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New Conservatism

Burger Court Speculation

WASHINGTON — (NNS) — The most popular legal game of the season is to speculate on the political and constitutional effects of the new conservative majority at the Supreme Court.

Will it flatly reverse prior decisions of the "Warren Court" on such issues as obscenity, police confessions and wiretapping?

Or will Chief Justice Warren Burger — and at least four other conservative justices — leave the old decisions alone, but decline to expand the Constitution to give new rights to the poor consumers, women seeking abortions and newsmen contesting grand jury subpoenas?

Sense of Gloom

One bellwether of liberalism, the American Civil Liberties Union, reported last

month "there is a sense of gloom among many persons committed to civil liberties" when they look at the new Supreme Court.

From 1965 through 1968, ACLU said it had won 80 percent of its cases before the Supreme Court. But last year it only won 50 percent and "most ACLU attorneys expect to do even worse" in the years to come.

A lawyer from the Legal Defense and Education Fund told poverty lawyers meeting in Denver last month: "I do not think that the Supreme Court is going to ban discrimination against poor people in such municipal services as housing, roads and zoning."

Will Press

However, civil rights lawyers also believe that the Supreme Court will continue to

press for school desegregation, voter reapportionment and free legal services for indigent defendants.

One strong hint of a constitutional change came recently when the court, by a 4-3 vote, voided two obscenity prosecutions.

The breakdown was the liberal trio of Justices William Douglas, William Brennan Jr. and Thurgood Marshall plus "swing-vote" Justice Potter Stewart.

The three dissenters were the Chief Justice and Justices Harry Blackmun and Byron White, also a conservative liberal switch-hitter.

Five Votes

With the addition of Justices Lewis Powell and William Rehnquist, Burger would have the necessary five votes to start toughening up on obscenity.

Even without the addition of the two latest Nixon appointees, a Burger-led majority last term was able to chip away at prior decisions on police confessions, segregation of municipal facilities and discrimination against poor people in municipal housing.

One result of a clearly denominated "Nixon Court" will be to inject its decisions into the 1972 political campaign on such controversial issues as the constitutionality of the death penalty, wiretapping, subpoenas to newsmen and investigations of political radicals.

Into Congress

Another political byproduct of the new conservatism could be to turn liberal activists away from the court and into the halls of Congress and state legislatures to lobby for new social reforms.

But the legislative process is generally slow and more compromising in its goals than the courts.

And many law school professors are wondering aloud whether the younger generation — already alienated from the establishment — will be willing to wait.