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4 Nixon Justices Dominate Decisions

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WASHINGTON, July 2—The voting solidarity of the four Justices named by President Nixon to the Supreme Court fell off perceptiby during the term that closed this week, but their power to control decision-making remained strong.

Chief Justice Warren E. Burger and his three colleagues did not maintain as united a front in weighing the legal issues as they had during the previous two years, but their generally conservative viewpoint was backed more frequently than before by two more moderate members of the Court.

As a result, the four newest Justices continued to dominate a sizable majority of this term's decisions, generally faforing strict interpretation of the Constitution, curbing enforcement of the antitrust laws, enforcing criminal sanctions vigorously, and cutting back on Federal Court jurisdiction.

The Nixon appointees, headed by Chief Justice Warren E. Burger, voted as a bloc on 69 per cent of the cases the court decided, down from 75 per cent during the previous term, but they received strong support from the two so-called "swing" Justices, Byron R. White and Potter Stewart.

Almost Always Majority

Figures compiled by The New York Times showed that Justice White voted with the Burger bloc in 91 per cent of the cases in which it was solid, compared with 85 per cent the term before. Justice Stewart's record for joining the four Nixon Justices rose from 83 to 87 per cent.

With such allies, the four Nixon men were able to form the nucleus of a majority 98 per cent of the times that they voted together. In only two instances among the 94 in which the Burger bloc voted as a unit did it wind up in the minority.

Only eight times among the 137 rulings that the high court handed down did Chief Justice Burger and his three colleagues fail to command a majority when three or more of them voted together. The three other Nixon Justices are Harry A. Blackmun, Lewis F. Powell Jr. and William H. Rehnquist.

Solidarity also declined in the Court's liberal bloc, which consists of Associate Justices William O. Douglas, William J. Brennan Jr. and Thurgood Marshall. They voted together on 57 per cent of the Court's cases, compared with 75 per cent during the 1973-74 term.

That figure may reflect Justice Douglas's absence from the Court during all but three weeks of the last six months, while he was recovering from a stroke. He did not cast a vote in 18 cases in which he could have adopted the joint position of Justices Brennan and Marshall if he chose to.

During its third full term, the Burger court continued a trend toward fewer sharply divided decisions. The share of cases decided with two or fewer dissenting votes has gone from 54 per cent two years ago to 56 per cent last year to 68 per cent for the term just closed.

Percentage Down

This means that the percentage of 6-to-3 and 5-to-4 decisions handed down by the Court has dropped from 46 to 44 to 34 over the same period. Even if all eight cases that were put over until the next term had been decided 5 to 4, the percentage of these contentious cases would have fallen to 38.

With the Burger bloc not quite as rigid as in past years, the number of cases on which one of the four Nixon Justices deserted the other three rose from 23 last term to 27. Justice Rehnquist showed the greatest independence with 10 such votes; Justice Blackman cast eight, Justice Powell seven and Chief Justice Burger only two.

The Burger bloc was most consistent in the area of criminal law, which constituted nearly one quarter of the 1974-75 docket. There the four Justices voted together on 88 per cent of the cases and formed the nucleus of a majority on each occasion.

The Nixon appointees formed a solid front on 86 per cent of the cases involving court jurisdiction, 80 per cent on education, 71 per cent on discrimination, 65 per cent on business and 63 per cent on taxes.

During the 1974-75 term, the share of the Supreme Court output that represented reversals of lower court diecisions, both state and Federal, reached 66 per cent, a record for the Burger court.

This means that the Justices rejected as legally unsound the reasoning of the lower courts in two out of three of the disputes it heard. To some extent, however, this reflects less upon the competence of those courts than on the care of the high bench in selecting questionable decisions to review.

Of the 11 circuits of the United States Court of Appeals, only three in the East managed to break even or better in winning Supreme Court affirmation of their decisions. Only one case from the First Circuit in New England reached the docket, and it was affirmed. In the Second Circuit—New York, Connecticut and Vermont—six rulings were affirmed and five reversed. In the third—New Jersey, Pennsylvania and Delaware—there were five affirmations and five reversals.

Among the larger circuits, the Fifth in the South was affiremd three times and reversed five, and the Ninth in the Far West was affirmed five times and reversed six.

The District of Columbia Circuit, generally rgearded as the most liberal in the country, won five affirmations while suffering eight reversals.

Among the three-judge Federal District Courts, whose rulings, largely on constitutional questions, are appealable directly to the Supreme Court, the Justices reversed 19 and affirmed only nine. Chief Justice Burger and several of his colleagues have urged the abolition of these courts to help ease the high court's work load.