

Nine Lonely Men

(Other Editors Speak)

While the people of the United States wait for the decision in the case of their government vs. their president, the eight participating Supreme Court justices go about what Arthur Goldberg calls "the lonely business of judging."

Lonely indeed. Secluded in their marble chamber, some of them avoiding even news accounts of litigation in progress, the old men operate in Washington's one remaining isolation ward. They do not have the luxury of polls to gauge the republic's attitude. There are no leaks to relieve the pressures of their responsibilities. There is, as Goldberg says, communion "with the great spirits of the masters of the law who preceded," but otherwise: "Each man must decide the matter entirely by himself."

Goldberg should know. He is a graduate of the supreme legal monastery (1962-65), one of four living former justices. Now in private Washington practice, he remembers his first day on the big bench as "the time when my telephone stopped ringing. Nobody calls a Supreme Court justice. They are men apart. The public view of them is that they are wizards of Oz, to be respected but never approached lest the Great Decision-Making Process be interrupted.

The public view is, of course, excessive. But there is, according to Goldberg, much that is monkish about the men who can integrate schools, outlaw pornography and judge presidents.

"You do not shop for opinions," says Goldberg of members; the wives, sons and bowling partners of the justices are never consulted about matters before the court. "When I was there, I didn't talk to anybody outside the court. I didn't even tell my law clerk how I'd vote."

Instead, members consult each other in a variety of ways. One-to-one contact is naturally frequent, with exchanges of ideas, opinions and sometimes arguments. "They don't roar at one another," says a court official, "what they do is use words of great

weight with which to thump each other over the skull." Albeit, the tale is told of one early justice who got so angry at a fellow that heavy words were not enough — so he knocked over the adversary's water glass.

Each Friday the members gather in conference to vote. But the debating does not necessarily stop there. If the ruling is unanimous, each member must still agree on a final draft of the written opinion — no easy thing, says Goldberg, who remembers once writing an opinion 10 times before the court would accept it. At times members have changed their votes after reading the opinion; at times a single phrase has broken the unanimous decision.

If the verdict is divided, or if separate opinions are wished (each

justice wrote his own opinion in the Pentagon Papers case), the writers often try last-minute appeals for their side. The opinions circulate freely among the members, often with some soft-shoe politicking: "If I change this part, will you then join me?" Or: "Look, how can you write this? Only last month you wrote the opposite."

Despite the inside influencing, Goldberg says deadline changes of votes are as rare as bawdy jokes in the court. As for outside influencing, he says it doesn't exist, at least it didn't for him.

"I made a practice of avoiding newspaper editorials on a case before court. I felt that as a judge my concept of the Constitution should be wider than that of any newsman or editor."

But if the court is difficult to influence, the public it serves is likewise. As we wait now for the Nixon judgment, it would be well to remember that Brown vs. Board of Education did not immediately integrate the schools, that dozens of pornography decisions have gone unheeded, and that, in fact, once when the court reversed the sentence of a convicted murderer he was executed anyway.

Thus the judgment on Richard Nixon, no matter the lonely wisdom involved, may as in past decisions raise more questions than answers.—By Tom Tiede, Newspaper Enterprise Association.

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