

Reagan could nominate six Supreme Court justices

By Smith Hempstone

The retirement of Justice Potter Stewart, effective July 3, points up the fact that President Ronald Reagan, even if he does not serve more than one term, may be able to appoint as many as six justices to the Supreme Court.

Stewart is 66, and apparently in good health. But five other justices — Chief Justice Warren Burger, and Associate Justices William Brennan, Thurgood Marshall, Harry Blackmun and Lewis Powell — are 72 years old, or older. And four of them (Burger is the exception) are in failing health. The average age at which the 99 men who have served on the court have left it, feet first or otherwise, is 70.

One president naming six Supreme Court justices, dramatic as it would seem, would be far from unprecedented. George Washington — a special case, since he was in office when the court was created — appointed 11.

But Franklin Delano Roosevelt, despite his failure to pack the court by enlarging it, named eight (Roosevelt, of course, served more than three full terms in office). Andrew Jackson and William H. Taft (who later became chief justice himself), each had six nominees confirmed.

Abraham Lincoln and Dwight D. Eisenhower each appointed five justices, of which Stewart was one of Ike's. Grant, Harding, Truman and Benjamin Harrison accounted for four each, as did Richard Nixon (Burger, Blackmun, Powell and William Rehnquist, the court's "baby," were Nixon appointees).

Jimmy Carter, a Georgia peanut farmer, packed the lower and appellate federal courts with liberal Democrats, but was the first president since Andrew Johnson who never had the chance to make a Supreme Court nomination.

The hypothetical importance of being able to name members of the Supreme Court is obvious.

Many members of the House of Representatives come and go before one learns their names, or what (if anything) they stand for. It is possible to emerge from a term or two in the Senate virtually anonymous. Even presidents hold center-stage for but a brief hour, before retiring to their libraries to write self-vindicating memoirs.

But members of the Supreme Court, because they are appointed for life (on his retirement, Stewart will have served nearly 23 years), and their rulings become the law of the land, leave deep imprints on the sands of history.

Their influence is the more important in that, as that astute observer of American character and institutions, Alexis de Tocqueville, once remarked, "scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question."

Yet a president's ability to see his political proclivities translated into high court rulings is more apparent than real. If this were not the case, the court, which contains only two members appointed by Democratic presidents — Byron R. White, who was

named by John F. Kennedy, and Marshall, the court's first and only black, appointed by Lyndon Johnson — would have been handing down decisions far more in accord with GOP theology than has been so.

While it is clear that, in the words of the authors of the Federalist Papers, Supreme Court justices are not expected to be "obsequious instruments of his (the president's) pleasure," many chief executives have been bitterly disappointed by the rulings of men they have appointed to the high court.

Theodore Roosevelt, no mincer of words, once characterized his 1902 Supreme Court nominee, Oliver Wendell Holmes, as having less backbone than "a banana." Eisenhower is said to have regarded his appointment of Brennan as one of the worst mistakes of his presidency.

Reagan himself had some experience of this syndrome during his tenure as governor of California. Reagan's first appointee (1970) to the California Supreme Court was Donald Wright, who boasted outstanding judicial and academic qualifications, with a moderate-to-conservative voting record.

Once on the bench, Wright, who retired in 1977, showed himself to be far more liberal than Reagan had expected, declaring the death penalty (which Reagan had favored) unconstitutional. His two other nominees, Deputy Secretary of State William Clark and Frank K. Richardson, cast few votes contrary to Reagan's political philosophy.

The president, who sometimes



seems wise beyond his years (if that is possible), has made it clear through White House spokesman Larry Speakes that, in filling the first vacancy in six years on the court, he will not insist that the nominee agree with him on all issues, only that he (or she) be highly qualified, and hold the "key view" that "the role of the courts is to interpret the law, not to enact new law by judicial fiat."

There are many men (and some women) who fit this mold. But few would be a better choice than former Solicitor General Robert H. Bork.

ANYTHING TO ATTRACT MORE TOURISTS

When Chamber of Commerce improved city's weather

By Stella Haverland Rouse

In the days before and during the early part of the 20th century when tourism was Santa Barbara's chief source of winter income, local business men attempted to figure out why guests enjoyed our winter attractions, but overlooked Santa Barbara as a vacation spot in summer months.

In August, 1906, Lawrence Redington, a Press columnist, presented a reason for Santa Barbara's neglect by visitors, and divulged a remedy for the situation:

"What is the best way to advertise Santa Barbara's attractions as a summer resort? Is a question that the Chamber of Commerce, the business men and everyone interested in the city's welfare has asked.

"Many suggestions have been made, and many an hour have Chamber of Commerce directors spent in discussing schemes such as posting photos of prominent local citizens on the boardwalk at Atlantic City, sending Secretary Gidney to Fresno in a balloon, taking a set of moving pictures of our street sweeper in action, etc. for publicity.

But it remains for a well known professional man, one who has no pecuniary ends to gain by development of Santa Barbara as a resort, to give the real reason for the apparent disregard of Santa Barbara's summer attractions by those on vacation thoughts intent, and to suggest a remedy . . .

"What is keeping Santa Barbara back, according to my friend, is that summer tourists can't wear their fashionable summer clothes here. It's so delightfully foggy and pleasantly cool, that the residents have gotten into the habit of wearing dark, warm homespun and automobile coats most of the time, and their poor visitors feel conspicuous when they appear on the street in 'ice creams.'

"As a result, the dainty peekaboos and the white shoes stay at the bottom of the trunk, and the vacationer who has spent his or her hard-earned coin to lay in a supply of light togs gets disgusted and goes away.

"The weather here is all right, but the people need educating. A league



should be formed of men and women who would pledge themselves to parade the streets in the airiest costumes in order to give the visitors a little encouragement.

"On a day like this, for instance, white trousers, a white coat, white shoes and open-work socks might seem to be a little uncomfortable, but the public-spirited citizen could always get around this difficulty by wearing three suits of underclothes.

"If the Chamber of Commerce took up this proposition, it might mean thousands of dollars to the town.

"Now what d'ye think of that?"

"Isn't that the idea of a fertile brain, capable of getting below the surface and grasping the real root of the trouble?"

"And certainly the argument is plausible. What a disappointment it must be to the men and the women not to be able to wear their smart clothes just because it makes them feel conspicuous.

"And if it will help matters for the residents to sport cobweb costumes, the residents ought to begin discarding the nice warm clothes right away.

"Now, if this matter were taken up by the Chamber of Commerce on well organized lines, wonders might be accomplished. The costume for the day might be made known to league members by a postal card.

"These notices would probably read something like this:

"Members of the Chamber of Commerce Light Clothes League will please dress in the following: Coat, pongee; trousers, pongee or serge; shirt, pale blue or pink silk; shoes, white canvas or buckskin (neatly pipelaced); socks to match shirt; hat, smooth straw sailor with light-colored ribbon.

"Members are requested to carry a light bamboo swagger stick and colored handkerchiefs, and light gloves will be appreciated.

"Be on the street and round the hotels as much as possible, and meet

all trains. (Weather forecast for tomorrow is: 'Light southeasterly winds, fog and probably light showers.')

"I respectfully pass along my friend's suggestion, and refer the whole matter to the Chamber of Commerce in conjunction with a committee to be named by the laundrymen."

A few weeks later, Sept. 13, Secretary Gidney of the Chamber of Commerce decided to reverse the old saw that everybody talks about the weather but nobody does anything about it.

The Press announced that Gidney was arranging to change the system by which weather reports were made out here, "to give the locality a better average of clear days."

He made an important discovery regarding the system of weather reporting along the coast, which revealed that other cities had been "able to send out better reports when the weather conditions were no better than here."

He found out that the local weather observer reported a "clear day" only when it was clear and bright through the entire day.

The San Diego weather forecaster informed him that observers in San Diego and elsewhere reported a clear day when it was cloudy or foggy for three-tenths of the day or less.

Since coast fogs raised late in the morning during summer and fall months, resulting frequently in a clear day for over half of it, San Diego took advantage of this fact to report many "sunny" days.

Santa Barbara weather observers hoped to adopt that system, and to secure an instrument used by San Diego, reporting clear and cloudy weather automatically. There "the character of the day represents daylight cloudiness, i.e., such as automatically registered by the automatic sunshine recorder."

It might have been easier for our citizens to be consoled with a Press observation Oct. 4, 1881: "This can be the most economical place to live, since ladies may wear the same fabrics all year. The coming of winter does not necessitate expensive furs, and the reign of June can be serenely enjoyed without costly laces and gossamer gremelines."

The fall of Bani-Sadr

Even the redoubtable Ayatollah Khomeini is powerless to prevent clashes in the streets. —Hindustan Times, New Delhi

Mr. Bani-Sadr's call for "resistance against tyranny" by his followers is portentous. —South China Morning Post, Hong Kong

The Iran of the Ayatollahs has become an even more distant planet. —Jornal do Brasil, Rio de Janeiro

Iran may have lost its last hope for a peaceful transition to civilian, secular government. —The Gazette, Montreal

The tossing out of weak, well-intentioned President Bani-Sadr makes it likelier that the turbulence in Iran will suck in the great powers. —The Economist, London

Bani-Sadr is a wanted man, and Iran closes in on itself. —La Repubblica, Rome/Milan

The hardline sector is on the verge of total conquest of power — a prelude to the final collapse of the Iranian revolutionary process. —Clarín, Buenos Aires

Like all revolutions, the Iranian revolution is consuming its perpetrators. —Yediot Achronot, Tel Aviv

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Weapons labs, the university and the governor

By Walter H. Capps

The decision of the regents of the University of California to renew contracts with the federal laboratories which develop the nation's nuclear weapons is full of complication. The prevailing opinion is based on the judgment that the arrangement is supported by "the national interest," as this is perceived today by the president and Congress of the United States.

David Saxon, UC president, has said repeatedly that assigning this task to the university is to place it in competent hands. Such is more reliable, he contends, than allowing some other segment of the industry to take it on, particularly those less highly trained, perhaps, who may be in more convenient position to exploit the situation for personal gain. Gov. Brown, on the other hand, has wanted to sever the relationship. But, sensing the futility of this, he has proposed alternatively that the university establish a "peace institute" — a Center for Global Security — to be paid for, in part, by some of the revenue the university receives for running the federal labs. In his view, a university involved in the weapons business should also take deliberate steps to assess and propose conditions advancing the cause of international peace.

The fundamental question concerns the place accorded the national interest and the university's responsibility thereto. David Saxon, supported by a majority of the regents, believes that as long as the national interest is understood to be served by the development of nuclear weaponry, the University is sanctioned to play whatever corroborative role is compatible with its fundamental intention. Gov. Brown can mount a forceful appeal too, for, surely he is not alone in reckoning international peace to lie within the pursuit of the same basic interest.

And yet the issue for the regents is whether it is in the best interests of the university to promote either aspiration on such terms. Arguments against nuclear-weapons support can be made more compelling and dramatic than arguments against world peace. But the deeper question is what the basic premise does to the character, moral fiber, integrity and independence of the university. Each is endangered if the work of the university becomes so directly subservient to "the national interest, no matter to what extent the principals find themselves in agreement with accepted or semi-official renditions of it.

These were the issues at stake too, though in minuscule form, in the recent controversy about the purpose of the Huchins Center for the Study of Democratic Institutions. I had supposed that an intellectual center, privately funded while affiliated with the University of California, could remain free to pursue its chartered objectives, at least sufficiently so to sustain its identity as an advocate of human rights, civil liberties, personal freedoms, and social justice.

I believe the outcome of the discussion is that agencies of the university can effect no roles which might qualify as political espousal, but must restrict their ambitions to academic pursuits such as the search for truth and scholarly rigor, making certain that all serious reflection on important issues be given a fair hearing.

All right. But if this is a matter of policy, on what basis can the regents decide in favor of nuclear-weapons involvement? Isn't it a distinctively political reading of the situation that shelters this cause under the protections of "the national interest?" (Predictably Regent Glenn Campbell, head of the Hoover Institute, voted for the resolution; Stanley Sheinbaum, long-time advocate of civil-libertarian causes, abstained; the governor registered his opposition. Each one, devoutly committed to the national interest, nevertheless voted his politics.)

Or, if there is pretense that sponsorship of the nuclear labs does not enmesh the university politically, then why are human rights and personal freedoms (both constitutional rights), and, yes, even social justice, international peace and global security not protected in the same way?

The policy must be consistent. If the contract with the nuclear labs can be sustained, why not permit the alternative to occur too? Or, if the latter is difficult to create, shouldn't the former be subject to the same restriction?

Until the principle is clarified, politics and financial expedience will be the ruling factors. Under this combination, and more and more as defense budgets increase, the "national interest" will hold the university captive.