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Supreme Court Term Ended With Theme of National Unity

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"There is no evidence, empirical or historical, that the stern 19th century American censorship of public distribution and display of material relating to sex in any way limited or affected expression of serious literary, artistic, political or scientific ideas," Chief Justice Warren E. Burger observed.

"On the contrary, it is beyond any question that the era following Thomas Jefferson to Theodore Roosevelt was an 'extraordinarily vigorous period' not just in economics and politics, but in belles lettres and in 'the outlying fields of social and political philosophies.' We do not see the harsh hand of censorship of ideas—good or bad, sound or unsound—and 'repression' of political liberty lurking in every state regulation of commercial exploitation of human interest in sex."

With that, Chief Justice Warren E. Burger sought to allay fears that the Supreme Court's new local-option guidelines on obscenity would usher in a new era of thought control and cultural isolation in the United States.

Whether Burger's assurances will prevent a rash of "raids on libraries," as Justice William O. Douglas feared, the court assured a mixed national pattern of free expression here and strict censorship there. The "quality of life" which Burger said he was trying to enhance will be quite different, depending on location.

This was a most conspicuous triumph of the anti-permissiveness forces and states' rights over a national standard broadly safeguarding free speech and press, but it was not typical of the term just ended.

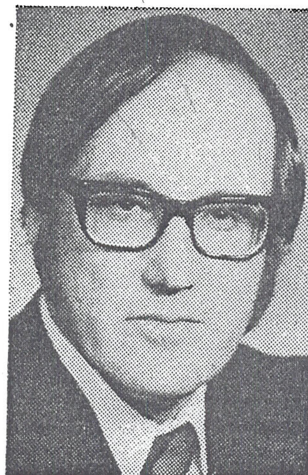
On the contrary, in many ways the term developed a theme of national unity. The court moved toward one rule of law for both North and South in school desegregation, a new national commitment to secular public education, removal of state barriers against new residents and aliens, more inclusion of women and blacks in integrated surroundings and more power to the people in the battle against pollution.

Even the court's controversial abortion decision had its unifying features. A woman, her rights now the same everywhere, need no longer leave her home state to terminate her pregnancy and the "right to life" forces have a common target—the court itself—for their anger.

CHIEF JUSTICE BURGER
... joined dissenters

JUSTICE POWELL
... reaffirmed rights

JUSTICE BLACKMUN
... call for self-denial



JUSTICE REHNQUIST
... a lone voice

Yet with new majorities, the court went far to create a distinctive brand of "new federalism." Local political boundaries took on new significance as the court honored them as a basis for wide departures from "one man, one vote" reapportionment and unequal state spending for public education.

And in what the justices treated as a sanitation measure, the majority provided a 10 per cent margin of error in the reapportionment of state legislatures. This, said Justice Byron R. White, was to keep the courts, which have spent a decade in the political thicket, from becoming "bogged down in a vast, intractable apportionment slough"—a swamp or muddy backwater—in drawing lines for fairer representation.

The new majority went further and finally found a stopping point for the election reforms pressed by former Chief Justice Earl Warren. Warren had written, "Legislators represent people, not trees or acres," but in March the Burger Court held that the vote could be limited. Landholders may enjoy it exclusively and in proporion to their holdings in districts formed to handle such specialized but vital government functions as managing the water supply in arid Western counties.

The most voteless Americans of all, black school children in Washington, D.C., had a taste of power as the court reinstated their lawsuit to restrain distribution of an allegedly libelous House District Committee report on D.C. school conditions.

But the court found a way to ignore the desperately poor.

In a case involving a man named Robert Kras, who was admittedly so broke that he couldn't afford to pay a $50 bankruptcy filing fee, the court excluded Kras from

the benefits of federal bankruptcy procedures. Let him pay the fee in installments by denying himself "a pack of two of cigarettes" each week, said Justice Harry A. Blackmun. Dissenting Justice Thurgood Marshall said it was "disgraceful for an interpretation of the Constitution to be premised upon unfounded assumptions about how people live."

This was a question of due process mixed with equal protection, which is a principle that reminds Harvard law professor Paul A. Freund of the little boy who knew how to spell "banana" but didn't know where to stop. It took an iron will to rule against Kras, but a majority was determined to find another stopping point in the due process-equal protection revolution.

Some members of the middle class—the Democratic National Committee and a group of businessmen protesting the war—felt left out after the court rejected their pleas for guaranteed access to the electronic communications media, even when they had the money to buy part of the time reserved on TV and radio for advertising. Rejecting arguments that the First Amendment required the court to crack a media monopoly, the court said the broadcasters had a right to use "journalistic discretion," even in their advertising.

The justices very nearly gave newspapers a similar kind of right—one which the American Newspaper Publishers Association had sought but much of the press had not—to print sex-discriminatory help-wanted classified ads. The vote was 5 to 4, with Burger, who suggested three years ago that many a newsman should be whipped, joining the dissenters in worrying about prior restraints on publication.

Women fared well with the nine old men, although they didn't win outright the legal trophy sought by women's groups—a ruling that sex bias is as constitutionally suspect as race bias.

One look from the court was enough to convince the government not to defend its pregnancy discharges for servicewomen. Feeling forced to defend Congress' discrimination, fringe benefits for military dependents, the government found only Justice William H. Rehnquist willing to sustain them.

In race relations the court, after breaking ranks last year for the first time in two decades, held remarkably firm to past commitments—carrying many of them forward and Northward in the Denver case to require Northern cities to face up more squarely to racial isolation in their public schools.

Justice Lewis F. Powell Jr. of Virginia pressed for a nationwide rule that would ignore the old de jure—de facto distinctions by which past segregation led to automatic judgments against Southern school boards. At the same time, he urged limits on the relief available to blacks South and North. Justice Douglas, always alert to traces of government action in supposedly private discrimination in housing patterns and the like, also condemned the old distinction and so, some day, may the full court.

With Powell writing for the court, the justices reaffirmed one of their most important civil rights stances: against the denial of jobs to qualified blacks, in this instance even an applicant who had been convicted of an illegal trespass at the employer's own plant.

The court was bolstered in the employment case by the Justice Department but was its independent self in the school case. For those keeping box scores, it was the Supreme Court 3, President Nixon 1—Denver, the abortion cases and parochial aid going against the White House and the obscenity rulings decidedly in the Nixon scheme of things.

Thus if Mr. Nixon has turned the court around, the evidence of it was somewhat less convincing than a year ago. The margins in the three Nixon "losses" were 7-to-2 and 6-to-3.

Indeed, although a string of criminal law decisions went in favor of prosecutors, the court indicated it was feeling no more pressure from the "law and order" administration than past courts had felt from past administrations.

Spurning a department plea that patrols near the Nexican border were so essential that cars could be stopped without warrants or probable cause, Justice Potter Stewart said:

"The needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power. It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards."

A more conservative Supreme Court, yes, much more conservative. But taken over politically, no. A term that began with a landslide election has found a once-beleaguered court reading the election returns its own way and apparently more independent than many had thought.