

Burger Stampede Fault of Senate

By Drew Pearson
and Jack Anderson

Sen. Frank Church of Idaho delivered a statesmanlike address last week urging Senate colleagues to reassert their right under the Constitution to "advise and consent" regarding foreign affairs.

He said that the Senate had so abdicated in regard to the conduct of foreign policy that the White House had got the United States embroiled in problems which cost billions. Sen. Church, a Democrat, had Democratic Presidents in mind more than Republicans, along with their policies on Spanish military bases, the Dominican Republic and, of course, Vietnam.

Though Sen. Church is 100 per cent right, the fault in large part is that of the Senate. It gets stampeded too easily. More and more, Senators have become like Idaho sheep, easily herded into approving whatever the Executive, whether a Democrat or a Republican, proposes.

The herd instinct was never more apparent than when 96 Senators were stampeded into a quickie approval of a man who will preside over the courts of the United States for the next ten to fifteen years—Chief Justice Warren E. Burger.

After only one hour and forty minutes of Senate Judiciary Committee consideration, Burger's confirmation

reached the Senate floor. During the debate which followed, Sen. Gaylord Nelson of Wisconsin walked over to sit beside big Jim Eastland of Mississippi, chairman of the Senate Judiciary Committee. He showed Eastland a column quoting Burger as being opposed to the jury system, to the Fifth Amendment and to the traditional American principle that a man is innocent until proven guilty.

"This column raises important questions," said the Senator from Wisconsin.

"Oh, you can't believe anything Drew Pearson writes," replied the gentleman from Mississippi.

"That's not the issue here," replied Nelson. "The issue is whether the new Chief Justice was asked his opinion on these questions."

"Here is the record," said Eastland, showing a typewritten transcript of Senate hearings toward Nelson.

No Readable Record

The record was not printed and had not been made available to other Senators to read. It was a private copy held by the Chairman of the Judiciary Committee and it was impossible to do more than thumb through it during the brief Senate debate on Burger's confirmation.

When the vote was taken, not one Senator really knew what Burger's views were on the most important issues of

American jurisprudence. But this was their own fault. Under the Senate rules, any Senator could have forced postponement of the debate.

The vote on Burger was just as hurried as on the Gulf of Tonkin resolution, which gave LBJ a free hand to wage war in Vietnam and which Senate leaders have been regretting ever since. There were two dissenting votes on the Tonkin resolution—by Wayne Morse (D-Ore.) and Ernest Gruening (D-Alaska). In the Burger vote there were three dissenting voices—Nelson's and those of Steve Young, Ohio, and Gene McCarthy, Minn. William Fulbright of Arkansas abstained. All are Democrats.

Meanwhile, it has been revealed that the new Chief Justice was engaged in a real estate deal with an influential lobbyist which appeared to go further than real estate ventures by other judges which were criticized; got a former law client, West Publishing, to subsidize a lecture series at New York University as Abe Fortas did at American University; and finally that he spoke at the Center for the Study of Democratic Institutions at Santa Barbara, partially subsidized by the Parvin Foundation from which Justice William O. Douglas has just resigned.

Most of these activities were quite unimportant. What was important was the views of the new Chief Justice at Santa

Barbara in which he criticized the jury system and the Fifth Amendment, and expressed doubt that we should continue the principle that a man is innocent until proven guilty.

Soviet Jurisprudence

It would shock some members of the Senate Judiciary Committee, but Burger's ideas are similar to the Russian system of jurisprudence. The Russians do not have the right to avoid self-incrimination, namely the Fifth Amendment. They do not have juries. And once it's evident that a man is guilty, they place more emphasis on social aspects of crime.

The jury system was originally established in this country when we were a Nation of small towns and rural areas and when neighbors could sit in judgment on people they knew. Today in a Nation of big cities, juries have no knowledge of the defendants. In other words, Chief Justice Burger may be right about some of his ideas, even though they're identical with Russian jurisprudence.

But Senators who voted on him should have had a chance to know all about him. After all, he'll be the top judge of the United States for ten to fifteen years.

Chief Justice Burger is now taking his seat on the bench. We wish him many years of enlightened service.