

# Burger Silent on Judge's Conflict Role

By Jack Anderson

For 150 years, America's black-gowned judges have sat high on their judicial benches basking in prestige. Admission to their select circle is like joining sort of a gentlemen's Cosa Nostra. They have their own code of omerta, or silence, about what goes on behind their paneled portals.

Now, the spotlight's hot glare upon G. Harold Carswell, Clement Haynsworth and Abe Fortas has shown that judges may also have feet of clay. When they are caught in wrongdoing, however, they are as evasive as Mafia chieftains.

This column, for instance, reported recently that Chief Justice Warren Burger was involved in an ethical conflict. He is sitting on one of the most venomous cases in Supreme Court history, which grew out of a bitter feud between two federal judges, Alfred Murrah and Stephen Chandler.

Burger failed to disqualify himself from judging the case, despite a personal friendship and other ties with Murrah. The Chief Justice played a backstage role, for instance, in naming Murrah to the \$40,000-a-year directorship of the Federal Judicial Center.

This column, of course, sought Burger's comments,

but he acted as if it were beneath his dignity to respond.

## Clark's False Report

Instead, decent old retired Justice Tom Clark, whom Murrah is succeeding at the Judicial Center, came to Burger's defense. In a letter to this column, he declared flatly but falsely: "Chief Justice Burger took no part in the selection of Judge Murrah."

But Murrah himself, a crusty Oklahoman, is devoted to the truth. With obvious pain, he conceded to this column that Burger not only was instrumental in his appointment but was his single most important supporter.

"If he hadn't agreed to my appointment, I never would have accepted it. I know it was agreeable with him," Murrah said, his voice strained.

Although he was the main candidate for the job even before Burger came to the Supreme Court in June, 1969, Murrah made clear to friends that he "wouldn't want to come in without his (Burger's) final consent and approval."

When Burger attended a judicial conference at Jackson Lake, Wyo., in July, Murrah huddled with him in the shadow of the Grand Tetons. The plainspoken Oklahoman indicated he would accept the Judicial Center job if it were offered.

"But I let him know I wasn't seeking it," he said.

Burger replied: "Give me some time to think about it."

## His Backstage Role

Clark stated in his letter that Burger had played no part in selecting Murrah at the Judicial Center's December meeting. Actually the meeting was held in November, and Burger carefully avoided formal participation. But behind the scenes, he played the crucial role.

He consulted privately with the chairman of the nominating committee, Chief Judge Edward Devitt of the U.S. District Court in St. Paul. As late as February, Devitt and Burger discussed the Murrah appointment. Afterwards, Devitt called Murrah to report on their conversation.

"Judge Devitt said he had seen the Chief Justice, and he let me understand that it was all right," recalled Murrah. Devitt also confirmed to this column that he had spoken with Burger about Murrah. But he was evasive on what was said and contended that Burger's secret talks didn't constitute "taking part" in Murrah's appointment.

In March, Burger excused himself from the formal vote on the appointment. But in private, he had already made plain what the result should be. A few days later, Burger announced Murrah's appointment as a "worthy successor" to Justice Tom Clark.

Clark also claimed in his let-

ter that Murrah had waived the \$40,000-a-year salary. It's true Murrah took the job more for its prestige than its financial rewards. Instead of taking the salary, he will continue to draw his \$42,500-a-year senior judge's pay.

Despite Clark's strange misrepresentations and Burger's Bygantine secrecy, the facts can no longer remain hidden. It will be interesting to see whether the Chief Justice, in view of this clear conflict, will withdraw from the Supreme Court case involving Murrah.

Note: Burger supported Murrah for the directorship of the prestigious Judicial Center despite a confidential House Judiciary Committee report that harshly criticizes Murrah. He accepted \$20,000 from an oilman's estate in fees while a federal judge. Murrah also participated in deciding an Occidental Petroleum Company case in which his former law partner had an interest.

These facts were whispered in judicial circles well before Burger announced Murrah's appointment. Again, Burger refused to tell this column whether he had heard the whispers or was aware of the confidential House report. Murrah, in contrast, honestly acknowledged the facts when questioned by this column. With total assets of only \$63,000 after 33 years on the bench, Murrah clearly had not used his position for profit.