

## Millar Sees Lax Judicial Capacity Among Members Of U. S. Supreme Court

### Waynesville Lawyer Tells Views Before Rotary Club

"We are rapidly slipping into a position which the framers of the Constitution valiantly tried to avoid — a government of men — not of laws," W. H. F. Millar, Waynesville attorney told Rotarians here Friday.

"Who are the men?" he asked, and then went on to say, "The present members of the Supreme Court."

The speaker said: "I say to you that I am, and for a long time have been alarmed at the lax judicial capacity among members of the Supreme Court."

"The decisions in the school segregation cases are not worse, and no more revolutionary than others this court has rendered. They are only a part of the picture—other decisions did not effect so many people—did not have the same impact and did not receive the same public attention," Millar went on to explain.

The speaker went on to explain that while all the members of the Supreme court are gentlemen of high attainments, and significant accomplishments that the majority of them have not worked either long or laboriously as practicing lawyers or as State judges or as judges of the lower Federal courts. As a consequence the majority of them have not undergone the mental discipline which enables a qualified occupant of a judicial office to lay aside his personal notions of what the law ought to be and to base his decisions on what the law has been declared to be in legal precedents.



W. H. F. MILLAR

"I think the breaking of the Court began when the hue and cry arose about the 'Nine Old Men'."

The speaker went on to say:

"The Supreme Court and its usurpation of power is a matter which has distressed me for a long time. This talk seems to be peculiarly appropriate now because public attention in the South has been focused upon the Court's recent decisions in regard to segregation. It is brought into bold relief by the demands for interposition and the recent Manifesto signed by practically every Southern member of Congress denouncing the usurpations of the Supreme Court."

"For a proper understanding of this subject, I think we have to bring in mind that the State is the Sovereign power and that the Federal Government has only such powers as have been granted to it by the Constitution and its Amendments. If there was ever any doubt about it, the 10th Amendment, the last one in the Bill of Rights, removed such doubt by providing that powers not specifically so granted to the Federal Government are retained by and still remain in the several States.

"In grammar school we learned of the three branches of the Federal Government—the Legislative, Executive and Judicial. We learn-

ed of the system of checks and balances. It was not then pointed out to me, and probably not to you, that there was one branch upon which there was and is no check—namely the Judicial. There lies our weakness and the indirect cause of our present dilemma."

"Having in mind those fundamentals, I feel that I must begin with the American Constitutional Convention of 1787."

"The men who composed the American Constitutional Convention of 1787 comprehended in full measure the everlasting political truth that no man or set of men can be safely trusted with governmental power of an unlimited nature. In consequence, they were determined above all things, to establish a government of laws and not of men.

"To prevent the exercise of arbitrary power by the Federal Government, they inserted in the Constitution of the United States the doctrine of the separation of governmental powers.

"In so doing, they utilized the doctrine of the separation of powers in a two-fold way. They delegated to the Federal Government the powers necessary to enable it to discharge its limited functions as a central government, and they left to each State the power to regulate its own internal affairs.

"In their other utilization of the doctrine of the separation of powers, the Members of the Convention of 1787 vested the power to make laws in the Congress, the power to execute laws in the President, and the power to interpret laws in the Supreme Court of the United States and such inferior courts as the Congress might establish. Moreover, they declared, in essence, that the legislative, the executive, and the judicial powers of the Federal Government should forever remain separate and distinct from each other.

"The Members of the Convention of 1787 did not put their sole reliance upon the doctrine of the separation of governmental power in their effort to forestall the exercise of arbitrary power by the Federal Government. They balance-

ed the President's power to veto the acts of Congress against the power of Congress to legislate, and they balanced the power of Congress over the purse against the President's power as Commander-in-Chief of the Army and Navy. They made the Supreme Court of the United States independent of the President and the Congress by giving its judges life tenure during good behavior and by providing that their compensation should not be diminished during their continuance in office. They failed, however, to place in the Constitution any provisions to restrain any abuse of its judicial power by the Supreme Court of the United States.

"Alexander Hamilton said with emphatic assertion: 'The supposed danger of judiciary encroachments . . . is, in reality, a phantom.' He declared, in essence, that this assertion was true because men selected to sit on the Supreme Court of the United States would be chosen with a view to those qualifications which fit men for the stations of judges, and that they would give 'that inflexible and uniform adherence' to legal rules 'which we perceive to be indispensable in the court of justice.'

"By these remarks, Hamilton assured the several States that men selected to sit upon the Supreme Court of the United States would be able and willing to subject themselves to the restraint inherent in the judicial process. Experience makes the proposition indisputable: Although one may possess a brilliant intellect and be actuated by lofty motives, he is not

### Miss Mannequin



CHRISTIANE Rouvreau, 22, of Paris, a former dancer, is shown after she was chosen Miss Mannequin 1956 in a contest held at the Moulin-Rouge in Montmartre. By winning, Miss Rouvreau earned the right to compete in the preliminary judging for the Miss World title. (International)

qualified for the station of a judge in a government of laws unless he is able and willing to subject himself to the restraint inherent in

the judicial process. "What is the restraint inherent in the judicial process? The answer to this query appears in the statements of Hamilton. The restraint inherent in the judicial process is the mental discipline which prompts a qualified occupant of a judicial office to lay aside his personal notion of what the law ought to be, and to base his decision on established legal precedents and rules.

"The reasons why the mental discipline required to qualify one for a judicial office is ordinarily the product of long and laborious work as a practicing lawyer, or as an appellate judge, or as a judge of a court of general jurisdiction are rather obvious. Practicing lawyers and judges of courts of general jurisdiction perform their functions in the workaday world where men and women live, move and have their being. To them, law is destitute of social value unless it has sufficient stability to afford reliable rules to govern the conduct of people, and unless it can be found with reasonable certainty in established legal precedents.

An additional consideration implants respect for established legal precedents in the minds of judges in courts of general jurisdiction and all appellate judges other than those who sit upon the Supreme Court of the United States. These judges are accustomed to have their decisions reviewed by higher courts and are certain to be reminded by reversals that they are subject to what Chief Justice Bieckly of the supreme court of Georgia called—"the fallibility which

is inherent in all courts except those of last resort, if they attempt to substitute their personal notions of what they think the law ought to be for the law as it is laid down in established legal precedents.

"The States accepted as valid Alexander Hamilton's positive assurance that men chosen to serve on the Supreme Court of the United States would subject themselves to the restraint inherent in the judicial process, and were thereby induced to ratify the Constitution notwithstanding the omission from that instrument of any express provision protecting the other branches of the Federal Government, the States, or the people against the arbitrary exercise of its judicial power by the Supreme Court.

"Very vividly I can remember when I first had a case in the United States Supreme Court twenty odd years ago. It is difficult to describe my feelings. The decorum, the poise, the respect for the Court was wonderful. I had a feeling of absolute confidence that the court would administer the law or interpret the Constitution without fear or favor. There was the collection of the finest legal brains in the country — every one an eminent jurist in his own right—and there was poor little me. That bench, The Nine Old Men, consisted of Charles Evans Hughes, Chief Justice, to me the finest Constitutional lawyer of all time. There was Van deVanter, McReynolds, Brandeis, Sutherland, Butler, Stone, Roberts and Cardozo. Brandeis was considered the radical—among the

present members of the Court he would be ultra-conservative. That Court stood as firm as the Rock of Gibraltar. It was a bulwark protecting the rights of people and of States.

"Were I to appear before the Supreme Court now, I am sure my former feeling of reverential awe would be lacking—the mere passage of time does not account for (Continued on Page 3)

### THIS WEEK'S BEST SELLERS

#### FICTION

Andersonville, MacKinlay Kantor.

Ten North Frederick, John O'Hara.

Marjorie Morningstar, Herman Wouk.

The Last Hurrah, Edwin O'Connor.

Cash McCall, Cameron Hawley.

#### NONFICTION

The Search For Bridey Murphy, Morey Bernstein.

Gift From The Sea, Anne Morrow Lindbergh.

A Night To Remember, Walter Lord.

The Scrolls From The Dead Sea, Edmund Wilson.

Profiles In Courage, John F. Kennedy.

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