



Marquis Childs Nixon Shadow Coveys Court

WHILE it figures little if at all in the current political dialogue, one result of President Nixon's reelection would cast a long shadow on an indefinite future. In another four years Mr. Nixon would in all probability remake the Supreme Court of the United States in, if he holds to his belief in "strict constructionists," his own image.

That he could carry Congress for his party in the event of his reelection in November is unlikely. By naming five or six justices to the high court he would dominate the third coordinate and independent branch of government. Already four Nixon judges led by Chief Justice Warren E. Burger sit on the court.

Three "liberal" members out of the past survive. Given age and infirmity, one or more is likely to be replaced in the coming four years. That would mean an outright Nixon majority.

Increasingly the "liberal" judges are in dissent and the court is moving in a more conservative direction. From within the court come unhappy rumblings about the new order. The Chief Justice is said to want to make the highest tribunal a personal court.

Cited as evidence is his insisting when he is in the minority on assigning in conference the justice who will write the majority opinion. Traditionally over years when the Chief Justice is with the dissenters the senior judge with the majority assigns the opinion writer. This may seem a small matter, but it touches the prerogatives of independence long a part of court tradition.

AN INCIDENT causing concern within the court seems to link the Chief Justice with President Nixon's view that Congress can limit the scope of the courts in judicial review. The court denied a hearing to the D.C.

Federation of Civic Associations over the Three Sisters bridge across the Potomac River, long opposed by activist citizen groups. Chief Justice Burger, joining in the denial in a concurring opinion, wrote the following conclusion:

"In these circumstances (Congress having approved the bridge) Congress may, of course, take any further leg-

islative action it deems necessary to make unmistakably clear its intentions with respect to the Three Sisters project, even to the point of limiting or prohibiting judicial review of its directives."

ALL THIS MAY, of course, be no more than the troubles of a shakedown cruise. Mr. Burger was named Chief Justice in June of 1969 and it can be argued that he has hardly had time to shape up a new court. The disaster of the President's nomination of G. Harold Carswell to the court and the subsequent release of a White House list of possible nominees that included Senator Robert C. Byrd of West Virginia was hardly a steadying influence on an ancient institution rocked by the controversy over Abner Fortas.

Yet both admirers and critics of the now retired Chief Justice, Earl Warren, recollect the way in which he pulled the court together after his appointment by President Eisenhower in 1953. Warren's deep conviction was the need to reactivate the amendments in the Bill of Rights adopted after the Civil War as they related to justice for the minority race.

HE HAS DIVORCED himself entirely from the court spending a great deal of his time in seminars in law schools across the country. He was recently at the University of California in Berkeley for three weeks. In the dedicatory address of the Seeley G. Mudd Law Building at Washington University in St. Louis, he noted the growing trend toward suppression of civil rights and human liberties:

"The right of the press to publish is being attacked; the rights of association and of dissent are being questioned; detention without warrant is being advocated; the rights of privacy in the home and in communications are being disregarded; the right against self-incrimination is being restricted and the words 'due process of law' and 'equal protection of the law' for millions of minority citizens are in jeopardy."

That is a warning flag raised by one who has been through the wars and has emerged with a serene and courageous spirit.

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