more endorsements for this position from attorneys in Eastern North Carolina and from Bar Associations than all the rest of those who have been mentioned for this position put together. This could not be done by anybody for anyone if that person were not known to be worthy of the appointment.

Finally, it is urged that he could not be confirmed. I do not know whether any Republican can be confirmed or not, though I believe that they can, but I will say this, on the basis of my personal knowledge and acquaintance with and friendship with the Democratic

leadership, I believe we will have an easier time getting him confirmed than any other possible appointee, with perhaps the exception of Paul West who is also well liked by Democratic lawmakers and who is old enough so that the Democrats would like to see him in on the theory that he would be less likely to be there for an extended period.

The tactics used in this whole matter have struck a new low. I do not blame any of the candidates themselves. I certainly would not do that without having some direct proof and I have none. Therefore, I give them the benefit of every doubt. But a group of the so-called "leadership" seems determined to force through the choice of their candidate at all costs. Some of this same crowd are never interested in doing anything for the Republican Party outside their own immediate area. As a matter of fact, some of them say so when asked for assistance, but apparently they have no compunction about reaching down here and trying to tell us who ought to get our appointment and who is qualified and who is not. I have told them, and none of them have been able to answer me back, that I am more qualified on that point than anybody living west of Raleigh.

I don't know about the rest of you, but I do not intend to be run over in this matter. I trust you have courage enough to stick with me.

There are three likely explanations for the delay in the vote:

1. Gaskill had the most votes and the pro-Butler forces at the head of the North Carolina Republican Party sought to subvert the pre-established procedure and/or to buy time for additional persuading and maneuvering.
2. The North Carolina Republican Party leaders realized that that the established process was unsavory or appeared unseemly and wanted to act in a more discreet manor.
3. The North Carolina Republican Party leaders believed it was inappropriate and/or unseemly to make a recommendation to the Eisenhower administration prior to Judge Gilliam's official retirement.

Regardless of which explanation is correct, the meeting and inaction in Durham seems to have left a bad taste in the mouth of Gaskill supporters.

On March 6, 1959, Johnson wrote to Butler:

Took a trip up through west Tuesday. Saw several of the "boys". Had a long, pleasant chat with Sim. We discussed every angle of the situation and he made me feel assured you dont³⁸ have much to worry about.

Have tried to reason with Wade Marr, but without any success. Don't think his "blabbering" will amount to anything.

³⁸ Lack of punctuation in original

Don't know of anything else I can do at this time. If there is anything you know of let me know, and I will be glad to. Was by your office but nothing special to discuss, so, will see you later.

On March 7, 1959, the News & Observer reported that Gaskill supporters at the Raleigh Federal Building³⁹ were discussing how Congressman Jonas' wife and Butler were first cousins.⁴⁰ The paper claimed that Butler's supporters claimed this connection has little bearing and that the relationship between Butler and Jonas at the University of North Carolina was more relevant.

On March 10, 1959, Butler wrote to Thomas:

I enclose photostatic copies of several endorsements from Superior Court Judges and others. I have received many voluntary endorsements from Democratic and Republican lawyers throughout the State. I can send you copies of all of these if you desire.

I do not know what the future procedure will be. I hope we can avoid any unseemly wrangles within our party.

If there is any information you desire of me in connection with the work of your committee, I shall be glad to supply it.

On March 13, 1959, Butler wrote to Jonas:

I enclose photostatic copies of a few additional endorsements for your information. I have many other endorsements from Democratic and Republican lawyers throughout the State, and I can send you copies of all of these if you desire.

You will recall that Judge Gilliam attained his seventieth birthday on March 12. I note in today's Charlotte Observer a statement by Judge Gilliam that he will mail a notification of his retirement to the Justice Department on March 13th or 14th.

I understand that Bill Cobb has returned to the State, but I have had no communication from him and I do not know what the future procedure will be. If there is to be another meeting of the members of the Executive Committee from the Eastern District, I think I shall have fairly strong support. It appears that there are thirty-five members of the Executive Committee from the forty-four counties constituting the Eastern District. I have written endorsements from fifteen. The remaining twenty seem to be divided as follows: M.B. Prescott, one vote; Paul West, four votes; Thomas M. Moore, five votes from the Second Congressional District (I am reasonably certain that the five votes will come to me on the second ballot, if any), and the remaining ten members are for Julian Gaskill or are noncommittal.

³⁹ This is now known as the Century Station Post Office and Courthouse and is where the U.S. Bankruptcy Court for the E.D.N.C. is headquartered.

⁴⁰ The News & Observer, March 7, 1959 (page 3).

I have been advised by certain Democratic lawyers, who have spent some time in Raleigh during the current session of the General Assembly, that there is some speculation that Kenneth Royall could have this appointment if he wants it. It is pointed out that the Attorney General is a former member of Kenneth's law firm and that Kenneth and Mrs. Royall are close personal friends of the President and Mrs. Eisenhower. Of course it is inconceivable that any Democrat would receive the appointment, unless it should appear that there is no Republican in the State competent and suitable for the position. In 1909 when President Taft appointed a Democrat as United States District Judge for the Eastern District, our party in this section of the State was practically destroyed. We have not recovered from that blow in fifty years. A repetition would finish us off.

Speculation in Raleigh has also produced the name of Charles H. Young, an Attorney of Raleigh, North Carolina, who is reputed to have been a roommate of Vice-President Nixon at Duke University⁴¹. I do not know Mr. Young nor do I know his politics. I simply mentioned these matters so that you may know some of the rumors in North Carolina.

On March 13, 1959, Butler wrote to Mrs. Louise G. Rogers, Broyhill and Cobb:

I enclose photostatic copies of several endorsements from Superior Court judges and others. I have received many endorsements from Democratic and Republican lawyers throughout the State. I shall be glad to send you copies of all of these if you desire.

On March 13, 1959, Butler wrote DeLapp:

I enclose copy of letter to Charlie Jonas which is self explanatory. Please keep the letter to Jonas confidential.

I shall appreciate you letting me know whether or not Bill Cobb intends to call another meeting of the Executive Meeting, or if the matter will be handled in some other manner. After reading the enclosed letter, I will appreciate any suggestions you have to offer as to my procedure. I have sent photostatic copies of certain representative endorsements to Ed Broyhill, Bill Cobb, Kenneth Thomas and Mrs. Rogers.

On March 16, 1959, Gilliam made his retirement official.⁴²

On March 18, 1959, DeLapp wrote Attorney General Rogers:

Several weeks ago I wrote you endorsing Mr. A.L. Butler as Judge of the United States District Court for the Eastern District of North Carolina to succeed Judge Gilliam who has publicly announced his intention to retire following March 12th.

Fortunately, there seems to be no difference of opinion between the National Committeeman and me. Mr. Broyhill told me over telephone that he was for Mr. Butler

⁴¹ Nixon was at Duke Law School from 1934-1937 and was elected president of the Duke Bar Association and finished third in his class.

⁴² The News & Observer, March 18, 1959 (page 20).

and so was National Committeewoman Mrs. Louis Rogers of Charlotte. I also have a letter from Congressman Jonas saying he is for Mr. Butler. I do not know anything about the position of the State Chairman, but I doubt very much if he would take an opposite position from Congressman Jonas.

The reason I write this letter is that there has been right much rumor going around lately that the President might appoint a prominent Democrat from Eastern North Carolina. Approximately fifty years ago President Taft did just that and overlooked one or two excellent Republican lawyers who would have made at least as good a Judge as the Democrat he appointed. This destroyed our party organization in that part of the state or at least crippled it so that it has never forgotten the act of President Taft. It was the one thing which helped us to secure delegates for President Eisenhower in 1952 when Senator Taft had control over the State and most of the state officials in the Republican Party. It would be a devastating thing for this to be done again. It would simply say that the Republican Party in North Carolina does not have suitable material with which to fill a Judgeship in the Eastern portion of the state. This is very untrue because A.L. Butler is one of the two or three ablest lawyers in Eastern North Carolina regardless of party. He stands out so far ahead of everybody else in being considered as the only logical choice that there is very little opposition except from partisan Democrats and from a very few discredited elements in the Republican Party. In my opinion Mr. Butler would make one of the ablest judges that President Eisenhower could appoint or has appointed during this administration. I doubt if he has appointed to the United States District Court an abler man than Al Butler.

I am simply writing this to beg that since our party has gotten together so far as its leadership is concerned on one Republican, that we do not make the mistake of slapping the party in its face.

On March 18, 1959, DeLapp wrote to Tom Stephens at the White House:

I am enclosing a blind copy of a letter I have written to the Attorney General of the United States with reference to the appointment of a Judge in the Eastern District of North Carolina. The reason I am writing this is that the story is going around that President Eisenhower may appoint Kenneth Royall who now practices in New York and Washington and who was formerly a lawyer in Goldsboro, North Carolina. Mr. Royall is a former partner of Bill Rogers. He is a man of some age⁴³ and is a Democrat. As I set out in my letter to the Attorney General, President Taft appointed a Democrat during his term and if President Eisenhower would do this again it would hurt us so bad in this state that we could not recover from it for many, many years to come.

I shall not bother you about this any more. You were so kind to me in the fight we had over Judge Stanley, who is now one of our best judges, that I am persuaded not to ask too many additional favors of you. But I do hope that everything will be done that can

⁴³ Royall was born July 24, 1894 and was 64 years old when the letter was written.

possibly be done that can prevent such a thing as this happening, and especially in view of the fact that Mr. Butler is one of the ablest lawyers in North Carolina.

Sometime when you get a chance let me know what is going on up there and what are the prospects and what is the best line up for 1960.

On April 2, 1959, Cobb announced that voting would be by mail as opposed to in person. He also announced that the votes would not be made public and that he may not act according to the outcome of the voting.⁴⁴ He also pointed out that the National Committeeman, National Committeewoman and Congressman Jonas were not obligated to be bound by the Republican State Plan of Organization. In Cobb's letter he asked for a 1st and 2nd choice and warned against "steam-roller" tactics but did not refer to any particular group. Cobb noted in the letter that the Justice Department preferred quiet recommendations for Federal judgeship candidates rather than open political pressure.

On April 2, 1959, Second District Executive Committee member Margaret R. Vogt endorsed Butler.⁴⁵

On April 4, 1959, Second District Executive Committee member Thurston B. Lowe endorsed Butler.⁴⁶

On April 4, 1959, Butler wrote to DeLapp and copied Jonas:

I received a copy of Bill Cobb's letter of March 30, 1959, addressed to the members of the Executive Committee from the Eastern District, requesting letters of endorsement for the judgeship. I telephoned Bill's secretary and corrected several errors in the list to whom

the letter was mailed. I informed her that Steve Wilkins of Rose Hill had been replaced by N.C. Rice of Arapohoe, and I had been replaced by C.C. Tart, Sr., of Clinton; that J.E. Spence of Siler City was not in the Eastern District and therefore ineligible; that the following members from the 7th District should be added to the list: R.E. Lewis, L.C. Babson, Mrs. Warren H. Coolidge who succeeds Mrs. John Penjenick, George H. Cannon, Curtis Guy, Wade H. Kinlaw and Wayne E. Bailey. Bill's secretary advised me that she would make these corrections and mail letters to those who had been overlooked.

For your information there are apparently thirty-five (35) members of the Executive Committee from the Eastern District. I am informed that Paul West of Raleigh, who received endorsements for the judgeship, has remained on the Committee, but has disqualified himself from the voting. If this is so, there will only be 34 eligible voters.

⁴⁴ The News & Observer, April 3, 1959 (page 38).

⁴⁵ See letter from Vogt to Cobb dated April 2, 1959.

⁴⁶ See letter from Lowe to Cobb dated April 4, 1959.

I have in my files copies of endorsements addressed to Bill Cobb from the following members of the Eastern District:

1st District: L.V. Gaskill

2nd District: J.E. Cannon; Thurston B. Lowe

3rd District: E.L. Peterson; N.C. Rice; Mrs. Garvin Hardison; C.C. Tart, Sr.; P.B. Lockerman; Joe A. Dunn.

4th District: Joel A. Johnson; J. Bradley McLamb.

7th District: R.E. Lewis; L.C. Babson; Mrs. Warren H. Coolidge; Curtis Guy; Wade H. Kinlaw

I also have copy of letter of endorsement from George H. Cannon of the 7th District, addressed to Mrs. Rogers. In addition to the seventeen endorsements now on hand, I am informed by what I consider a reliable source that the remaining members from the Second District (Thomas J. Moore, W.T. Outland and Margaret R. Vogt) will give me their unanimous support. I will get a second choice endorsement from A.L. Wilson of Newport, a supporter of Claude Wheatly.

Bill Cobb's letter requests a current letter of endorsement "even though you may have previously written to me." It is possible that some committee members who have written Bill may not trouble themselves to write again. I would not want to lose any of the seventeen endorsements I now have simply because of failure to write a second letter. Some of them may think that one letter should suffice. Therefore, I hope you will consult with Bill to the end of that if second letters are not received by the time he leaves for Washington, that he will recognize the endorsements on hand as sufficient indicated of the writer's choice.

I shall always be grateful to you for all that you are doing in my behalf.

On April 4, 1959, Second District Executive Committee member W.T. Outland endorsed Butler. The endorsement letter is dated March 4, 1959 but it seems likely this is a mistake as occasionally occurs when months and years change over. There is no way to reconcile a March 4, 1959 endorsement date with the Butler letter of March 13, 1959 to Jonas. Or the letter sent by Butler to DeLapp on April 4, 1959 where he omits any reference to Outland's endorsement. Also, Outland's letter makes the second choice of Thomas M. Moore. There was no request for second choices until Cobb's announcement on April 2, 1959. Also, the form of the letter does not track the form endorsements that were remitted in the early part of the process. However, a March 4, 1959 endorsement date cannot be completely ruled out.

On April 5, 1959, the News & Observer ran a story entitled "Veto Plans Irk East GOP".⁴⁷ The story indicated that some Gaskill supporters claim their man was "getting a raw deal" and "The West is writing off the East". The Gaskill supporters claimed that the Republican Executive

⁴⁷ The News & Observer, April 5, 1959 (page 24).

Committee sidestepped a vote in Durham after learning that Gaskill apparently had a majority of the ballots in his hip pocket. The speculation was that Cobb's announcement was the same as a death notice for Gaskill's chances.

On April 6, 1959, Butler wrote Jonas:

I am in the midst of a trial in the Superior Court and this is a hurried note to keep you advised of developments. You received a copy of Bill Cobb's letter of March 30th, and I enclose copy of a letter to Sim DeLapp with respect to the endorsements I have received to date from members of the Executive Committee from the Eastern District. Since writing the enclosed letter to Sim, I have received an endorsement from Mrs. Margaret R. Vogt of the Second District bringing the total of my endorsements to 18 out of 34.

I am deeply grateful for all of your efforts in my behalf. I shall be interested in a report of your conference with the Attorney General. I am tremendously proud of my friendship with you throughout the years and my relationship to Annie Elliot. The more the press refers to those matters the prouder I shall become.

With love to all the family

On April 6, 1959, Thomas J. Moore (father of Thomas M. Moore) wrote the following letter to Cobb:

This is to advise you that, as a member of the North Carolina Republican Executive Committee from the Second Congressional District, I do hereby endorse Mr. A.L. Butler of Clinton, North Carolina, for the position of Judge of United States Federal District Court for the Eastern District of North Carolina.

Mr. Butler is an extremely capable practicing attorney, and I feel that his professional qualifications for the position are superior to those of all other interested parties. The background and experience which Mr. Butler has with respect to matters of administration, personnel and organization would further qualify him for the position. In addition, Mr. Butler's party loyalty is unquestionable, and his endeavors on behalf of the Republican Party are well known through the State of North Carolina

For the reasons set out above, and with priority being placed on the first of such reasons, I have concluded that Mr. A.L. Butler's appointment to said position would be to the best interests of the citizens of North Carolina, to the legal profession, and to the Republican Party.

It is not certain that the endorsement of Moore and the other members of the Second Congressional District had a correlation to the appointment of Moore's son Thomas M. Moore by Butler to be the bankruptcy referee of the Eastern District in October 1960. But it seems likely. The endorsements of Vogt, Lowe, Outland and Moore in quick succession gave Butler a majority. Certainly political party patronage and/or loyalty was the expectation and custom. In February 1960, Butler appointed his distant cousin and life-long Republican Samuel A. Howard

to be E.D.N.C. Clerk of Court.⁴⁸ On August 15, 1961, Butler appointed Republican C. Wallace Jackson to replace a Democrat as United States Commissioner.⁴⁹ In August 1961, Nancy H. Coolidge, a Republican Executive Committee member from the 7th Congressional District who endorsed Butler⁵⁰, was appointed Deputy Clerk.⁵¹ After Butler secured the appointment in the fall of 1959, he drafted the following letters:

To Thomas M. Moore (the son and future bankruptcy referee):

I want you to know how much I appreciate all that you and have done lately on my nomination as United States District Judge. I shall always be grateful to you and your splendid father for your friendship to me.

It is good to know that I have the confidence and respect of friends like yourself and I hope we shall see much of each other in the years to come.

With assurance of my appreciation and kind personal regards.

To Thomas J. Moore (the father and member of the NC Republican Executive Committee):

I am deeply grateful for the fine letter you wrote Bill Cobb recommending my appointment as United States District Judge and I appreciate your expressions of confidence in my qualifications for this high office.

I want you and Mickie to know that

I know that that I owe much of my support in the Second Congressional District to you and Mickie (Thomas M. Moore) and I appreciate all that you have done on my behalf. I shall want to confer with you at the proper time. I look forward to the opportunity to see both of you in the near future.

The letter to Thomas J. Moore is different than the multitude of other thank you letters Butler sent out. Thomas M. Moore had served as a bankruptcy trustee for a case in 1957 but it is unclear if he had additional experience in bankruptcy cases. Here are some reasons that suggest Moore's appointment was a deal made between Thomas J. Moore and Algernon Butler.

1. It was customary deal-making and intuitively makes sense.
2. The appointment occurred relatively soon into Butler's tenure on the bench.
3. The draft letter along with crossed out sections to Thomas J. Moore are consistent with the theory.
4. The unanimity and timing of the Second Congressional District Republican Executive Committee members coalescing behind Butler.

⁴⁸ The News & Observer, March 1, 1960 (page 18).

⁴⁹ The News & Observer, August 15, 1961 (page 3).

⁵⁰ See letter from Coolidge to Cobb dated February 25, 1959.

⁵¹ The Durham Herald-Sun, August 30, 1961 (page 17).

5. Butler had specific advanced knowledge of the coming endorsements as evidenced by the March 13 letter and April 4 letter.

April 8, 1959, former White House special counsel from 1953-1955 and Deputy White House Chief of Staff Appointments Secretary from 1955-1957 Bernard M. Shanley⁵² endorsed Butler⁵³. Although Shanley did not know Butler, Butler's cousin Wiley Butler was Shanley's friend and long-time client. The Shanley endorsement was sent to Rogers and copied to David Kendall who worked at the White House. Kendall responded:

Dear Bern:

I don't know how much good our endorsements do with Justice, but at least anything which you want is a pleasure here and I mean this sincerely, as you know.

To answer your real question: Mr. Butler's qualifications are receiving every consideration.

The tone of this letter provides an indication of the preeminent role the Justice Department had in the process.

On April 11, 1959, Cobb passed along the recommendation of Butler to the Department of Justice while in Washington D.C. for other business.⁵⁴ Cobb claimed to the press that Jonas was not consulted before the recommendation was made. Although the recommendation was supposedly confidential, sources confirmed it was Butler.

April 1959. Letter from Cobb to Butler:

Have just written John Wilkinson saying that the only chance we have of getting you confirmed is to show unity in your support. The opposition just needs one excuse to kill you in the Senate.

Suggest you make every effort to quell any dissatisfied aspirants.

Most everybody is pleased with your selection.

On April 13, 1959, a newspaper piece was published where the process by which Butler was recommended was questioned.⁵⁵ Butler was quoted as saying he "was very grateful for the support I have received from the executive committee and Mr. Cobb who have recommended me". Gaskill said he had no comment and added it is a sensitive proposition. Gaskill supporter Wade Marr was quoted as saying that "The way the Butler recommendation was worked would call attention to Republicans in other parts of the State that use almost all party resources for the election and privilege of one man is an inept way for a minority party to grow responsibly in contributing to the State's progress."

⁵² Lou Gehrig's roommate, baseball teammate and fraternity brother at Fordham.

⁵³ Eisenhower Presidential Library archives.

⁵⁴ The News & Observer, April 11, 1959 (page 1).

⁵⁵ The News & Observer, April 13, 1959 (page 1).

On April 20, 1959, Cobb called Butler to let him know that Alexander Barnes, a Durham newspaper editor, and Negro Republican leader was opposing his nomination. Here are some of the notes Butler took about that conversation starting with the reasons why Barnes was opposing the nomination.

1. *That Butler refused to accept the Negro in the policy making of the Republican Party.*
2. *It is alleged Butler wrote the constitution of a "White Citizens Council".*
3. *That Butler's indifference to Negro issues had cost the Republicans politically in Sampson County.*
4. *That the Negro Bar Association is believed to be definitely against the appointment of Butler and will fight his appointment to the finish.*

[Only letter of protest to my appointment received by Justice Dept. in Washington is from one Rivera in Durham. Who is Rivera?⁵⁶

[Alexander Barnes has announced that he will fight my confirmation because I was connected with the Patriots, Inc. of North Carolina and that I am anti-Negro!

A suggestion that was followed was to solicit letters of support from black supporters of Butler. In quick succession, the letters were obtained and sent.⁵⁷

On April 22, 1959. Butler files contain these notes:

Alexander Barnes had a personal conference with Dr. W.E. Merritt on Wednesday, April 22, 1959, stated his reasons for objecting to the appointment of Algernon L. Butler as U.S. District Judge as follows:

1. *That Butler refused to accept the Negro in the policy making of the Republican Party.*
2. *It is alleged that Butler wrote the constitution of the "White Citizens Council"*
3. *That Mr. Cobb, Republican State Chairman, is said to have received a letter from a responsible Republican leader in the state who charged that due to Butler's indifference the Negro vote in Sampson County has been lost.*
4. *That the Negro Bar Association is believed to be definitely against the appointment of Butler and will fight his appointment to the finish.*

Dr. W.E. Merritt advises:

That Alex Rivera who resides on Fayetteville Street, Durham, NC is a writer and contributes to the "Pittsburgh Courier", the 2nd or 3rd largest Negro newspaper in U.S.

Rivera is a friend of Nixon having accompanied him to Ghana

⁵⁶ Alex M. Rivera Jr. of Durham was a journalist and photographer of some significance.

⁵⁷ See endorsement letter from Attorney Mitchel Gadsden to AG Rogers dated April 22, 1959; letter from O.A. Dupree to AG Rogers dated April 22, 1959; letter from Dr. R.H. Lewis to AG Rogers dated April 22, 1959; letter from Dr. William Merritt to AG Rogers dated April 22, 1959; Letter from Asa Spaulding to AG Rogers dated April 28, 1959 blind copied to Dr. J.M. Hubbard; Letter from Dr. Helen Edmonds to AG Rogers dated April 29, 1959; Letter from J.W. Seabrook President Emeritus of Fayetteville State College to AG Rogers dated April 27, 1959.

Alexander Barnes also resides on Fayetteville Street, Durham and is connected with the "Carolinian" a Negro newspaper published in Raleigh. The editor is Jervay⁵⁸—no comment on the Judgeship has yet appeared in the Carolinian.

Let Clinton group contact Mr. Spaulding, Pres of the Negro Insurance Company.

Also, the Negro woman from Durham that seconded the nomination of Eisenhower in Chicago Dr. Helen Edmunds.

.....

Talked to Edward L. Cannon

He contacted Eugene A. Soloman, a Negro atty of Raleigh

He advises there is a N.C. Negro Bar Association—President—Mayor S. High, Greensboro (formerly of Wake Co) & Secretary Floyd McKessick⁵⁹, Durham—Both are light skinned—Educated—Intelligent Negros.

Herman Taylor, member of Taylor & Mitchell, attys, Raleigh, may have organized the group. They are interested in getting negros into law schools and other racial projects.

Alexander Barnes is a rabble rouser. He is public relations man for African M.E. Zion Church—helps collect funds to pay expenses for legal defenses. He collected funds in the negro boys busing case. Seawell⁶⁰ made speech in Charlotte about x-mas time, stating money had been collected but families of children never got any.

Jervay (Editor Carolinian)-first met Barnes in Wilmington, N.C.

On April 23, 1959, Butler wrote to Jonas:

On Tuesday, April 21st, I was informed by telephone that Alexander Barnes, a Negro who resides in Durham and has some connection with The Carolinian, a Negro newspaper published in Raleigh is violently opposed to my appointment and confirmation for the reason that I am supposed to have been in some way connected with Patriots of North Carolina, Inc., a Pro-Segregation Corporation of Greensboro. Barnes now states that I am reputed to have written the Constitution of the White Citizens Council, which I understand is an Anti-Negro Organization of Mississippi or some other State in the deep South.

Barnes is a Republican and has attended our State Convention for the last ten or twelve years. I first knew him about twelve years ago when he was presumably trying to organize Republican Negros in various counties. He worked for a while in Sampson County and made his reports to me. Our dealings were always pleasant and he has no personal reasons to oppose me. Barnes has sense enough to know that there is no truth in

⁵⁸ Thomas Clarence Jervay

⁵⁹ Correct spelling is Floyd McKissick. A Durham lawyer with a significant role in the civil rights movement. In 1959 he was seeking to integrate the Durham City Schools.

⁶⁰ Malcolm Seawell was the North Carolina Attorney General. He was a Democrat.

any of these rumors, and I am forced to think that there is some ulterior motive in his opposition or that he is being encouraged by some unknown source.

I enclose copies of endorsements from five of the leading Negro citizens of Sampson County, some of whom have been active in the NAACP and the Sampson County Civic League, a similar type organization. These men are working on Barnes and may be able to hold him in line. I do not believe he has yet filed a protest with the Department of Justice, but I wanted you to know of this development in the event any inquiries are made of you.

I shall appreciate your informing me of any developments that may have occurred in Washington.

On April 23, 1959, Butler wrote Cobb:

I enclose photostatic copy of clipping from the News & Observer of April 13, 1959, quoting Wade Marr on the subject of my recommendation for appointment as U.S. District Judge. I also enclose copies of endorsements from five leading Negro citizens of Sampson County. I will keep you informed of all developments in connection with the Barnes matter.

I appreciate all that you are doing.

On April 25, 1959, DeLapp sent the following letter to Herbert Brownell who was the U.S. Attorney General from 1953-1957 and was a lawyer with a large firm in New York when the letter was written:

I just learned in a long distance call from Congressman Jonas that the Department of Justice is seriously considering the appointment of an Eastern Democrat for United States Judge of the Eastern District of North Carolina.

While I am trying to stay as far as possible out of the intensity of politics I cannot resist writing this letter to request your help on this threatening situation. Approximately fifty years ago President William Howard Taft did that same thing and almost completely destroyed our party in the East for the past fifty years. To me it is completely unthinkable that the Attorney General would ever do this. May I give you as briefly as possible the reasons why it should never be done?

- 1. The Republicans are all united on one man, A.L. Butler of Clinton. All responsible party leaders are definitely for him.*
- 2. A.L. Butler is probably as scholarly a lawyer, as fine a character, as has been mentioned for any judicial appointment during the whole administration of President Eisenhower. He is tops in every way, culture, character and particularly ability and judicial temperament. Many Democrats regard him as the best lawyer in Eastern North Carolina. I talked to one able Democratic lawyer yesterday who said that in his opinion he was the outstanding lawyer in the East, regardless of party.*

3. *The appointment of a Democrat would humiliate our party for years to come. We would never overcome it. The hope of getting bright young men into it would be faded completely.*
4. *The appointment of a Democrat would so humiliate Congressman Jonas that he would definitely retire, in my opinion. If he didn't retire, it would certainly cause his defeat, because the attitude of the average Republican would be we have stuck to our party here in North Carolina for years and it has now insulted us by the appointment of a Democrat.*
5. *This appointment if it really should mature, would utterly destroy the political influence of every leader, big or small, who fought for the nomination of President Eisenhower. Any attempt ever again to try to help out in the nomination of the best man for President by any of these leaders would be completely futile.*

If there has been a man in the Republican Party who has stuck to Governor Dewey, Herbert Brownell and President Eisenhower and who has helped me on every occasion it has been Al Butler. As I recall he was for Dewey in 1940 in 1944 and 1948 and for Eisenhower in 1952. He was a delegate during some of these conventions.

The demand of the Democratic leaders in Eastern North Carolina for the appointment of a Democratic Judge is based on the matter of patronage and on influence. It cannot be because of any incompetence on the part of Butler, because I repeat that I doubt if you or the present Attorney General ever named a more scholarly and able attorney to any judicial position. He has the mental capacity and the character and the brain to be a Supreme Court Justice.

The appointment of a Democratic Judge would mean that all financial contributions from our state would dry up, or virtually all of them, and that the leaders would be so resentful that the matter of cooperation with the National Party would be virtually at an end. We North Carolinians are strong in our allegiance to our party. For us to think that our own party would turn down the ablest lawyer in the state, and a Republican, and appoint someone outside our own party could never be understood by the greatest or the least Republican in North Carolina. Two slaps in the face in a fifty year period would be more than we could stand.

I hope that you can talk to the Attorney General somehow and convince him of the wisdom of not doing this terrible thing.

I certainly hope that your life is happy, that your family is well and that you are making at least a million dollars a year in your law practice.

April 26, 1959. Notes from call between Butler and Jonas.

He asked if I had any trouble with any Negro groups.

I told him "no" then gave full report on the Alexander Barnes matter and the efforts of local Negroes to combat it.

Charlie is of the opinion that the Negro opposition may be engineered by Democrats to block confirmation of any Republican in hopes of getting a Democratic appointee. He also suggests that maybe the Negroes themselves hope to block a Republican confirmation in hopes of getting Atty Gen Seawell appointed. Seawell has ingratiated himself with the Negroes on account of his tolerance toward integration. It would be strange if Southern Democrats would attempt to block the confirmation of a Republican in order to get a Democrat integrationist.

Charlie has written a memorandum to the Dept of Justice pointing out the highly partisan nature of the Democratic Administration in N.C. and the fact that the Republicans are not represented on the State judiciary or in govt and also the disastrous effect of a Repub Admin appointing a Democrat judge in N.C.

He has also contacted Morton⁶¹, the new Nat'l Chairman.

Charlie is worried at the prospect.

On April 27, 1959, Butler wrote to Jonas:

I am grateful for your telephone call Sunday. The letter which I wrote you on Saturday has not gotten in the mail and I am enclosing photostatic copies of newspaper clippings relative to Governor Hodges' maneuver to prevent the appointment or confirmation of a Republican as United States District Judge in the Eastern District. I also enclose photostatic copies of newspaper clippings from the Raleigh News & Observer and two local newspapers, both of which are Democratic, relative to Howard Hubbard's candidacy for the appointment. This was a very surprising development. Hubbard has been a life long partisan Democrat and it is inconceivable that he could expect the appointment from a Republican President when his own Democratic party has not appointed a Republican to a Judgeship or any other political office in North Carolina since the Civil War. Hubbard has got too much sense to expect this appointment, and the only conceivable reason that he would permit his name to be used in this connection would be for the purpose of discouraging Democrats from endorsing any Republican for the appointment.

It would not surprise me from Senators Ervin and Jordan to request that the Department of Justice to recommend "a good Democrat" for the appointment as suggested by Governor Hodges. However, I think they would both be amazed if their recommendation was seriously considered. Even The News & Observer admitted that "it is hardly likely" that a Democrat would get the appointment.

On April 27, 1959, DeLapp wrote Republican National Committee Chairman Thurston Morton with a very similar letter to that written to Brownell on April 25, 1959. The letter from

⁶¹ Thurston Ballard Morton was a Republican Senator from Kentucky and the Republican National Chairman at the time.

DeLapp to Morton was in turn sent from Morton to special White House counsel David Kendall with the following note on April 28, 1959⁶²:

The attached letter points out the seriousness of the situation in Eastern North Carolina. I am in full accord with the sentiments expressed in Mr. DeLapp's letter.

On April 27, 1959, Johnson wrote to DeLapp:

For your information I want to keep you current as the operation of Butler opponents for the Judgeship.

Wade Marr, I am sorry to say, is one of the leading opponents. He is very active, and has been, in Gaskill's behalf. His adamant position now is, if Gaskill cannot have it, he is determined to defeat Butler by lining up Democrat opposition, and support for Malcolm Seawell. He approached me twice last week with the proposition that if I would withdraw my support of Butler and give to Gaskill, he would guarantee Gaskill's nomination and confirmation.

It seems that Charlie Johnson, along with State Senator D.J. Rose of Goldsboro, is taking the initiative in the fight against Butler. Wade said Luther Hodges (Governor Hodges) assured he and Senator Rose, that Butler would not get by the Judiciary Committee. He is going to Washington Thursday, armed he says, with protests and opposition from 40% of the Legislative membership. He says the powers that be, in order to get rid of Malcolm Seawell, are going to make a concerted effort to kick him upstairs in the Federal Judgeship.

Wade is positive the NAACP will seriously object, and prevent Butlers nomination. This I challenge. I did not tell Wade, but I intend to contact, by grapevine, the leadership and find out the extent of their efforts. Frankly, a serious objection by the NAACP would be cause to worry about. If protest and objection should come from Dr. Helen Edmonds, who seconded Ike's nomination at San Francisco, Louis Austin, Editor, Carolina News (negro) and Asa T. Spaulding, President, N.C. Mutual Ins. Co. and Mr. Eisenhowers representative in Nigeria, all good friends of Wade Marr, it would create a bad situation. I know them personally and I intend to see them.

I hope my fears are groundless and there is no cause for concern. I shall make no Washington contacts, or efforts, without your suggestion and approval.

On April 27, 1959, Jonas wrote to Deputy Attorney General Lawrence E. Walsh:

I appreciate the opportunity you gave me on Friday to discuss the Judgeship vacancy in the Eastern District of North Carolina.

I was so disturbed over our discussion that upon returning to the office I prepared the attached memorandum outlining some of the reasons why I believe Mr. Algernon L.

⁶² Letter from Morton to Kendall dated April 28, 1959. Eisenhower Presidential Library. General File Series, Box 88 4-D.

Butler, of Clinton, North Carolina, should be nominated for this position. I am putting these reasons on a separate paper and in the form of a memorandum for your use in discussing the situation with the Attorney General and any Senators who might recommend otherwise.

Again my thanks for your courteous attention to the points I tried to make when I discussed the matter with you on Friday.

Memorandum concerning Judgeship vacancy

In the Eastern District of North Carolina

1. *President Eisenhower has appointed two North Carolina Democrats to high positions in his Administration:*

Gordon Gray of Winston-Salem has held a number of important positions, and filled them admirably, in the Eisenhower Administration. Not a single North Carolina Republican objected although Mr. Gray is a well-known Democrat of North Carolina and was Secretary of the Army under a previous Democratic Administration.

John S. Graham of Winston-Salem (has resided in Washington, D. C. for several years but is a native of North Carolina and is listed in the Official Register of the United States as from North Carolina) was appointed to membership on the Atomic Energy Commission although he was an out-spoken and active Democrat and held a high position the Truman Administration.

2. *President Eisenhower appointed Judge Clement F. Haynsworth, Jr., a Democrat from South Carolina, to the 4th Circuit Court of Appeals. Not a single Republican from North Carolina, so far as I know, offered any objections to the appointment.*
3. *Republicans cast a very respectable vote in North Carolina in all elections, as will be indicated from the following tabulation:*

Vote for Governor, 1936-1956,

1936 – Democratic 542,139

Republican 270,843

1940 – Democratic 608,744

Republican 195,402

1944 – Democratic 528,995

Republican 230,998

1948 – Democratic 570,995

Republican 206,166

1952 – Democratic 796,306

Republican 383,329

1956 – Democratic 760,480

Republican 375,379 – 33% of total vote for Governor.

4. *Although the foregoing tabulation shows that there were nearly 400,000 Republican votes cast in North Carolina for the Republican candidate for Governor in recent years (the number is considerably higher for Republican candidates for President), there is not a single Republican serving in North Carolina on the Supreme Court Bench or as a Superior Court Judge (the North Carolina Trial Court). The Election Laws require candidates for Superior Court Judges to be nominated in the Primary in the Judicial*

Districts within which they reside, but when it comes to the General Election their names appear on the State Ballot along with that of the Governor and other State Officials and they are voted on by the State at large. This makes it impossible for a Republican to be elected a Superior Court Judge in North Carolina unless the Republican State ticket is elected.

5. *The Democratic-controlled General Assembly of North Carolina has gone to such lengths to preserve one-party domination of the Judiciary that it has even gerrymandered Judicial and Solicitorial Districts. Some of these districts do not even comprise contiguous territory.*

6. *In addition to party domination of the Judiciary in North Carolina, and although there are nearly 400,000 voting Republicans in the State, the Democrats will not permit a Republican to serve on the State School Commission, which controls the Public School System in North Carolina; or on the State Highway Commission, which controls and operates the entire Highway System of the State; or on the Board of Conservation and Development, just to name a few of the highly important Commissions that exercise vast power in the State.*

With a few exceptions, established by special Local Acts of the General Assembly for specific counties, the Democratic Party in North Carolina will not permit the people of the different counties of the State to elect their own School Boards. With the few exceptions mentioned, the School Boards that run the public schools in the counties of the State are selected by the General Assembly. The obvious purpose is to make it impossible for Republican Counties in the State to elect Republicans to run the School System in their own counties.

7. *If a Democrat should be appointed to fill the Eastern District Judgeship vacancy, it will mean that there is only one Judge in all the State of North Carolina who is a Republican, with the exception of a few County Recorders who serve within their own counties and whose jurisdiction is limited to the trial of misdemeanors. Such an appointment would be considered in North Carolina as an expression of no confidence and a slap in the face to nearly 400,000 Republicans who, despite the most overwhelming odds, continue to go out on Election Day and vote the Republican Ticket. It would virtually destroy all chances for the Republican Party in North Carolina to grow.*

8. *Recognizing that Judicial appointments should not be made on the basis of partisan considerations, nevertheless it would appear reasonable to expect a Republican President to follow the recommendation of the Party Leadership in the State if that recommendation is of a man of outstanding legal ability, judicial temperament, and integrity. On this point, may I suggest that you personally read the recommendation of Mr. Algernon L. Butler that are in your file. You will find that the strongest kind of endorsements come from Democrats who are serving as Supreme and Superior Court Judges in North Carolina and who have presided over Courts in which Mr. Butler has appeared as a lawyer. They come from Democratic lawyers all over North Carolina who recognize Mr. Butler's superior qualifications and attest to them. These people are not expecting a Democrat to be appointed to this vacancy by a Republican President when he has an opportunity to appoint such an able and highly-regarded Republican. You will also find strong endorsements of Mr. Butler in that file from the members of the faculty of the University of North Carolina Law School.*

If all of the arguments in favor of taking a short step in the direction of a more balanced Judiciary in North Carolina should fail, and if all of the political aspects should be disregarded, I believe the file in your own office will show that Mr. Butler has the strongest endorsements of all others who are under consideration for the appointment. A few Democratic politicians may urge the appointment of a Democrat, but their recommendations will clearly be based upon politics and it would seem inconsistent to reject the appointment of an able Republican lawyer because he is a Republican and select for appointment a Democrat because he is a Democrat.

On April 28, 1959, the following notes were taken by Butler:

Mossette⁶³ suggests:

Endorsement of every Republican of any consequence

Is the Department of Justice affected by any rumor

Get Sim to go to Washington

Get Bill Cobb to give Wade Marr full treatment?

That the Republican Congressman from NC is _____ that this administration might appoint a Democrat is _____.

Kenneth Royall may be exerting influence on Rogers. But Rogers ought not to completely ignore the unanimous endorsement of the Republican organization in N.C. even if the Republican Party in the State is personally obnoxious to him.

On April 29, 1959, DeLapp wrote Butler:

I have been so busy that I apologize for not reporting to you sooner. I just received your letter with enclosures and at the same time received a letter from Joel Johnson, which enclosed a short brainstorm by Wade Marr who seems to be fighting you recklessly and without cause. Wade's lack of balance seems to show up at the most unfortunate times.

Bill Cobb called Julian Gaskill and gave him a good frank talking and Julian apparently tried to put it all on Wade. My guess is Wake⁶⁴ thought he would be United States Clerk under Julian and that is the reason his going half wild over the matter. I tried and tried to get Alexander Barnes and got his home or his father's home a number of times but he would either not speak to me or he just wasn't home.

Joel Johnson writes that he will be glad to see the more prominent Negro leaders in Durham, whom Wade is trying to stir up in Durham, and will straighten them out if for any reason he has gotten them on the wrong track.

⁶³ Mossette Butler was Al Butler's brother

⁶⁴ Typographical error in original. Should say Wade.

I see from the newspaper comments on Senator Ervin that he is cleverly trying to play broad-minded towards the press but his is trying desperately hard to push over the appointment of a Democrat. I have written a number of letters recently in your behalf to various persons who I thought need to get busy on this matter. There is no need for me to tell you to whom I wrote the letters, but I simply want to assure you that I hear from you or not, I am doing everything humanly possible to use my influence to help you through. It would be a tragedy for you not to be appointed and confirmed. Frankly, I have had you in my mind in this position ever since I entered politics. I had Jim Bailey picked for the West and you for the East. If I had been completely well and a little younger and if we had had a Republican Senate, I would probably have aspired to be the Judge in the Middle District myself, but Ed Stanley is doing a wonderful job and, as you know, I supported him against all the rest of the party officials.

You can keep me advised as to the turn of events so that I can make sure moves as I think are proper. I am old enough and have had enough experiences in politics to know what persons to whom I can write and do some good. I would never forgive myself if I failed to do everything I could in your behalf.

On April 29, 1959, Cobb wrote Butler:

This acknowledges receipt of your letter of April 23rd and enclosures. Possibly I was an alarmist in calling you with reference to the Alexander Barnes development, and nothing may come of it to your disadvantage. However, it can't help but be a good thing to be prepared if we run into trouble from this source.

I believe that most of the Republicans of the East including John Wilkinson and Julian Gaskill are prepared to give you support now that your name has been recommended to the Justice Department.

Wade Marr seems to be the principal disgruntled spokesman. I do not know what can be done to silence him except that I am sure that people like Sam Morris, Julian Gaskill and other people in Raleigh will upon their own initiative speak to him with reference to damage these comments can make to the Republican Party.

On April 29, 1959, Dr. Helen G. Edmonds wrote to Attorney General Rogers:

I wish to ask your indulgence in reading this letter which comes to recommend and further endorse to your Department an able North Carolinian with the hope that he will receive paramount consideration when the impending appointment is made of a Federal District Judge in Eastern North Carolina. This letter purports to speak about the ability and activities of Attorney Algernon Butler of Clinton, North Carolina (Sampson County).

Attorney Butler is one of the most prominent lawyers in this State, and is a descendent of one of this State's most prominent families with a long and honored record in this profession as well as Republican politics. I wish here to cite from historical research which I have done: Fusion Politics in North Carolina, 1894-1901, Univ. of North Carolina Press, 1951, with regards to the Butler family's political activities. Attorney

Algernon Butler's uncle, The Honorable Marion Butler, was a United States Senator from North Carolina, 1895-1901, and thereafter, was a stalwart in keeping Republicanism alive in this area. Attorney Algernon Butler is an active and faithful supporter of that Republican tradition. One of the political enigmas in North Carolina has been the constancy with which Sampson County has registered Republican victories since the turn of this Century. For Sampson County, an island of Republicanism, surrounded by a sea of Democrats, has been the Republican anchor in Eastern North Carolina for some fifty years. This has been due to the Butler family, and of late years primary due to the influence and activities of Attorney Algernon Butler.

The recent Presidential Campaign of 1956 showed the largest Republican vote in this State for senatorial and gubernatorial candidates in its history and shook the political opposition to its feet. North Carolina, in my opinion and backed with documentary substantiation, is the only real potential two-party state in the South from heritage and tradition, It is my firm conviction that qualifications come first, and faithful Republican political activity and affiliation, second. Mr. Algernon Butler is a highly trained lawyer, a seasoned practicing lawyer and a well respected lawyer. No man can shed one iota of doubt on the ardent Republicanism of Mr. Butler nor the entire Butler family.

There are many in this State who would consider Mr. Butler's appointment as Federal District Judge as an appropriate reward for an alert and capable citizen and testimony of the realization that the present Administration will reward its qualified faithful supporters.

I write this letter unsolicited. I am motivated to do so by the painful recognition that there are Democrats who attempt to "horn in" on appointments irrespective of which political party is at the head of Government.

I take this liberty because I am a Republican who was the first Negro woman to second the nomination of the candidacy for the Presidency of the United States (Mr. Dwight D. Eisenhower, August 22 1956); traveled 15,000 miles on behalf of our ticket covering North Carolina, New Jersey, Massachusetts, Indiana, Pennsylvania and Illinois; campaigned in Michigan, Ohio and Pennsylvania during the recent congressional campaign of 1958; served as Leader-Consultant for the United States Department of State under I.E.S. in Germany, Austria, Sweden, Denmark and France, 1954-1955, and 1957; and, served as President Eisenhower's personal Representative to the dedication of the Capital Building in Monrovia, Liberia, Africa, October 1957. Please know that I do not submit this information about myself for any personal reasons what soever, but merely to make known that as an active supporter of the Republican Party, I am interested in seeing active qualified Republicans receive the appropriate rewards from this Administration.

While I feel that long letters are apt to go amiss when submitted to busy executives, it was necessary to make it lengthy in order so say some of the things on my heart on behalf of Algernon Butler.

On May 1, 1959, Butler wrote DeLapp:

I received your letter of April 29th. I know that you are doing everything possible in my behalf, and there is no one whose support I value more highly.

Supplementing my letter of April 27th, I enclose photostatic copies of endorsements from three of the most outstanding Negro leaders of North Carolina: Dr. Helen G. Edmonds, Professor of History of North Carolina College at Durham; Dr. J.W. Seabrook, President Emeritus of State Teachers College at Fayetteville, and A.T. Spaulding, President of North Carolina Mutual Life Insurance of Durham. These letters should dispel any rumors that my appointment would meet the opposition of the Negro leaders in North Carolina.

In early May 1959, the American Bar Association Standing Committee on Federal Judiciary sought information to include in a report the Committee would make to the Attorney General and the President as to the views of the Bench and Bar in the E.D.N.C. on Butler's qualifications. The primary investigator for the eleven-member committee was Francis E. Winslow of Rocky Mount, North Carolina. The responses that Mr. Winslow received that are maintained in the Butler archives were all very favorable. If unfavorable information was received it is unlikely that Butler would have received a blind copy of such feedback. In any event, it must have aided the ABA Committee's work to have one of its members be from the E.D.N.C. The correspondence reflects that Mr. Winslow had tried a case with Butler's brother and partner Edwin.⁶⁵

On May 6, 1959, J.M. Stancil wrote Butler:

Mack called me the day you called him and later I talked with Barnes, he said I have to go to Clinton to see my Dentist. I said why don't you go around to see our good Friend Al Butler, while there?

He said I don't want to see him and I asked why. He said, he wrote the constitution for the White citizens council sometime ago.

I said mabe⁶⁶ he did it, if he did, as a lawyer and not as an individual- he said yes he did.

I told him that I was 100% for you as judge of Eastern Federal court and he said he has been recommended but that he was de recommending him. He said if he is your man he don't have a chance.

Now-Barnes is a fellow Al, that goes against anything others want to do and he is nothing to be worried about at all. Has caused confusion here many times.

Just wanted you to know that. I have highly recommended you to Washington for the appointment.

On May 9, 1959, Butler wrote Spaulding:

⁶⁵ See letter from F.E. Winslow to Edwin Butler dated May 4, 1959.

⁶⁶ Typographical error in original.

I received copy of your letter of April 28, 1959, addressed to the Honorable William P. Rogers recommending my appointment as United States District Judge for the Eastern District of North Carolina, and I had intended writing you at an appropriate time expressing my appreciation.

I have now received copy of your subsequent letter advising Mr. Rogers of your information that "Attorney Butler is not only one of the Arch Segregationist of Eastern North Carolina but is also otherwise biased on racial matters."

Since I feel sure you do not wish to do any man an injustice, nor lend your name to the spreading of baseless rumor, I can only wish you had taken sufficient time to investigate these accusations among credible people, including the Negroes of Sampson County who have known me a life time.

Suffice it to say that I am not now, nor have I ever been, anti-Negro, anti-Semitic⁶⁷, nor anti-any racial group, and there is nothing in my record to indicate otherwise. I have never been connected, either as a member or as an attorney, with any such group. In view of these facts, even a casual request for supporting evidence from your Negro and white informants would have exposed the baseless nature of their charges. I think I know who your informants are, both Negro and white, and I think I know their motive. Of one thing you may be certain, they are not responsible members of either race.

Butler was likely referring to Wade Marr and/or Alexander Barnes when he referenced informants.

On May 11, 1959, DeLapp wrote Butler:

I have been slow in writing but sometime the first of last week I ran into the fact that the F.B.I. was engaged in a check on you, and this should mean that everything is all right so far as an appointment is concerned. I am sure that you know about it but I thought I should write you, even though I have done it a week late.

On May 11, 1959, Spaulding wrote Butler:

I have your letter of May 9, 1959, setting forth your reactions to my letter of May 1, to the Honorable Wm. P. Rogers, U.S. Attorney General. Under no circumstances would I in any way want to be a party to doing you an injustice or in any other way thwart the cause of Justice, that is why you were sent a copy of my letter of May 1, to Attorney General Rogers. I am enclosing herewith a copy of my letter of even date to the Honorable Clive W. Palmer which is self-explanatory and which I hope meets with your approval.

Unfortunately, I do not know many people in Clinton: consequently, I was not in position to do much investigating. The unfavorable information which came to me was through informants whose veracity I had no previous cause to question; consequently, since I had passed on to the Attorney General the favorable information which I had received from

⁶⁷ DeLapp was Jewish and it appears he and Butler had a warm relationship.

friends of yours concerning you, I felt some obligation to pass along the unfavorable also, especially since I do not know you personally and consequently had no opinion. Furthermore, my letter of April 28, to Attorney General Rogers was written immediately upon receipt of letter and telephone call from friends of yours urging that I act at once as time was of the essence. I am sure you can see, therefore, that my actions in both instances were in good faith. If you can furnish me with additional supporting data favorable to you, I shall be very glad to use it in your behalf.

On May 11, 1959, Spaulding wrote to Palmer:

I note that my letters of April 28, and May 1, to Attorney General Rogers, regarding the appointment of Attorney Algernon L. Butler as U.S. District Judge for the Eastern District of North Carolina, were passed to you for reply. I am, therefore, directing this letter to you.

It has been my purpose to be fair and just in this matter; consequently, I sent Attorney Butler a copy of my letter of May 1, to Attorney General Rogers. I have just received a reply from Attorney Butler in which he denies unequivocally the allegation of my informants relative to his being biased and ever having been anti-Negro or otherwise racially biased. He says he is not now, nor has he ever been "anti-Negro", anti-Semitic, nor anti-any racial group and there is nothing in his record to indicate otherwise." He further states that he has "never been connected, either as a member or as an attorney, with any such group."

It appears that there is much misinformation going the rounds concerning Attorney Butler either politically motivated or otherwise inspired. I hope, therefore that your office will be able to ascertain the true facts before a decision is made in order that no injustice might be done Attorney Butler or the cause of Justice otherwise thwarted.

May 14, 1959. Butler's notes from call with Jonas:

He wrote Judge Walsh⁶⁸ a memorandum that if the Department of Justice was giving any consideration to the appointment of a Democrat, that the leaders of the Republican Party in N.C. would like to be heard. But that such a conference was not desired under the Dept through a (unintelligible).

Jonas has been watching to get any indication from Judge Walsh as the thoughts of the Dept.

He has a letter from J. Walsh setting a date for the conference on Wednesday, May 20, at 3:30 pm in Washington.

Date can be rearranged if desirable.

[Ed Broyhill is going to Washington next week might take others with him on his plane.]

⁶⁸ Deputy Attorney General

*Nixon*⁶⁹—Ok

Thruston B. Morton—Ok

*Sen. K*⁷⁰ _____ -Ok

On May 20, 1959, a note from Butler details a call with DeLapp. DeLapp and Cobb talked with deputy Attorney General Walsh. Walsh explained that the Democratic Senate was putting pressure on the Justice Department to appoint Democratic judges. The Department may from time to time appoint a Democrat to appease the Senate. Based on Butler's strong endorsements by the bench and bar, DeLapp was of the opinion that the Justice Department would not use this appointment for appeasement purposes.

On May 22, DeLapp wrote Butler:

I enclose herewith a copy of a letter which I received from Governor Dewey.

I feel very positive that Dewey or somebody else close to him must have talked to Judge Walsh prior to the time we were there, because Walsh started talking to me, as soon as we entered, about our connections with Dewey in previous campaigns. I imagine that Governor Dewey has to have some informal approach to the administration through some other party for fear that he would be accused of trying to be a political boss. I am convinced that both Dewey and Brownell have gotten close connections with Rogers between the time that Congressman Jonas first called me and the time that Brownell wrote his letter.

Incidentally they say that Governor Dewey has probably the largest and most lucrative law practice of anybody in the country.

After I called you I talked with Jonas and he thinks that the best thing do to about the so called Hiatt matter is just to be quiet about it. Apparently some disgruntled person is trying to hurt you, knowing that there is no way that you can ever learn who gave the stab in the back.

On June 26, 1959, Butler notes indicate that ally Frank Neeley called and was in Wilmington and heard from several sources that Gaskill was part of a letter writing campaign opposing the Butler nomination.

Notes from a June 28, 1959 call between Butler and Jonas:

Have you heard anything recently from Dept. of Justice

When will Congress adjourn? About August 30.

If an appointment is not made or confirmed before Congress adjourns we will be faced with the possibility of a recess appointment.

⁶⁹ Vice-President Richard Nixon

⁷⁰ Options are Keating, Kefauver, Kennedy and Kerr

If a recess appointment is made and accepted there will be pressure in the Senate for confirmation. The _____ will be going on these _____ would be no criticism on congested docket.

No civil case tried in the Fayetteville division in 5 years.

The Senate could delay action in a recess appt until after the election then revisit confirmation if a Democrat is elected

On July 1, 1959, note about FBI background investigation.

July 5, 1959, Johnson wrote Jonas:

About the Eastern Judgeship Nomination:

I am very much interested in behalf of Al. Butler. I talked with Sim DeLapp few days ago and he told me that he and Bill Cobb was up there last of May and was assured the nomination would go forward about first of June.

I know you are interested and will do all you can to push it through. What I want to know is what progress has been made is there ANYTHING further we can do to help. One thing I would like to know, if you can find out, has there been any objections filed by the N. A. A. C. P. I have been assured there would not be, but we have some dirty opposition to deal with, and we cannot accept everything everybody says.

On July 8, 1959, Jonas responded to Johnson:

Thanks for your letter of July 5.

I am expecting the Butler nomination to go to the Senate almost any day now. All of the information I have is favorable, but these things take time and there has been some delay. I inquired again this morning before dictating this letter, and expect that we will have some acceptable news within the next week or ten days at the latest.

On July 8, 1959, Jonas wrote Butler:

I believe your nomination is just about ready to go to the Senate. I have been making frequent inquires and have been told recently that final action is in the offing, but delays continue to occur.

I inquired again just before dictating this letter and have what I consider to be good reason to feel that everything has been cleared and that the nomination will go forward in the next few days.

I have done everything I could to expediate the decision.

With kindest regards and best wishes to both you and the family, I am

On July 10, 1959, Johnson wrote Butler:

Made little survey in Raleigh on Thursday evening. Looks like the opposition is about ready to admit defeat. Understand Wade Marr is still fighting. (We have parted ways—did not see him). But think his efforts are about exhausted.

On July 10, 1959, Butler wrote to Jonas:

I have just received your letter of July 8th and I am glad to get the encouraging news. The newspapers have been very quiet, and your report is the only information I have received in many weeks. I do not know what has caused the delay in the Department of Justice, unless it is the constant effort by some Democrats to block my appointment. I know the F. B. I. has been kept busy chasing rabbits, but even that activity seems to have abated.

If the appointment come through, I think it extremely important that every effort be made to obtain confirmation at this session of Congress. Pressure will be brought to bear on the Senate for confirmation at this session by the press, the Bar, and other sources. I enclose a facsimile copy of a letter I have just received by N. E. Day, a prominent Democratic lawyer of Jacksonville addressed to Senator Ervin. I also enclose copy of several which have appeared throughout the East.

If, however, confirmation is not had and a recess appointment is made and accepted, the pressure will be off, and the Senate might not act on the confirmation until after the election in November 1961⁷¹, at which time Senate action probably would be dictated by the election results.

I know you have done everything possible to expedite the appointment, and I am grateful to you for your efforts.

If and when the appointment is made, I will appreciate your advising me what should be done in an effort to obtain prompt confirmation.

With kindest regards to you and the family

On July 11, 1959, Butler wrote Johnson:

I have just received your letter enclosing correspondence with Charlie Jonas. I am glad to get your comments concerning the situation in Raleigh. The opposition has been very active in this matter, and apparently has attempted to create dissatisfaction among several minority groups. Fortunately, many of the rumors have come to my attention, and I have had some measure of success in counter-acting them. Nevertheless, the constant effort to block my appointment has caused delay.

If the appointment comes through, I think it extremely important that every effort be made to obtain confirmation at this session of Congress.

On July 20, 1959, DeLapp wrote to Butler:

I have written again to urge haste in the matter of your appointment.

⁷¹ Typographical error in original. Should say November 1960 when the general election was held.

On July 26, 1959, the News & Observer reported that informed sources claimed the President Eisenhower would nominate Butler within the next few days.⁷²

On July 29, 1959, Butler was officially nominated by President Eisenhower. Butler explained “I knew that I had received the endorsement of a great many people in North Carolina. It wasn’t a total surprise, but I had no advance information on the nomination. It will be a distinct honor and privilege to service in that capacity. I consider it one of the greatest honors that can come to a lawyer. I would assume the duties of the office with great humility and a spirit of dedication.”⁷³

At this point Butler pivoted to trying to persuade Senators to support (or simply not oppose) the nomination. Letters were sent (primarily by lawyers and judges) to the Senators. Some of the letter writers were Democrats. The primary target of the letters were Senators Ervin and Jordan but letters were also sent to other senators including Lyndon Johnson and James Eastland. Much of the correspondence focused on the significant backload of case in the E.D.N.C.

On August 5, 1959, Royall wrote to Butler:

As you may or may not have known, I was against your appointment because I preferred the appointment of a Democrat. I did everything I could in this matter except to talk with the President and I didn’t want to add to his problems. However, I am confident that you will do a splendid job, and reflect credit on the State and on yourself. Incidentally, I hope that there will be no trouble about your confirmation, and I have told Bill Rogers that if you should have trouble, to feel free to call on me for any help that I might give.

On August 6, 1959, Senators Ervin and Jordan announced they would not oppose the Butler appointment.⁷⁴

For some time Judge Don Gilliam, United States District Judge for the Eastern District of North Carolina, has been prevented by illness from holding court. As a consequence, he has felt constrained to retire, thus creating a vacancy in the Judgeship of the Eastern District. These events constitute a tragedy because Judge Gilliam is as just a judge as North Carolina has ever known.

In accordance with a practice of long usage impliedly sanctioned by the Constitution itself, the President, a Republican, has nominated as Judge Gilliam’s successor a member of his own party, Algernon L. Butler of Clinton.

In so doing, the President has acted without consultation with us. It must be confessed, however, that there is ample precedent for the President’s action in this respect in cases

⁷² The News & Observer, July 26, 1959 (page 16).

⁷³ The News & Observer, July 29, 1959 (page 1).

⁷⁴ Statement of Senators B. Everett Jordan and Sam J. Ervin Jr, Concerning the Nomination of Algernon L. Butler as United States District Judge for the Eastern District of North Carolina.

where the President belongs to one political party and the Senators representing the State of the vacant Judgeship adhere to another.

Available information is to the effect that Mr. Butler possesses the capacity to discharge the duties of the office to which he has been appointed.

Consequently, we are confronted by this question: Should we oppose Mr. Butler's confirmation simply because he is not a member of our party?

We cannot do this if we are to act responsibly in the light of existing circumstances. This is so for these reasons:

- 1. The Federal Government cannot function effectively during times when the President adheres to one political party and the majority of the Senate belongs to another if the Senate rejects competent presidential appointees to major federal offices because they are affiliated with the President's party rather than of the majority of the Senate.*
- 2. Government has no more important obligation than that of administering justice. If government is to perform this obligation, course must be open to vindicate rights and to prevent or redress wrongs. It is obvious that the courts of the Eastern District of North Carolina cannot be open in any real sense of the term as long as the Eastern District is without a resident judge for as much as two years.*

These things being true, we will file no objection to Mr. Butler's nomination with the Senate Judiciary Committee.

On August 9, 1959, a News & Observer profile reveals that Butler's father almost got the E.D.N.C District Judgeship in 1925 when a sizeable delegation of politicians, including not a few Democrats, traveled to Washington to urge the appointment.⁷⁵ They conferred with President Coolidge some 15 to 20 minutes.⁷⁶ Their only reaction they got from him was a "Thank you, gentleman."

On August 10, 1959, Barnes, publicly opposed the Butler nomination. It was, "not only unfortunate, but a moral monstrosity and a political blunder." "I am a Republican but I was a Negro first and I shudder to think what will happen when a question of the rights of a Negro has to be decided by Mr. Butler...I am afraid to trust the fate of my people in the hands of Mr. Butler in a courtroom."⁷⁷ He claimed that Butler was a "rabid" advocate of white supremacy and has fought every effort of Negro Republicans to have a voice in State and National party affairs.⁷⁸ Barnes alleged that in 1948 Butler told him that 'the Negro should be contented with the way he had been treated in North Carolina and that equality for him did not mean equality to live and have his being on the same level as a white man'.⁷⁹

⁷⁵ The News & Observer, August 9, 1959 (page 6).

⁷⁶ Another account claims the meeting lasted 40 minutes.

⁷⁷ The Charlotte Observer, August 12, 1959 (page 4).

⁷⁸ The News & Observer, August 14, 1959 (page 18).

⁷⁹ Rocky Mount Telegram, August 19, 1959 (page 1).

On August 10, 1959, Barnes sent the following telegram to the White House⁸⁰:

THE PRESIDENT

THE WHITE HOUSE

IT IS REGRETTABLE THAT YOU PLACE THE NAME OF HON A L BUTLER FOR NOMINATION TO A FEDERAL JUDGESHIP IN NORTH CAROLINA IT LEAVES NO OTHER RECOURSE FOR DEMOCRATIC CITIZENS TO TAKE BUT TO BARE HIM BEFORE THE SENATE JUDICIARY COMMITTEE WE HAD HOPED THERE WOULD NOT BE A RECURRENCE OF THE PARKER SITUATION⁸¹ AND CERTAINLY WANTED TO SAVE YOU THE EMBARRASSMENT OF ANOTHER STRAUSE PETITIONS⁸² ARE NOW BEING CIRCULATED TO BE PRESENTED TO THE COMMITTEE

ALEXANDER BARNES

1011 Willard Street⁸³

On August 11, 1959, White House special assistant Robert E. Hampton responded to Barnes:

This is in reply to your telegram of August tenth addressed to the President.

May I explain that Mr. A.L. Butler was given a thorough investigation as to his background and qualifications and was recommended to the President by the Attorney General for the United States District Court for the Eastern District of North Carolina. Mr. Butler was also endorsed by representatives of the American Bar Association from your State. On the basis of these recommendations, the President nominated Mr. Butler for this judgeship.

Your telegram lacks specifics as to why you are opposed to this appointment. However, I do note that a petition will be forwarded to the Senate Judiciary Committee.

On August 11, 1959, Joel Johnson wrote the following letter to Alexander Barnes:

I was shocked this morning to see in the press your attack, or opposition, to Algernon Butler's confirmation as Judge for the Eastern District.

Alexander, you know, you or anyone else can question my loyalty to, support of, and interest in Civil Rights. And I believe you know I would not support any man for District

⁸⁰ Original at Eisenhower Presidential Library.

⁸¹ John Johnston Parker was a 4th Circuit Judge from North Carolina whose nomination to the U.S. Supreme Court had failed to gain Senate approval in 1930 in part because the NAACP opposed it based on Parker stating that "The participation of the Negro in politics is a source of evil and danger to both races and is not desired by the wise men in either race or by the Republican Party of North Carolina."

⁸² It is unknown to the author what a "Strause Petition" is.

⁸³ Willard Street is proximate to the Durham Bulls Athletic Park and was impacted by the construction of the Durham Freeway in 1967 and was partially renamed Jackie Robinson Drive.

Judge who is biased, prejudiced, or mentally small enough not to realize, and accept the rulings of the Supreme Court as the law of the land.

I want to say to you, and all my Negro friends, that I have known Algernon Butler all his life. I have followed closely his legal career, and I believe I know as well as anyone his philosophy of life, his feelings towards Civil Rights, and his qualifications for the high office of U. S. District Judge. And I want to say further, that we who believe in, and work for Civil Rights, have less to fear from him than any man I know, in either party, in eastern North Carolina.

Now as to why Sampson County was lost from the Republican party, you know as well as I do, who was responsible, and you know it was not Algernon Butler. The truth is, if Butler's council had been followed, the Negro vote would never have left our party. I think you owe Butler an apology, and frankly I am surprised, being the good politician that you are, that you would be a tool for Wade Marr, to help him further his selfish ambitions.

Before you go to Washington I want to see you and set you straight on a few things that you are, evidently, not familiar with. Will be up there Thursday or Friday and want to see you.

On August 11, 1959, Johnson wrote to Butler with a blind copy of his letter to Barnes:

I am not a Civil Righter or integrationist but am so classed so might as well take advantage of a situation.

Will keep lookout on this situation and if necessary will go to Washington.

On August 12, 1959, Johnson wrote Butler:

My opposition to the Pearsall Amendment in 1956, together with a wide distribution of the enclosed "Political Statement" sent to the leading Negroes and "Liberal" whites, branded me as a pro-civil righter. Being aware, of course, that I could not be elected, this was purely an experiment. Much to my surprise, and contrary to what I expected, that I would be a low man on the ticket, I was third from the top. A perusal of my vote is very interesting. In the illiterate sections, especially in the east, I ran far behind the ticket, while in the cultural centers I ran far ahead of the ticket.

Wade Marr helped prepare this statement and was responsible for it's distribution, especially among the negroes. He has a natural approach, for the reason that he is strongly pro-Civil Rights. It was through him that I met a goodly number of the leading Negroes of the state, some of which I admire. It is through my acquaintance with the Negro leadership, including the NAACP, that I was hoping to play a part in the fending off of any NAACP attack on your confirmation, even with Marr doing everything he can to bring it on.

My purpose in writing you is to make clear my feelings and position in regard to Civil Rights. Which is, like yours and every other clear thinking Southerner. I do not want integration, not even a little, but we cannot afford, or permit, defiance of the Supreme

Court. Therefore, our course must be compliance, token at least, and as gradual as possible.

I noticed in press this morning, a probable Judicial sub-committee hearing next week. Might be a good idea to contact Charlie Jonas and if he thinks it necessary, I will be glad to go alone, or with any other, and consider it an honor as well as a pleasure to testify before the Committee.

It is not necessary to reply to this letter, unless there is something specific, I can do, or help in any way.

August 12, 1959. Butler wrote notes from a conversation with Frank Neely.

Part of grand strategy to defeat confirmation.

3 northern liberals on subcommittee who will be more sympathetic to Negroes.

On August 17, 1959, Butler made the rounds on Capitol Hill including meetings with Jonas and Ervin.⁸⁴

On August 18, 1959, Butler testified before the U.S. Senate Judiciary Committee subcommittee which consisted of Senators Eastland⁸⁵ (D-Miss), Olin Johnston (D-S.C.) and Roman Hruska (R-Neb). Hruska chaired the proceeding⁸⁶. The following is a newspaper account of the proceeding⁸⁷:

Sixteen witnesses said Tuesday that Algernon Butler, 54-year old Clinton, N.C. lawyer, will be a fine federal judge, and one said he wouldn't.

Only testimony against nomination of Butler to be U.S. judge of the Eastern District of North Carolina came from Alexander Barnes, Negro, of Durham, N.C. Several Negroes testified for Butler.

Barnes said he came in a Senate Judiciary hearing on the nomination out of a deep conviction that Butler is not the type of person that should be appointed to pass on the rights of my people.

Butler has been nominated to succeed Judge Don Gilliam, who retired because of ill health.

⁸⁴ The News & Observer, August 18, 1959 (page 5).

⁸⁵ Eastland was an avowed segregationist---The Washington Post, June 21, 2019.

⁸⁶ Hruska later became known for a Senate speech he gave in 1970 where he responded to criticism that a U.S. Supreme Court nominee was mediocre by responding: "Even if he were mediocre, there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they, and a little chance?" Hruska had a personal connection with author, journalist and Butler supporter Ben Dixon MacNeill---see letter from Hruska to MacNeill dated September 16, 1959 in Butler archives.

⁸⁷ Asheville Citizen-Times, August 19, 1959 (page 2).

Barnes identified himself as a registered Republican in Durham County, active in politics since 1926, and a member of the National Assn. for the Advancement of Colored People.

Barnes said he was sent to his native North Carolina in 1948 by the Republican National Committee to campaign for the Republican party. He said Butler, one of the first persons he met, "lost no time in telling me that the Negro should be contented with the way he had been treated in North Carolina and that equality for him did not mean equality to live and have his being on the same level as a white man".

"I found that Mr. Butler had discouraged Negro participation in politics." He added.

"I submit that that a man who does not want to be associated with Negroes long enough to solicit their vote, a man who says a Negro should know his place and not aspire for first class citizenship, a man who will permit his client to defy the law of the United States certainly should not get the approval of the august United States Senate to become a federal judge."

Butler told the committee he'd known Barnes about eight or ten years from the time Barnes came to his office to introduce himself as a Republican who worked among Republican Negroes in the county.

"There is no truth in any statement or allegation that I am prejudiced in any respect to any race or segment of our population." Butler testified.

Dr. W.E. Merritt, a Negro dentist of Butler's hometown of Clinton, told the committee: "Barnes statements are untrue. Algernon Butler is fair to all people. He is an able attorney. I am here to endorse him."

Dr. J.W. Seabrooks, retired Negro educator of Fayetteville, said "Judge Butler has shown a love of justice in all his dealings. I don't think you'll find a person in Sampson County---white, Negro or Indian—who will say one word against Mr. Butler."

Asa T. Spaulding, Negro president of the North Carolina Mutual Life Insurance Co., testified, "Butler is fair in keeping with the law of the land."

Dr. D.J. Sammons, Negro doctor of Clinton, said, "Mr. Butler is a high type gentleman."

Judge Q.K. Nimmocks of the North Carolina Superior Court told the committee: "I am a life-long Democrat. He is a life-long Republican. I'm here to testify that Algernon Butler will make a fine judge. He is able. He is honest. He has represented colored people and he has represented white people with as much grace and affability as any lawyer I know of."

John Anderson and W. T. Joyner, both Raleigh lawyers, said Butler would be a fair judge. Anderson said Butler is dedicated to the law and to the administration of justice.

Other Butler supporters at the hearing included his attractive wife Josephine, in a bright red hat and gray sheath; Reps Hard D. Colley (D-NC); Alton A. Lennon (D-NC); Herbert

Bonner (D-NC), and Charles Raper Jonas (R-NC); Charles Green, former U.S. attorney for the Eastern District of the state; James Swailes, Wilmington lawyer; Lindsay Warren Jr., of Goldsboro, lawyer; Carl Venters of Jackson, a member of the North Carolina General Assembly; Perry D. Crumpler, R.M. Holland and Henry Vann, all of Clinton: Omar L. Henry, former president of the University Alumni Assn. Letters of endorsement were filed with the committee from James K. Dorsett Jr., president of the North Carolina Bar Assn., and former Secretary of the Army Kenneth C. Royall.

Sen. Roman L. Hruska (R-Neb) presiding at the hearing, stated the record will be kept open until Aug. 22 for other letters after Barnes asked the hearing be extended to hear others he said are opposed to the nomination.

August 21, 1959. Barnes indicated that he would make no future effort to block the nomination. No letters of opposition had been received by the committee.⁸⁸

Butler described it as follows in a letter dated a few weeks later⁸⁹:

A Negro newspaperman from Durham, North Carolina, a member of the NAACP, filed a protest to my confirmation with the Senate Judiciary Sub-Committee. The witness appeared at the hearing and testified in opposition, but his protest was ineffective and I received the unanimous approval of the Senate.

August 28, 1959. The Senate confirmed Butler unanimously.

On September 28, 1959, Butler was sworn in as judge.

Epilogue

Judge Butler served until going on senior status in 1975. He died in 1978. One of the significant issues he faced while on the bench was public school desegregation in Eastern North Carolina.⁹⁰

Thomas M. Moore was appointed bankruptcy referee by Judge Butler effective November 1, 1960. Moore served under Butler throughout Butler's entire tenure on the bench.

In 1961, a second judgeship was created for the Eastern District of North Carolina and that position was filled by John D. Larkins.

⁸⁸ The News & Observer, August 22, 1959 (page 3).

⁸⁹ Letter from Butler to Judge Ted Dalton dated September 16, 1959

⁹⁰ See East Carolina University Manuscript Collection. John D. Larkins, Jr. September 8, 1977. Interview # 4. "I suppose that Judge Butler and I, during the intervening period of time from September 1961 until he retired in August 1, 1975, handled together more school cases in the courts than the other judges in the state and possibly in the whole circuit for the reason that we had forty-four counties in the Eastern District. I'm satisfied that I handled twenty-five of the counties, and Judge Butler probably handled the remaining."

In 1968, Republican Richard Nixon won the state of North Carolina in the presidential election over George Wallace and Hubert Humphrey. In 1972, North Carolina elected a Republican to the U.S Senate⁹¹ and as governor⁹².

In 1973, bankruptcy referees were redesignated as judges. In 1973, Senator Ervin became nationally recognized during the Watergate hearings.

The volume of bankruptcy filings increased such that Moore's position was made full-time in 1976.

Moore appointed Judge Butler's son Algernon Butler Jr., to be a chapter 7 bankruptcy trustee in the late 1970s. For many years, Butler Jr. hosted an annual "shrimperoo" social function at his home where bankruptcy judges and trustees in the E.D.N.C. socialized. Moore and Butler Jr. were key members of the small but effective group from the E.D.N.C. who fought off the expansion of the United States Trustee Program into North Carolina in 1986.⁹³

Moore died in 1991. Butler Jr. presented the portrait of Judge Moore at a ceremony in Wilson, North Carolina in 1992. That portrait now hangs in the 2nd floor courtroom of the Raleigh bankruptcy court which is a courtroom used by the E.D.N.C. from 1915-1970. Butler Jr. was a finalist to replace Moore as bankruptcy judge in but was not selected.⁹⁴

Travis Sasser⁹⁵

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⁹¹ Jesse Helms

⁹² James Holshouser

⁹³ The author has addressed this topic in some detail in a paper entitled "Why Bankruptcy Judges Still Appoint Trustees in North Carolina" which can be found at <https://www.sasserbankruptcy.com/trustee-appointment-in-nc-bankruptcy/>

⁹⁴ The News & Observer, March 21, 1992 (page 30).

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