

Nixon Imprint, Through

By William Greider

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Richard M. Nixon has left the government, but his imprint on it will endure for years — a legacy of hundreds of Nixon appointees on federal regulatory agencies and the U.S. judiciary.

For starters, Mr. Nixon appointed more federal judges than any other President in history — 220 of them. His people, furthermore, now fill all the seats on eight regulatory agencies, from the CAB to the FCC to the NLRB, and they hold the majority on four others, including the Federal Reserve Board and the Interstate Commerce Commission.

What are those men and women like?

One veteran court watcher, former American Bar Association President Bernard G. Segal, insists that Mr. Nixon's selections for the federal bench were high in quality — a better performance than some of his predecessors in the White House.

"You can't take the credit away from him," Segal said. "If you're going to condemn him for the things he did that were wrong, as you must, you should also give him credit for the good things he did. The federal judiciary is better off for his being President."

That opinion arouses hot dissent in some quarters, particularly among liberals who successfully opposed two Nixon nominees for the Supreme Court and who frown upon several others who made it.

"The fact is," said civil rights lawyer Joseph Rauh, "what Nixon did to the Supreme Court is a scandal and he tried to make it even worse."

Mr. Nixon's impact on the regulatory agencies, which set rates and grant routes and licenses and enforce consumer-protection laws, is an equally volatile question.

John F. Cushman, executive director of the Administrative Conference of the

United States, told Congressional Quarterly in its survey of the subject: "Generally speaking, the Nixon appointees to these agencies are no better or no worse than those of his predecessor."

But consumer advocates around Washington denounce Mr. Nixon's regulatory appointments as pro-business in general and often mediocre. They accuse the Nixon administration of tightening the grip that special interests have traditionally held on the government regulatory machinery.

In two instances, the Civil Aeronautics Board and the Securities and Exchange Commission, Mr. Nixon's regulatory agencies were tainted with the same sort of cozy special-interest dealing that hovered over the Nixon White House. The one striking exception is the Federal Trade Commission, where even the former President's critics agree that the Nixon appointees have reinvigorated the FTC's enforcement of consumer-protection laws.

In terms of judicial appointments, Segal bases his high appraisal on Mr. Nixon's consistent acceptance of the ABA's recommendations. When the ABA's standing committee on the federal judiciary found a candidate "not qualified," he was not nominated, despite a lot of pressure sometimes from the Republican senators who were sponsoring the homestate lawyer.

The only exception came in the closing hours of the Nixon administration when Mr. Nixon nominated Connecticut Gov. Thomas Meskill for a seat on the Second U.S. Circuit Court of Appeals in New York. The ABA committee has found Meskill "not qualified," largely because he lacks courtroom experience as a lawyer, and the nomination is still pending before the Senate Judiciary Committee.

According to Segal, Mr. Nixon's record compares favorably with his Democratic

predecessors, Johnson and Kennedy, and even with Eisenhower. It was much better than Truman's performance, Segal said, when the President usually ignored the ABA committee.

"Whatever one thinks of President Nixon," Segal said, "his judicial appointments have been excellent. Nixon was the only President from Eisenhower on who had no appointments who were not qualified—until the very end."

When John F. Kennedy was President, he nominated eight judges in his first year who did not pass muster with the bar association, according to Segal, largely to settle election debts.

One administration official, who is familiar with the Nixon appointees, agreed that the new judges have met the ABA's minimum standards but he said the federal judiciary is still not getting the best qualified men and women for the bench. It won't get them, he said, until a future President seeks out those who are outstanding candidates—instead of relying exclusively on those who have political sponsors in the Senate.

Segal gives a lot of the credit for the Nixon appointments to former attorney General Richard G. Kleindienst—since convicted of lying under oath to a Senate committee. As the administration's first deputy attorney general, Kleindienst turned away hundreds of

unqualified candidates being pushed by various Republican senators, Segal said.

But Segal's view of what represents qualified judges is much too narrow for many lawyers. The ABA committee, after all, approved both Clement Haynsworth and G. Harrold Carswell for the Supreme Court, yet they were rejected by the Senate which refused to confirm them.

"The bar association's standards leave me cold," said Rauh, who was prominent in the campaigns against Haynsworth and Carswell. "Anybody who could have approved Haynsworth and Carswell, that's not much of a standard. Any fence Carswell can climb over is underground."

The ABA committee praises candidates on standards which are studiously non-political, dealing largely with a man or woman's experience as a lawyer. Haynsworth was accused of a conflict-of-interest and Carswell of racial bias when they were opposed by liberal-labor groups. The bar committee did not rescind its approval after investigations revealed flaws in each judge's past.

"If you appoint anti-public-interest judges to the Supreme Court," said Rauh, "I can't believe there would be a great difference in the lower courts."

Nixon appointees now

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hold appellate courts, but they have no strong ideological concern to the new judicial appointments. Texas law professor Alan Wright, a student of the federal judiciary represented Mr. Nixon in legal appeals.

"In the nature of things," Wright said, "the inferior courts have to take their direction from the Supreme Court and much less from the appointment of lower-court judges. To the extent the Supreme Court may have taken a more conservative view of matters, one would expect the lower courts to follow course."

In terms of regulatory agencies, the Nixon legacy is more complicated, though it is widely agreed that his appointees generally strengthened the representation of industry on the various boards and commissions.

The major exception is the FTC where Miles Kirkpatrick, followed by Lewis A. Engman as chairman, stimulated a more aggressive attack on consumer problems and focused the commission's energy on major issues which have wide economic impact.

Mark Silbergeld of Consumers Union said consumer advocates have been consistently surprised and pleased by the Nixon nominees to the FTC. "I think his appointees are very wisely turning their attention to antitrust and economics and doing fewer things, but things which have much more impact."

Why were FTC appointees generally independent compared with men and women named to other regulatory boards? Silbergeld thinks the answer is that other agencies regulate specific industries—broadcasting, energy, shipping, airlines and so forth—but the FTC's charter covers a broader spectrum.

"It doesn't regulate any particular industry and it doesn't truly regulate," Silbergeld said. "It enforces laws, but it doesn't grant routes or set rates. That makes it very different. You don't have that close relationship with a very narrow industry—like the CAB and the major airlines."

Mr. Nixon's CAB chairman, Robert D. Timm, has been under fire lately because he has been vacationing with some of the major airline officials whose com-

panies he is supposed to regulate. Timm junketed to a Bermuda vacation with airline executives, arranged by United Aircraft, and also golfed in Portugal with a TWA official.

Reuben Robertson, a consumer advocate in airline matters, charges: "There's no question that the CAB is at its lowest point in history in terms of regulation, of consumer interests, and questions of integrity."

The SEC, which traditionally took pride in its insulation from under-the-table influence, was burned by the Vesco affair, when its new chairman, G. Bradford Cook, played intermediary for political influence and was forced to resign in embarrassment.

The Federal Power Commission, which oversees electric power and natural gas, among other things, is now clearly committed to industry interests, including de-regulation of natural gas. Forbes, the business magazine, once described FPC Chairman John Nassikas this way:

"It's hard to see how the troubled natural gas industry could have a regulator more to its tastes . . . [Nassikas] sometimes sounds

more like a natural gas executive expounding about how the FPC should regulate his industry than a man burdened with the actual responsibility of regulation."

The Federal Communications Commission, now chaired by Richard E. Wiley, also has a pro industry cast, though the FCC majority generally favored broadcasters during the 1960s, too, when Democratic Presidents were making the appointments.

Dean Burch, Mr. Nixon's first FCC chairman, was given high marks for effective administration, but Al Kramer, a citizens' group representative, said many middle-level professionals have left the agency "because of disillusionment with the mediocrity of the commission."