Wash Star 6·24·81

CARL T. ROWAN

# His Judges Will Linger With Us

As word flashed across the nation that Potter Stewart was retiring after 23 years as a Supreme Court justice, the thought that crossed my mind was an old bit of country wisdom from my boyhood days in Tennessee: "You never miss your water till your well runs dry."

I took the news about Stewart with a sense of foreboding that the well of reason is going to be a lot more shallow once Stewart leaves the high tribunal, because this administration seems committed to polluting it with some rock-headed doctrinaire reactionaries.

"No, no, no!" some of my colleagues say. "He promised to name a woman, and all the likely women justices are moderate and reasonable, like Stewart."

I am just not genteel enough to accept a premise that women cannot be as benighted, as socially blind, as mean as men, and I am not naive enough to think that Mr. Reagan cannot find a female troglodyte to siton the court if he is so inclined.

> This White House could build a Supreme Court majority of nightmarish mentality.

So I just sit around wishing that Potter Stewart had not jumped ship, and thinking that a lot of already-disillusioned Americans are really about to discover that they are getting some things they never voted for last fall.

Millions of Americans already are in shock, crying that in balloting for Mr. Reagan they never intended to vote away their child's college scholarship loan, or money for the arts, or a cut in Social Security payments, or a reduction in dairy price supports. Well, when Mr. Reagan puts his stamp on the Supreme Court, these Americans are going to get some shocks that go far beyond dollars and cents and reach to the very quality of American life.

A lot of publishers, editors, reporters, authors voted for Mr. Reagan, most never dreaming that in doing so they might be imperiling this nation's historic commitment to the rights of a free press under the First Amendment. They know that Justice Stewart understood and endorsed the constitutional protections of the press – that he once declared that "the autonomous press may publish what it knows" and upheld the right of the press to publish the Pentagon Papers.

Should Mr. Reagan name a superconservative to replace Stewart, publishers and editors could find themselves fighting off all sorts of trappings of censorships.

Stewart's retirement was unexpected. There are five or so members of the court, including liberals William J. Brennan, Jr., and Thurgood Marshall, who were expected to retire before Stewart, and they may retire before the end of Mr. Reagan's current term. That would enable this White House to build a Supreme Court majority of nightmarish mentality.

Voters will have a chance next year to rectify the mistakes they made in picking congressmen, and can give Senate control back to the Democrats. Three and a half years from now they can put a moderate or liberal in the White House.

But that Supreme Court? We'll be stuck with a "Reagan Court" for a generation or more, and a lot of today's youngsters will ask in the year 2000 how their mommas and daddies could ever have done this to them in the fall of 1980.

*Joseph Kraft*

# Business of the Court . . .

A rare insight into the true business of the Supreme Court was provided by Potter Stewart when he announced his resignation last week. Among other things, Justice Stewart said: "It seems to me that there's nothing more antithetical to the idea of what a good judge should be than to think it has something to do with representative democracy."

That comment describes the morass in which the court now flounders. It delineates the kind of person who ought to be appointed to lead the court back to sure ground.

The plurality decision, or ruling that commands no majority of the justices, is the hallmark of the court at present. Between 1969, when Chief Justice Warren Burger took over, and the end of the 1979-1980 term, 88 plurality decisions were handed down.

Only 87 plurality decisions were handed down by the Supreme Court in the 180 years prior to the advent of Chief Justice Burger. More than 40 of those were made by the court under the last chief justice, Earl Warren.

The frequency of plurality decisions announces that more and more there are coming up for judgment hard cases where the judicial mind is at the end of its tether. But it is not just any old issue that proves so baffling. On the contrary, rulings in which no majority prevails are concentrated around very few issues. Plurality decisions are particularly common in such matters as civil rights, including school desegregation, busing and affirmative action; criminal justice, including the right to a lawyer and trial by jury; the death penalty; private aid to public schools; abortion and voters' rights.

What all those issues have in common is that they have traditionally been settled by the processes of representative democracy—by the states, or Congress, or the president. They became judicial business thanks to the activist impulses, the will to break social deadlocks, that have characterized the Supreme Court under the last two chief justices.

Chief Justice Warren led a court famous for judicial activism. The Warren court broke new ground in sweeping decisions regarding school desegregation, voting rights and the right to counsel.

Chief Justice Burger, though the fact has been largely obscured, has presided over the same kind of tribunal. The Burger court has reached out for a wide variety of issues traditionally left to the states or other branches of federal government. Busing, for example, and affirmative action; the death penalty and state aid to private schools.

The result has been the same for both the Warren court and the Burger court. In trying to settle matters normally handled by other parts of government, the court has outsmarted itself, gone beyond its range. It has invited questions it can't answer, and cases it can't settle. The consequence is not

only a surge in plurality decisions. As a further result, the rulings of the court tend to resemble tea leaves as a guide to the future. Government itself becomes less certain, and more an object of obloquy.

The Burger court, in these conditions, has begun to grope its way out of the morass. A notable feature of the term now winding to a close is the number of cases in which the court declined to go beyond the strict terms of applicable statute. Bruce Fein, a legal scholar who surveys the work of the court for the American Enterprise Institute, began his account of this year by listing six cases in which he sees the court "frowning on judicial embellishment of federal statutes. . . ." Since then, and in the same spirit, the court has upheld the right of the New York state liquor licensing authority to bar topless dancing. It has also endorsed the power of the Minnesota state fair to limit religious fund raising.

What the court now requires is a theory that explicitly enunciates the self-limits it is imposing in hit-or-miss fashion. The need is for a judge who can preach the self-restraint the court has begun to practice.

That suggests the next justice should not be a person distinguished by the parochial experience that goes with membership in a particular group, or expertise in a special branch of the law. On the contrary, the requirement is for somebody with a feel for the just preserves of the other branches of government, and a belief in the limitations that necessarily hedge the capacity of the court to enact its own views on the best organization of society. What is wanted is a broad, institutional vision, a conviction that the court, like Congress and the presidency, has a duty to make government work.

is supported by experts of many political persuasions who believe it would distort business decisions less than any liberalized depreciation rules that might be written in hopes of encouraging additional business investment in new equipment.

But the Ways and Means Committee did not stop at voting "expensing" (a term that was known only to tax buffs until a few days ago.) It also approved a reduction in the corporate tax rate, in four steps, to 34 per cent from the present 46 per cent.

In voting this plan, the committee spent not one minute considering over 9 per cent at present.

There are several things wrong with this one. For lower-to-middle bracket taxpayers (up to the 30 per cent bracket, or about $38,000 of gross income for a married couple after the tax cuts are in effect) the scheme would be a gyp. They would be better off with the Treasury bill, though many may be lured into the certificates with advertising that fails to make this point clear. Nor are there any sound estimates of how attractive to upper-income investors the certificates will prove to be. Finally, though the plan was advanced as one that would draw funds into

stop its wholesale yielding to special-interest demands for government funds. The current tax bills, on the other hand (though for the most part omitting the one-company and one-industry loopholes of the past) cannot be said to be showcases of Congressional self-discipline.

If Dan Rostenkowski and the Ways and Means Democrats really want to serve their country, they will slow down. Let Treasury Secretary Regan call their three-day work-week "a disgrace," as he has already done. If someone doesn't stop the rush to enact this tax bill, some irrevocable harm is almost certain.

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6-25-81 Washington **JAMES J. KILPATRICK** Star

# Farewell to a Friend of the Press

Only a handful of senior correspondents were working in the Supreme Court's press room last Thursday when the word came down: Potter Stewart was retiring. The old hands reacted with disbelief, then with acceptance, then with profound dismay. For the past 10 years, since the death of Hugo Black, Mr. Justice Stewart has been our best friend on the court.

If the announcement had concerned any one of five others, the news would not have been so startling.

William Brennan was 75 in April, Warren Burger and Lewis Powell will be 74 in September, Thurgood Marshall will be 73 next week and Harry Blackmun will be 73 in November. Mr. Justice Stewart, at 66, was not on a reporter's list of prospects for replacement.

From our parochial view, as newsmen, he cannot be replaced; he can only be succeeded. Alone among his colleagues, Mr. Justice Stewart fully understood the role of a reporter in fulfilling the constitutional ideal of a free press.

He understood that in covering certain hard stories, a reporter must be able to protect his confidential sources; and he understood that in digging out difficult news, the press must have access to public institutions.

Nine years ago the court handed down a decision that has plagued us ever since. The case was *Branzburg vs. Hayes*. It involved a courageous reporter for the Louisville Courier-Journal who exposed traffic in hard drugs in Jefferson County. Summoned before a grand jury, Branzburg refused to identify his informants.

The question presented to the Supreme Court was whether such a summons abridges the freedom of the press guaranteed by the First Amendment. By the narrowest of margins, a sorely divided court gave a terse answer: "We hold that it does not."

Mr. Justice Stewart led the dissenters: "The Court's crabbed view of the First Amendment reflects a disturbing insensitivity to the critical role of an independent press in our society . . . A corollary of the right to publish must be the right to gather news . . . The right to gather news implies, in turn, a right to a confidential relationship between a reporter and his source."

### A Matter Of Access

On the matter of access, he agreed that the Constitution does not guarantee newsmen any right of access to a county jail beyond that given to the public generally. Even so, he said in a case three years ago, the needs of the press must be accommodated: "A journalist does not tour a jail simply for his own edification. He is there to gather information to be passed to others, and his mission is protected by the Constitution for very specific reasons."

In another case three years ago, involving a search by police of the Stanford Daily newsroom, he found it "self-evident" that such searches burden the freedom of the press. For police to rummage through a newspaper's files is to raise "the possibility of disclosure of information received from confidential sources."

A Virginia case dealt with a newspaper's report of certain closed proceedings before a judicial commission. State law made such publication a crime. No way, said Mr. Justice Stewart. "If the constitutional protection of a free press means anything, it means that government cannot take it upon itself to decide what a newspaper may and may not publish."

He said the same thing in a Pittsburgh case in 1973: The First Amendment provides "a clear command that government must not be allowed to lay its heavy editorial hand on any newspaper in the country."

In his 24 years on the high court, Mr. Justice Stewart never missed a day of oral argument. He carried his full share of the load – probably 300 opinions for the court, another 350, more or less, in separate opinions. He was not identified with any of the landmark decisions in this period, and historians are not likely to rank him among the giants of the court. Never a doctrinaire jurist, he defied classification as liberal or conservative. He wrote simply and clearly, and he called every case as he saw it.

"We are here to uphold a Constitution," he said in the Stanford Daily case. And Potter Stewart, to his eternal credit, upheld that Constitution very well.

*The column by Edwin M. Yoder Jr. will resume next week.*

*George F. Will* 6.25.81 Wt Post

# . . . And a Man To Do the Business

Institutions are, indeed, the lengthening shadows of men, and President Reagan can, with Supreme Court nominations, cast his shadow into the next century. His criteria for selecting nominees can be surmised.

Presumably he wants a person young enough to serve a long tenure, but old enough to have a substantial record of achievement in public service and in jurisprudential reflection. The nominee should be accomplished in both fields, because otherwise the person's published thoughts on the law and this unique court, however diligently arrived at, are abstract and give the president unreliable guidance as to the person's probable comportment on the court.

Furthermore, the person should have a demonstrated interest in economics, because considerable litigation concerns the imposition of public burdens on the private sector. "In a ten-year period federal litigation in the Supreme Court increased two and one-half times and that was primarily due to the growth of regulation." This is part of "the spread of an oppressive and excessive legalism throughout the social body."

Most important, the president needs a nominee who knows that "we have never had a rigorous theory of judicial restraint; for a time we had a tradition; now that is almost gone." The president needs a person with the intellectual power to provide a theory.

The person should understand that "the Supreme Court is an excellent barometer of change in the political and moral atmosphere, not because it follows the election returns, but because men who read the words of the Constitution unconsciously pour into them the animating conceptions of their age." The president needs a person alert to this tendency, and who has a record of rebutting the conceptions that have animated three decades of judicial excess.

This person should oppose the tendency "to create rights by arguments from moral philosophy rather than from constitutional text, history, and structure." He should know that that approach leads to "the destruction of the idea of law. Once freed of text, history and structure, this mode of argument can reach any result." And "not even a scintilla of evidence supports the argument that the framers and the ratifiers of the various amendments intended the judiciary to develop new individual rights, which correspondingly create new disabilities for democratic government."

The 1980 Republican platform speaks of selecting judges "who respect . . . the sanctity of innocent human life." But it would be wrong to seek (and hard to find) thoughtful judges who would hold that the 14th Amendment protections of "persons" extend to fetuses. Any justice who would purport to find authority for that in the Constitution would be just as arrogantly legislative and anti-judicial and result-oriented as were the justices who, in 1973, overturned the abortion laws that reflected the community judgments of 50 states. Such a new justice would be just as guilty as the 1973 court was of an authoritarian shortcut around the democratic process, using litigation rather than legislation to impose social change.

The platform's language alluding to abortion is conditioned by the passage immediately preceding it, that calls for judges "whose judicial philosophy . . . is consistent with . . . efforts to return decision-making power to state and local elected officials."

The truly conservative criticism of the 1973 ruling is not simply that it was incoherent in its attempt to find a right to abortion in the Constitution (a right supposedly inhering in a recently discovered right to "privacy"). Rather, the basic conservative complaint is that the 1973 ruling used—abused—the Constitution as a pretext for nationalizing a question that traditional and correct construction of the Constitution had treated as a moral judgment to be settled by the political processes of the states.

As has been said, "Courts must accept any value choice the legislature makes unless it clearly runs contrary to a choice made in the framing of the Constitution." And: "No argument that is both coherent and respectable can be made supporting a Supreme Court that 'chooses fundamental values' because a Court that makes rather than implements value choices cannot be squared with the presuppositions of a democratic society."

All the words quoted above, aside from those from the 1980 platform, are from the writings of the person called (by a scholar of the opposite persuasion) "perhaps the most able and articulate proponent" of the sort of judicial philosophy the president endorses. He is a man who took economic instruction at the font of Reaganism, the University of Chicago, and who has authored a seminal book on antitrust policy. He is the man who, since the death of Alexander Bickel, has carried on Bickel's great work of precisely defining the compatibility of judicial review and democratic theory—defining that is, not the impropriety but the gravity of invalidating acts of democratic bodies.

He is the 54-year-old former solicitor general of the United States, the first Alexander Bickel Professor of Public Law at the Yale Law School—Robert Bork.

# *Clark Withdraws as a Court Possibility*

By Lou Cannon
Washington Post Staff Writer

LOS ANGELES, June 26 — A Reagan insider with judicial experience today withdrew his name from consideration for the Supreme Court, and another well-informed administration official said the White House "was looking hard" for a woman to fill the vacancy caused by the resignation of Justice Potter Stewart.

"I've made it clear I don't want to be considered for the high court," said Deputy Secretary of State William P. Clark, who returned to Washington late Thursday after a two-week African trip.

Clark did not give a reason other than expressing a desire to return to his California ranch after completing his present job. But a high White House official said Clark is "badly needed" in his current post, where he has been a buffer between Reagan aides and the sometimes mercurial Secretary of State Alexander M. Haig Jr.

Clark was in Africa when Stewart's resignation was announced. He was mentioned immediately by White House insiders as one of three Reagan intimates who were potential candidates for the court.

The other two were White House counselor Edwin Meese III, who withdrew his name on grounds that it was inappropriate for a presidential adviser to be considered, and Attorney General William French Smith, who said his name will not be on the list of recommendations for the court that he will submit to the president.

Clark served as Reagan's executive secretary when he was California governor, was appointed by Reagan to a trial court and then was elected for another term to the same court. Subsequently, Reagan appointed him to a state appellate court and then to the California Supreme Court.

An administration official said today that White House aide Elizabeth Hanford Dole, 44, wife of Senate Finance Committee Chairman Robert J. Dole (R-Kan.), had emerged "high on the list" of people under consideration for the Stewart seat. She is one of a dozen nominees Smith is expected to submit to the president.

White House officials say Reagan will be guided by this list, but will not

See PRESIDENT, A8, Col. 1



# State's Clark Withdraws As Possibility for Court

PRESIDENT, From A1

necessarily be bound by it. They also said the president could make his decision as early as mid-July.

"A woman is a good possibility," one well-placed official said.

Reagan promised in the campaign to name a woman to one of the first vacancies on the court during his administration. If he decides against picking Dole or some other woman, some in the administration think he will turn to Robert H. Bork, 54, the solicitor general in the Nixon administration. Bork is also understood to be on Smith's list.

After two days in Los Angeles and more telephone calls to southern Democrats on behalf of his economic legislation, Reagan flew to his ranch north of Santa Barbara, where he will spend the weekend. He is to return to Washington Sunday and fly to Denver for a speech to the NAACP Monday.

As usual, Reagan is expected to spend most of his weekend riding horses, clearing brush and chopping firewood.

On Saturday, Vice President Bush is to fly in to report on his just-completed European trip. Bush will then meet reporters at Point Mugu Naval Air Station before flying to Manila for the inauguration of Philippine President Ferdinand Marcos.

President could name a new Supreme Court justice as early as middle of July.

# Wildlife Federation May Drop

*Ellen Goodman*

# Looking For a Woman

BOSTON—The word from Washington is that they are looking for a woman.

Well, who isn't these days?

Looking for a Woman has become an All-American game played by boards of directors across the land.

So, few of us are surprised that they are now looking for one for the Supreme Court. But there is a difference between looking and actually finding. Indeed, sometimes it seems that the microscopes of the mighty simply can't focus on 53 percent of the population.

From where I sit, up here in the bleachers, the real name of the new game is: How to Look for a Woman Without Often Hiring One.

The rules go something like this. Any candidate, company or even college these days has to prove that it is a certified Friend of Females. In order to do this, those in charge must make a Serious Commitment to the advancement of the sex.

In public life this is, of course, done during election time. The Serious Commitment in this case was one sentence: "I am announcing today that one of the first Supreme Court vacancies in my administration will be filled by the most qualified woman I can possibly find."

A statement of Serious Commitment generally will be greeted with applause. But it must contain the essential clause, "the most *qualified* woman I can possibly *find*." This is what is known as The Loophole.

The Loophole only goes into operation when in fact there is a job opening. At that point, someone is bound to remind the public that no woman should make it *because* she is a woman. This is known as the Warning Sign.

Last week, the current Warning Sign came from Justice Stewart himself. It would be an "insult to the court," he said, "to appoint somebody just because he or she was not a white male."

This Warning Sign is generally interpreted to mean that women 1) are most likely inferior and 2) could only be appointed if we reached down below the ranks of brilliant men to pull one up by her hank of hair.

Here is, I hasten to add, the essential strategy of this game. In the past, women were simply excluded because they were women. Now there is a new bylaw. They can still be excluded because they are women, but they also, with the aid of affirmative action, can be appointed *because* they are women.

This attitude brilliantly overlooks the qualifications of men. As Cissy Farenthold once put it, "Equality will be here the day that mediocre women take their place beside mediocre men." Chief Justice Burger, for example.

But our candidate will not be compared with Burger. She will be compared with Brandeis, Holmes, Hand. Thus any serious female candidate must be wildly overqualified. It is, I hasten to add, hard to be overqualified for the Supreme Court. None of us wants equal mediocrities on the bench. But that is beside the point of this game.

Once the search is on, it is rarely difficult actually to locate women. There are, for example, about 700 women judges in the country. If the search was limited only to judges, there would almost inevitably be an excellent candidate.

So, there will be names on the list. Surely, three or four will make the first cut and at least one will make the second cut. They usually do.

This is what's known as Throwing the Bone, or the Token Gesture. There are women in this country who have been in the finals for so many jobs that they are going to retire their resumes to the Women's Runner-Up Hall of Fame.

The Token Gesture allows those in charge to release the list, thus assuring us all that, indeed, women are being considered.

The game has several possible endings. They can, against the odds, actually appoint "a" woman, "*because* she is a woman." Or they can appoint a male "because he was most qualified."

They can also appoint a woman who is against women's rights. This is known among hard-core players as the Reagan Finesse. You quiet the opposition and keep the status quo.

Any way, the winners will go on to play another day. After all, when the president was asked if he was specifically Looking for a Woman, he answered, "Always."

Always Looking, that is.

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MONDAY, JUNE 29, 1981

# Speculation Grows Over New Justice

By David F. Pike
and Ruth Marcus
National Law Journal Staff Reporters

WASHINGTON — White House aides, who have been discussing replacements for Supreme Court Justice Potter Stewart since the 66-year-old jurist informed President Reagan May 18 of his pending resignation, are intensifying their search for a conservative nominee to succeed the moderate justice who provided the swing vote on many controversial issues.

And although Mr. Reagan pledged during his presidential campaign that "one of the first Supreme Court vacancies in my administration will be filled by the first qualified woman I can possibly find," there are those who doubt that he will fulfill that promise in the upcoming nomination.

Noted W.S. Moore, director of legal studies at the American Enterprise In-

*Continued on page 14*

*er Bowl*

# Filling the Stewart Seat

*Continued from page 1*

stitute, a conservative think tank here, the president "certainly has shown no political need so far to name women to his administration."

If the president does choose a woman, his prime candidates are likely to include Carla Hills, a former Housing and Urban Development secretary now with the Washington firm of Latham, Watkins & Hills; Rita Hauser, a member of New York's Stroock & Stroock & Lavan, who served in the United Nations during the Nixon and Ford administrations; 6th U.S. Circuit Court of Appeals Judge Cornelia Kennedy; and Elizabeth Dole, public liaison assistant to the president and the wife of Kansas Republican Sen. Bob Dole.

Sex will not be the only criterion in the choice, of course. Deputy White House Press Secretary Larry Speakes said the president will seek candidates who "share one key view: the role of the court is to interpret the law and not to enact new law by judicial fiat" — a requirement that will preclude judicial activists of the sort associated with the Warren Court.

Among the men who are thought to fit that bill are former Solicitor General Robert Bork, who just left Yale law school to join the Washington, D.C., office of Kirkland & Ellis; Philip Kurland and Antonin Scalia of the University of Chicago law school; Charles Allan Wright of the University of Texas law school; 9th Circuit Judges J. Clifford Wallace and Anthony M. Kennedy; 5th Circuit Judge Thomas Gee; D.C. Circuit Judge Malcolm R. Wilkey; former 6th Circuit Judge William Webster, now director of the FBI; Reagan confidant Sen. Paul Laxalt, R-Nev.; Attorney General William French Smith and Deputy Secretary of State William P. Clark, whom Mr. Reagan appointed to the California Supreme Court even though he hadn't graduated from law school.

The decision to resign by Justice Stewart, who was named to the Supreme Court bench 23 years ago, was one of Washington's best-kept secrets. Court observers had expected Justices William J. Brennan Jr., 73, Lewis F. Powell, Jr., 73, or Thurgood Marshall, 72, to be the first to go.

Justice Stewart gave no reason for his retirement in letters to Mr. Reagan or his fellow justices. However, at a meeting with the press, he said the most important reason was that "I wanted to have more time to spend with my wife and family while I am still relatively young and in good health."

He assured reporters that his health is "very good." Justice Stewart said he originally thought of retiring after he turned 65 in January 1980, "but that was an election year and I thought it would be harmful to the court and to the country if I retired then. The vacancy wouldn't be filled and the court would be dragged into a presidential campaign."

Justice Stewart said he had discussed his decision to resign with his wife, his "longtime friend" Vice President George Bush, Attorney General Smith, and Chief Justice Warren E. Burger. In response to a question about the choice of his successor, Justice Stewart said he did not think affirmative action considerations should come into play, and that he felt it would be "an insult to appoint someone just because he or she is not white male." He added, however, th there are "many qualified women but stressed that it is the president decision: "I have nothing to say abo it."

Although five of the curre justices, including Mr. Stewart, ca to the court from federal appe courts, eight of the 18 Supreme Co appointees since World War II, cluding Chief Justice Earl Warren a Justice Tom Clark, have gotten th first judicial experience on the hi court.

Indeed, the first name everyone's lips seemed to be a pers who has never been a judge, Mr. Bo the acting attorney general who fir Watergate Special Prosecut Archibald Cox on the orders of Pre dent Nixon during the so-called Sat day Night Massacre.

**Anti-Abortion Forces**

Mr. Bork's political views coinc with the administration's, and his tellectual credentials are strong. C possible drawback for Mr. Bo however, could be his testimc earlier this month against the pend Human Life Bill, despite his strong

*Continued on page 18*

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# New Justice

*Continued from page 14*

position to the constitutional reasoning of *Roe v. Wade*, 410 U.S. 113.

Anti-abortion forces are expected to push strongly for an appointee who might uphold that bill, and to hold Mr. Reagan to the Republican platform of appointing judges who "respect ... . the sanctity of human life." Some observers believe, however, that a nominee could avoid revealing his views on such controversial topics as abortion, the death penalty, affirmative action, busing and school prayer on the grounds that these issues are likely to come before him on the court.

At the same time, legal scholars expressed doubt that a single justice could upset the tide of recent court decisions on these and other issues both because precedent is hard to ignore and because a majority of the court has coalesced around those decisions since they were issued.

"In a number of the areas in which the president's program and the court tend to move in different directions, the court is unanimous or nearly unanimous," said Laurence Tribe, a former Stewart law clerk now teaching at Harvard Law School.

Mr. Bork echoed that view. "The appointment of a single justice or even two or three justices rarely means a dramatic shift in the court," said Mr. Bork. "I don't see this as a turning point."

**'Potential for Change'**

Both men, however, agreed with other court observers who noted that any shift on the court is significant. "The potential for change is there," said Associate Deputy U.S. Attorney General Bruce Fein, who has studied the court for the last several years for the American Enterprise Institute. "The court now drifts, it is at sea on a number of crucial issues, and if his successor can provide a strong intel-

difficult to gauge in advance, since once they get on the court, Supreme Court justices often espouse views that outrage the presidents responsible for their nominations.

It's clear, though, that Mr. Reagan will appoint someone he believes is more conservative than Justice Stewart.

The son of a prominent Ohio Republican family, Justice Stewart graduated first in his class from Yale Law School and was appointed to the 6th U.S. Circuit Court of Appeals by President Eisenhower in 1954 — at 39, the youngest federal judge in the country — only four years before being named to the high court, again by President Eisenhower.

During his tenure, Justice Stewart has earned the reputation of a moderate unwilling to stray far from constitutional guarantees but not hamstrung by strict constructionism.

Indeed, some observers believe, Justice Stewart has, over the years, become increasingly frustrated by his brethren's willingness to read the Constitution in the broadest conceivable light. "One of the distinctive earmarks of Justice Stewart's jurisprudence has been that he has been growing disenchanted in recent years with the activist role of the court," said Mr. Fein.

For instance, he noted, in writing the majority opinion for the court's decision to uphold veterans' preference despite a claim of sex discrimination, Justice Stewart relied on legislative intent and noted that he would have struck down the preference had "social good" been the only supporting factor.

Justice Stewart's views aren't easy to pigeonhole, however. "It's fair to see him as a moderate and pragmatic and not so far in any given direction as to be predictable," said Mr. Tribe.

While generally liberal on such issues as search and seizure, limiting executive power, free speech and free press, observers said Justice Stewart is more conservative in cases involving affirmative action, sex discrimination and state's rights. Added Mr. Fein, "He likes to rule case by

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Indeed, some observers believe, Justice Stewart has, over the years, become increasingly frustrated by his brethren's willingness to read the Constitution in the broadest conceivable light. "One of the distinctive earmarks of Justice Stewart's jurisprudence has been that he has been growing disenchanted in recent years with the activist role of the court," said Mr. Fein.

For instance, he noted, in writing the majority opinion for the court's decision to uphold veterans' preference despite a claim of sex discrimination, Justice Stewart relied on legislative intent and noted that he would have struck down the preference had "social good" been the only supporting factor.

Justice Stewart's views aren't easy to pigeonhole, however. "It's fair to see him as a moderate and pragmatic and not so far in any given direction as to be predictable," said Mr. Tribe.

While generally liberal on such issues as search and seizure, limiting executive power, free speech and free press, observers said Justice Stewart is more conservative in cases involving affirmative action, sex discases, including *Katz v. U.S.*, 389 U.S. 247 (1967), which held that wiretaps and other electronic surveillance fall under Fourth Amendment protections and found that the amendment "protects people, not places;" *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), which banned discrimination in the rental and sale of private housing; and *Geduldig v. Aiello*, 17 U.S. 484 (1974), which held that excluding pregnant women from disability didn't violate the equal protection clause.

Generally a conservative in criminal cases, Justice Stewart dissented in such landmark rulings as *Miranda v. Arizona*, 384 U.S. 436 (1966), which gave criminal suspects the right to a lawyer and to remain silent; and *In re Gault*, 387 U.S. 1 (1967), which gave juvenile defendants some due process rights. But he wrote the majority opinions in *Elkins v. U.S.*, 364 U.S. 206 (1960), which held that federal prosecutors could not use evidence illegally obtained by state authorities; *Robinson v. California*, 370 U.S. 660 (1962), which found that state laws making narcotics addiction a crime constitute "cruel and unusual punishment"; and *Chimel v. California*, 395 U.S. 752 (1969), which limited warrantless police searches of a suspect to incidents of lawful arrest.

Although he was often overshadowed on First Amendment issues by Justice William O. Douglas, Justice Stewart was generally a strong defender of free speech. He sided with the court's liberal members in dissenting in *Branzburg v. Hayes*, 408 U.S. 665 (1972) and *Zurcher v. Stanford Daily*, 436 U.S. 547 (1978), on the rights of reporters to protect their sources, and *Miller v. California*, 413 U.S. 15 (1973), which overruled the "utterly without social value standard" to allow states to exclude obscene material that "taken as a whole, appeals to the prurient interest in sex."

Free speech was not always his first commitment, however: Justice Stewart wrote the majority opinion in [illegible] 443 U.S.

torney General Smith and other Justice Department officials would be coordinating the efforts to find a successor to Justice Stewart, several White House and Justice sources agreed that the final selection process would likely be handled at the White House, probably by White House Counsel Fred Fielding.

Sen. Strom Thurmond, R-S.C., who has been working closely with the administration on federal judgeships as chairman of the Senate Judiciary committee, is expected to have considerable influence on the choice of Justice Stewart's successor, several sources said.

Once the White House makes its choice, the Federal Bureau of Investigation will be asked to run a background check, and the American Bar Association's Standing Committee on the Federal Judiciary will make its study of the person's legal qualifications. Once the nominee is cleared and announced, the ball will be in the court of Senator Thurmond's committee and then the full Senate.

Although Justice Stewart informed President Reagan in mid-May of his intention to resign so that a successor could be on board at the start of the court's term in the fall, it is by no means certain that the selection process will be completed by then.

"This can take a short time or a long time, there's no way to predict," said one veteran Justice Department official. "There are so many hurdles to overcome."

"But even if things don't work out, it won't be the first time the Supreme Court has started its term without a full complement of justices," he added.

As for Justice Stewart, his name is still likely to appear on federal court opinions. In a letter to his colleagues last week he said: "I shall hope in my retirement to serve from time to time as a member of the federal judiciary, but I cannot look forward to serving ever again with you."

Senior U.S. District Judge George Hart, who handles all special assignments for federal judges from the

# Surprise from the Swing Man

*Stewart resigns, giving Reagan a first high court opening*

A year and a half ago, Supreme Court Justice Potter Stewart received a letter from a high school student in St. Cloud, Minn. The Justice had done well, wrote the young woman, but why had he stayed in the job so long? "That," recalled Stewart, 66, last week, "sort of started me thinking." His thinking led him and his wife Mary Ann to conclude that this term, his 23rd, should be his last. Last week, a month after Stewart had quietly delivered a letter of resignation to President Reagan, he announced his decision. Not even his colleagues inside the court, except Chief Justice Warren Burger, had known about it until one day before his press conference. Said he: "I'm a firm believer that it's better to go too soon than stay too long."

The news was doubly a surprise because other Justices had been considered far more likely to depart. Five occupants of the bench are over 70, and two—William Brennan, 75, and Thurgood Marshall, 72—are reportedly in less than robust health. President Reagan now has an unexpectedly early oppportunity to begin his oft-promised ideological remolding of the court. His main criterion for candidates is clearly known. Said White House Spokesman Larry Speakes: "He will not seek only candidates who necessarily agree with him on every position, but rather those who share one key view: the role of the courts is to interpret the law, not to enact new law by judicial fiat."

Some observers think Reagan may pick a crony: White House Counsellor Edwin Meese, Deputy Secretary of State William Clark. Others predict that he will select an academic like Yale's Robert Bork or Chicago's Philip Kurland. The nation's lower courts offer Reagan such conservatives as Dallin Oaks of the Utah Supreme Court and Malcolm Wilkey, an old friend of Chief Justice Warren Burger's who sits on the U.S. Court of Appeals.

More intriguing is the possibility that the 102nd Justice will be the first woman appointee. Last October Reagan pledged that he would fill "one of the first vacancies" with a woman. Among the names under speculation: former Secretary of Housing and Urban Development Carla Hills, White House Aide Elizabeth Dole (wife of Senator Robert Dole) and U.S. Appeals Court Judge Cornelia Kennedy, who is known for her hard line in criminal cases. Insiders expect the nominee to be named soon, whatever the sex, to give the Senate plenty of time to begin the confirmation process before its scheduled August recess.

Stewart's retirement will round off a legal career that began virtually in infancy. As a child, Stewart would listen while his father, a Cincinnati lawyer and onetime mayor who later served on the Ohio Supreme Court, simultaneously shaved and rehearsed his courtroom arguments. Schooled at Hotchkiss, Yale and Yale Law School, he served as a deck officer on Navy oilers during World War II, "bored to death 99% of the time, and scared to death 1%." After three years of Wall Street he returned to Cincinnati. In 1954 Stewart was named to the U.S. Court of Appeals for the Sixth Circuit, becoming at 39 the youngest federal appellate judge in the country. Four years later, President Eisenhower nominated him for the Supreme Court.

DIANA WALKER

**The Justice at his Washington press conference last week**
*"It's better to go too soon than stay too long."*

Because the court was so evenly divided philosophically, the newcomer frequently found himself casting the decisive vote. A common expression in the press was "As goes Stewart, so goes the court." During the more liberal days of the Warren Court (1962-69), Stewart was often in the minority, but with the passing of that era, he again became what he remains today: a crucial swing man. As a centrist, Stewart has shrunk from formulating sweeping principles that would place him in one camp or another. Says Stanford Law Professor Gerald Gunther: "He's not going to be remembered as a great Justice, but that's part of his strength in a way. He was not an ideologue, not an extremist. They only remember the ones who stake out positions."

To Stewart, a judge is supposed to decide only the specific case before him —and to do so as narrowly as possible. A Justice, he said last week, should not "think of himself as some great big philosopher-king." He believes that social and economic issues should be left to legislators, even when they handle them poorly. He once derided a Connecticut anticontraceptive statute as an "uncommonly silly law"—and at the same time voted to uphold it. To some, this restraint betokened a lack of drive or leadership. Says one law professor: "He was a real disappointment. He was a responder." Adds Dennis Hutchinson, a professor at Georgetown Law Center: "He didn't have a hell of a lot of influence on his brethren."

Though impossible to pigeonhole, Stewart has generally defended civil rights. He creatively used Reconstruction Era statutes to strike down race discrimination, but he opposed Government-mandated affirmative action (so-called reverse discrimination) as well. A former chairman of the Yale *Daily News* who almost became a journalist, he believes fervently in a vigorous press. Purveyors of hard-core pornography, in his view, deserve less protection. In his most famous phrase, Stewart said he could not define pornography, "but I know it when I see it." He joked last week that the words might turn up on his tombstone.

Stewart has always relished his work. He never missed a day of oral arguments and often peppered attorneys with questions. His opinions are notably craftsmanlike, concise and crisply turned. An affable man away from the bench, his major interests aside from the law and his family (he has three children) are fishing and the Cincinnati Reds. During the 1973 playoffs between the Reds and the New York Mets, he was hearing arguments at the court and had his clerks slip him inning-by-inning, then batter-by-batter, reports. When Vice President Spiro Agnew's resignation came through during the climactic game, one clerk's note read, "Kranepool flies to left. Agnew resigns."

Stewart insisted last week that it was precisely because he retained his energy and breadth of interests that he wanted to quit while he could still enjoy them. Judges know best when to bring their tenure to an end, he said. After all, they serve during good behavior—"and whatever else growing old is, it isn't bad behavior." *—By Bennett H. Beach. Reported by Evan Thomas/Washington*

Weather

Today—Occasional showers and thunderstorms, high 77-83, low 65-73. Chance of rain is 70 percent. Friday — Variable cloudiness, showers and thundershowers, high 82-87. Yesterday — 3 p.m. AQI: 70; temp. range: 86-72. Details on Page B2.

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104th Year ···· No. 209



THURSDAY, JULY 2,

# Woman Tops List For Court

## Arizona Judge Has Strong Credentials, Conservative Views

By Lou Cannon
Washington Post Staff Writer

Sandra D. O'Connor, a prominent Arizona jurist with Republican political credentials, has emerged as a leading candidate for the Supreme Court vacancy that will be created Friday when Justice Potter Stewart retires.

Well-placed administration officials confirmed that O'Connor, who received a high ranking from the Arizona Bar Association and was third in the Stanford law school class in which Justice William H. Rehnquist finished first, had been interviewed for the job. She is believed to be the only potential nominee interviewed so far, and hers is one of a few names, most of them of women, on a "short list" reposing now with a handful of top White House aides and Attorney General William French Smith.

"She hasn't been chosen yet, but she's close," said one source.

O'Connor, a 51-year-old judge of the Arizona Court of Appeals, has enjoyed a meteoric rise through the state's political and professional circles, impressing colleagues with her intellect, demeanor, organizational abilities and conservative views. She received one of the highest ratings of any judge evaluated in a 1980 state bar poll — 90 percent favorable.

In addition to her legal credentials, O'Connor has strong backing from Arizona's senators, Barry Goldwater (R) and Dennis DeConcini (D), a member of the Senate Judiciary Committee, and from former House Republican leader John J. Rhodes.

"She's what the president's looking for," said DeConcini. "She believes in the court interpreting the law, not making it."

By Margaret Thom
Dr. Murdock Head and daughter Kimberly stand outside Alexandria Federal Courthouse before convic

# Head Again Convicted of Cons

By Philip Smith
Washington Post Staff Writer

Dr. Murdock Head was convicted yesterday of conspiring to bribe two powerful Democratic congressmen in return for their help in securing government grants and contracts for his Airlie Foundation and an affiliated George Washington University department.

A jury in Alexandria federal court deliberated for five hours before finding Head, 57, guilty of conspiring to funnel $49,000 in cash to committee chairmen, in exchange for their influence on behalf of his Warrenton, Va., foundation.

It was the second time that Head, who holds graduate degrees in medicine, dentistry and law, has been convicted on the charge. His initial three-year prison sentence was overturned by an appeals court this year.

Head also was found guilty yesterday of giving an illegal $1,000 gratuity to Flood in mid-1974

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This was the criterion President Reagan laid down when he announced Stewart's resignation on June 18. The justice had privately made his plans known to the administration two months earlier, giving the White House and the Justice Department a head start on finding his successor.

O'Connor, an Arizona native who was raised on a cattle ranch in the southern part of the state, was appointed in 1969 to fill a vacancy in the state Senate. She subsequently won two terms and was voted majority leader, the first woman in the nation to be elected to such a leadership post. She also is the first Arizona woman to serve on the board of directors of a major bank.

Prominent Republicans including Goldwater and Rhodes urged O'Connor to run for governor four years ago, but she decided to continue her judicial career, which began in 1975 when she was elected a judge of the

See PRESIDENT, A8, Col. 4

By Margaret

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# *Court Eases Candidates' Acces*

By Fred Barbash
Washington Post Staff Writer

The Supreme Court ruled yesterday that the government may force television and radio broadcasters to air the campaign ads of candidates for federal office.

Upholding a "new right of access" to television, the court said the Federal Communications Commission had the power to order the sale of 30 minutes of prime time to Jimmy Carter 11 months before the 1980 election. The networks had refused on the grounds that the campaign hadn't begun and that the ads would disrupt normal programming.

The ruling takes the FCC deeper than it's ever been into regulation of political broadcast content. A broadcaster can still deny air time to a candidate if the ads would "substantially" disrupt programming. But the candidate can then appeal to the FCC, which can order the ad run under penalty of license revocation.

Before, the FCC enforced only a generalized obligation to cover public issues and to allow equal time to candidates if a station allowed any time at all.

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# The Forgotten Deposits

## *Some Famous Names Are on Old Accounts List*

By Thomas W. Lippman
Washington Post Staff Writer

C. Douglas Dillon, investment banker and former secretary of the Treasury, probably doesn't need it, but he has some unclaimed money lying around in a Washington bank account, and if he doesn't come get it by Aug. 30 it will be turned over to the D.C. government.

Conservationist Gifford Pinchot has money coming, too, but his chances of collecting are probably slim since he died in 1933.

If the Maret School Alumni and the members of the Touchdown Club and the French Military Attache want to get back what belongs to them, individuals and organizations named on a list published in The Washington Post today by the D.C. Department of Finance and Revenue. They are the owners of record of abandoned property and dormant accounts held by District banks, savings institutions, insurance companies and corporations. Under a new city law, all the money and property in these accounts will be turned over to the city if not claimed by the end of next month.

The unclaimed property — bank accounts, insurance policies, cash, stock certificates, uncollected paychecks, the contents of safe deposit boxes — is worth at least $10 million, according to Finance and Revenue

# *Plot to Destroy The Parliament Charged by Iran*

By Phil Davison
Reuter

TEHRAN, July 1 — Fifty leftist guerrillas were arrested last night as they made plans to destroy the parliament building, the new leader of Iran's dominant Islamic Republican Party said today.

Newspapers said that guerrillas from the Mujaheddin-el-Khalq (People's Strugglers) were arrested after a gun battle with Revolutionary Guards. One guerrilla reportedly was killed and three wounded.

Islamic Republican Party leader Hojatoleslam Mohammed Javad Bahonar, speaking at his first press con-

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"To Reelect Pres Finance Comm."

And one owner, presumably a physician, may not recognize himself in this listing: "Gastro, enteroly."

# Arizona Woman Heading List For Supreme Court Vacancy

**PRESIDENT, From A1**

Maricopa County (Phoenix) Superior Court. A year and a half ago, Gov. Bruce Babbitt appointed her to the appeals court.

"There is a tendency to classify her as politically conservative," said Alan A. Matheson, dean of the Arizona State University College of Law. "She has good judgment, is articulate and well-liked." He said she has been involved in few controversial cases.

O'Connor was co-chairman of the Arizona committee campaigning for President Nixon's reelection in 1972 and was Arizona Woman of the Year that same year.

She and her husband, John, a well-known Phoenix attorney and active Republican, have three children. In the early 1960s she served as a deputy district attorney in San Mateo County, south of San Francisco, while her husband completed law school.

O'Connor is in Washington this week and was interviewed yesterday by an administration official.

Administration sources emphasized that the president has not made a decision, but one well-placed source stressed, as he did last week, that a strong effort is being made to find a "highly qualified woman." The name mentioned most, until now, is that of another conservative Republican jurist, Cornelia Kennedy of Detroit, a 58-year-old member of the 6th U.S. Court of Appeals.

One administration official said yesterday that Kennedy has support on Capitol Hill, and her name was on the list submitted to the White House by Senate Judiciary Chairman Strom Thurmond (R-S.C.).

The White House has ruled out nominating anyone in the administration for the high court vacancy, sources said yesterday. That has eliminated Elizabeth Hanford Dole, a White House aide and wife of Sen. Robert J. Dole (R-Kan.).

*Staff writer Fred Barbash and special correspondent Al Senia contributed to this article.*

SANDRA D. O'CONNOR
. . . judge, former state senator

# Woman Judge a Top Contender To Fill Supreme Court Vacancy

Sandra D. O'Connor, a 51-year-old judge of the Arizona Court of Appeals, has moved into position as a top contender to fill the Supreme Court vacancy, administration sources said last night.

They confirmed that Judge O'Connor was on the so-called "short list" of possible nominees by President Reagan to fill the vacancy caused by the retirement of Justice Potter Stewart and said that she was one of a very few that had already been interviewed by the administration in the past few days.

These sources declined to disclose how many names were on the "short list" and how many of those were women, but an original "long list" had about 25 possible candidates for the vacancy.

Judge O'Connor, wife of a Phoenix attorney, has been an active member of the Republican Party, and is described by party members as politically conservative. She served two full terms in the Arizona state senate and was elected majority leader before being elected a county judge in that state in 1975. In 1972 she was co-chairman of the Arizona state committee in behalf of President Nixon's re-election.

While acknowledging that various prominent women have been mentioned for the vacancy in keeping with a campaign promise by Reagan that he would name a woman to the high court, a well-placed administration source indicated last night that Judge O'Connor was more than just one of those many names. She has emerged as one of the very leading candidates for the post, he said.

There was no indication how many more potential nominees would be interviewed nor when the president would announce his choice.

Justice Stewart's retirement is due to take effect tomorrow. The "short list" of potential nominees has been compiled by White House and Justice Department officials. The president and Attorney General William French Smith have discussed possible names, according to a White House aide.

New York Times Service

United States.

Although officials refused to disclose specifics of the options that were presented to the president, the general outlines of some proposals are known from public statements by Reagan, Smith and other officials.

One plan, which Reagan discussed with Mexico's President Jose Lopez Portillo during their recent Washington meeting, involves the possibility of establishing a "guest worker" program for Mexican workers.

Mexican officials said the proposal was for the United States to permit and supervise admission of 50,000 Mexican workers each year.

These workers would be allowed to bring their wives, as well as any children under 18, and would have

## *No More 'Mr. Justice'*

Mrs. Justice? Madam Justice? With all the fretting about Judge Sandra O'Connor's positions on ERA and abortion, we were worried that no one had asked the really critical question of what to call her if her appointment to the Supreme Court is confirmed. "Mr. Justice" would clearly not do.

We should have had more faith in the nine men of the current Court. Last November, Chief Justice Warren Burger quietly urged his brethren to refer to each other merely as "Justice White" and "Justice Marshall" and "Justice Rehnquist" and to delete the 200-year-old appellation "Mr." Showing foresight that we would welcome in all court decisions, the Justices may have avoided the dilemma of how best to address a woman Justice.

# Affirmations of Federal Power Marked Court Term

By LINDA GREENHOUSE
Special to The New York Times

WASHINGTON, July 8 — Facing its first change in membership in nearly six years, the Supreme Court has just ended a term that affirmed the authority of the Federal Government to act in several important areas: to safeguard the health of workers, to regulate foreign travel in the name of national security and to override private legal claims in order to settle a major foreign policy crisis.

It was a term that removed doubts about the constitutionality of televised trials and the all-male military draft, with the Court ruling that the Constitution does not require either but permits both.

For the first time in four years, the term produced no major rulings on the subject of racial equality. But the theme of equality between the sexes dominated the term and found the Court less hospitable than it has been for years to allegations of unconstitutional discrimination on the basis of sex.

Following its longstanding practice, the Court for the most part ruled narrowly on the questions that reached it, preferring to rest its decisions on statutory interpretation rather than constitutional doctrine. Statutory rulings leave

*A September vote is foreseen on Sandra Day O'Connor's nomination to the Supreme Court. Page A17.*

**Continued on Page A16, Column 1**

# Federal Authority Affirmed In High Court's Latest Term

The Court pointedly declined the Reagan Administration's suggestion that it not decide the major regulatory case of the term, a challenge to the Occupational Safety and Health Administration's standards for exposure to cotton dust. The Court ruled that Federal law required the agency to protect workers from exposure to toxic substances to the maximum extent feasible, without regard to the relationship between costs and benefits. That was the position argued to the Court by the Carter Administration; but the Reagan Administration, which wants to subject all major regulations to an analysis of the cost as against the benefits, sought to avert the decision.

The Court issued full, written opinions in 123 cases in the term. It reversed lower court decisions about twice as often as it upheld them. By design, each of the nine Justices wrote roughly the same number of opinions for the Court. But they differed widely on other measures of judicial self-expression, dissents and separate concurring opinions.

Associate Justice John Paul Stevens wrote the most dissenting opinions, 24, while Chief Justice Warren E. Burger wrote the fewest, five. Associate Justice Thurgood Marshall, while writing only eight dissenting opinions, joined other Justices in dissent 31 times, for the highest overall total of 39. Justice Stevens's total was 31. The lowest overall number of dissents belonged to Associate Justice Byron R. White, with 13.

The highest number of separate concurring opinions, 15, was achieved by Justices Stevens, Lewis F. Powell Jr. and Harry A. Blackmun. Justice Marshall wrote one separate concurring opinion; Justice White, with the second fewest, wrote six.

### 44 Unanimous Decisions

More than one-third of the term's cases, 44, were decided unanimously, and 15 other decisions drew only one dissenting vote. Seventeen cases were decided by 5-to-4 votes.

Associate Justice Potter Stewart's role in the closest decisions belies the commonly held view that he occupied a crucial "swing" position on the Court. He retired from the Court on July 3 after 23 years, and President Reagan announced yesterday that he planned to nominate Judge Sandra Day O'Connor of Arizona to succeed him.

Justice Stewart was part of the majority in nine of the 5-to-4 cases; that is, nine cases out of 123, in which an opposite vote by Justice Stewart would have changed the outcome.

Among these were decisions that upheld the California statutory rape law as not violating the constitutional rights of men and that held that parents do not have a constitutional right to a lawyer to contest an effort by the state authorities to remove their children permanently from their home.

### Patent and Criminal Law

There were also patent law and criminal law decisions. Justice Stewart voted with Associate Justice William H. Rehnquist, the Court's most conservative member, in eight of the nine cases. Too little is known about Judge O'Connor's views to say how she would have voted in these close cases.

The Chief Justice and Justice Rehnquist voted together with a high degree the most senior Justice in the majority gets to assign the opinion. Justice Brennan, the Court's most senior member, exercised that right to assign himself the opinions in the cotton dust case and a second important case that expanded the right of women to challenge low pay on the basis of sex discrimination.

Following are summaries of the important decisions of the 1980-81 Supreme Court term.

## Federal Authority

In addition to the Iranian assets and the cotton dust cases, the Court upheld the authority of the State Department to revoke a passport on the ground that the overseas activities of the passport bearer "are causing or are likely to cause serious damage to the national security or the foreign policy of the United States." The decision upheld the department in revoking the passport of Philip Agee, a former Central Intelligence Agency official who has embarked on a worldwide campaign to expose the agency's personnel and operations.

The Court turned back a challenge to the Federal strip-mining law and ruled that the Environmental Protection Agency can enforce its water pollution standards without regard to the financial ability of an individual factory to comply.

The Justices aided the Federal Government's effort to deport former Nazis by ruling, in the case of Feodor Fedorenko, a guard at the Treblinka death camp in Poland, that failure to disclose such service at a concentration camp made a subsequent naturalization invalid.

## Sex Discrimination

The Court ruled that male-only draft registration, and by implication a military draft that included only men, does not violate the constitutional guarantee of equal protection of the laws. The 6-to-3 majority ruled that because women were barred by various laws and policies from serving in combat they were not "similarly situated" with men and so may properly be excluded from compulsory military service.

The Justices upheld state laws that punish men for having sexual relations with underage women but do not punish women for the same conduct with underage men.

The Court opened the door to a new theory of employment discrimination, ruling that women can sue over low pay even in the absence of male colleagues who are doing equal work at higher pay. The case was based on the Civil Rights Act of 1964.

## Institutionalized Persons

The Court ruled that placing two prison inmates in a cell designed for one is not of itself unconstitutional but left open the prospect that prison conditions as a whole might be unconstitutional if they violated the "contemporary standard of decency."

The Court ruled that a "bill of rights" for the mentally retarded, enacted by Congress in 1975, did not impose any specific obligation on state-operated institutions. The Justices have accepted a case for the next term that raises the broader issues of the constitutional rights of the institutionalized retarded.

The Court overturned a lower court decision that mandated special judicial

scrutiny for cases involving the mentally ill.

## Family Issues

The Court ruled that military pension benefits are the "personal entitlement" of the service member and thus may not become part of a property settlement in a divorce. The adverse impact of the decision falls almost entirely on the former wives of servicemen. The Court avoided extending the decision to private, nonmilitary pensions. On the last day of the term it let stand a lower court decision that treated a private pension as community property.

The Court ruled that a state can require that before performing an abortion on a teen-aged girl a doctor must notify the parents or face criminal liability.

The Justices ruled that a parent is not constitutionally entitled to legal representation at a court proceeding that could result in permanently severing the parent-child relationship.

## Press and Speech

The Court ruled that states may permit the televising of criminal trials, even over the defendant's objection.

The Justices ruled that decisions to change the entertainment programming of a radio station are not subject to Federal regulation.

The Court held that television stations are required to sell "reasonable" amounts of air time to candidates for Federal office and left wide discretion to the Federal Communications Commission to decide when in a particular campaign the obligation to provide access begins.

A local community that permits some form of commercial activity may not impose a complete ban on nude dancing, the Court ruled. But the Justices also ruled in a New York case that a state has the authority under its power to regulate the sale of alcoholic beverages to ban topless dancing in bars.

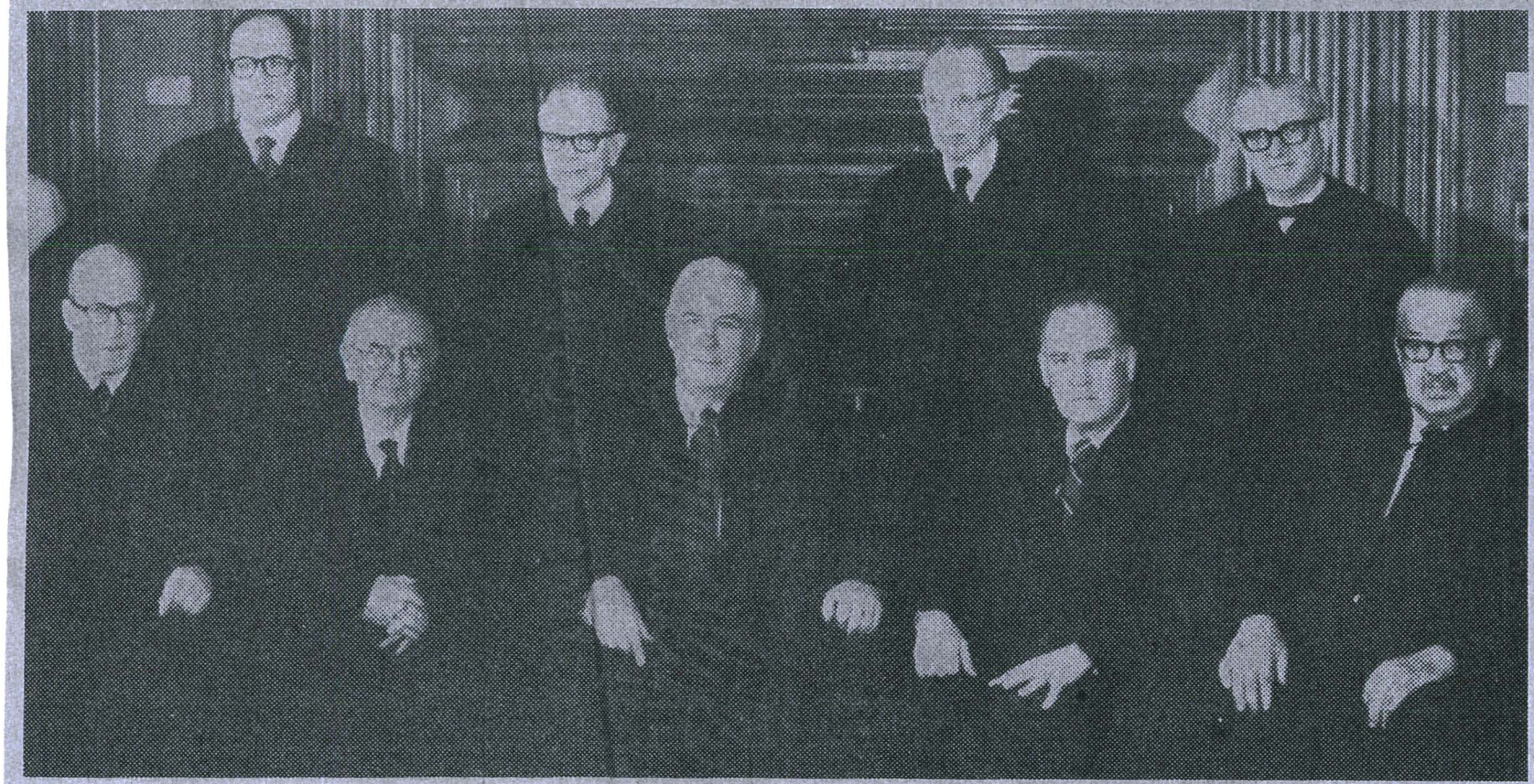
The Court ruled that localities may ban billboards that carry commercial advertising messages. That opinion left unclear the extent to which billboards bearing political or other noncommercial messages may be regulated.

The Justices upheld a Federal law that makes it a crime to deposit "mailable matter" in mailboxes without first putting a stamp on it and mailing it.

## Criminal Law

The Court ruled that the constitutional protection against double jeopardy does not bar the prosecution from appealing a sentence it regards as too lenient. The decision upheld a Federal law that authorizes the Government to appeal sentences under specific circumstances.

Two decisions expanded the constitutional protection against self-incrimination. The Court ruled that a murder defendant must be given the right to remain silent when questioned by a psychiatrist who might later testify that the defendant is "dangerous" and should be put to death. The second ruling, interpreting the 1966 Miranda decision, held that once a suspect has invoked his right to the presence of a lawyer in question-



United Press International

**Chief Justice Warren E. Burger, seated at center, with Associate Justices in photo made in 1976. Seated with him are, from left, Byron R. White, William J. Brennan, Potter Stewart and Thurgood Marshall. Standing, from left, William H. Rehnquist, Harry A. Blackmun, Lewis F. Powell, John P. Stevens.**

ing he cannot be regarded as having waived that right unless he initiates further conversations with the police.

Four decisions dealt with search warrants, and the results were mixed. Two placed new limits on the police: a ruling that even when the police have a valid arrest warrant they also need a search warrant to enter the home of a third party in search of the one they want to arrest, and a ruling that the police generally need a warrant to open a closed container taken from the trunk of an automobile.

In the other decisions, the Court ruled that a warrant to search a home for contraband automatically gives the police the power to detain temporarily anyone found on the premises, and that the police do not need a warrant to search the passenger area of an automobile while arresting the occupants.

Finally, the Court upheld the Justice Department's interpretation of the Federal antiracketeering law, ruling that the statute is not limited to the prosecution of criminal organizations that take over or infiltrate legitimate businesses.

## Religion

The Court struck down a Kentucky state law that required the posting of a copy of the Ten Commandments in every public school classroom.

The Justices ruled that a worker who quits a job that conflicts with his religious beliefs may not be denied state unemployment compensation.

The Court ruled that officials of a state fair may require members of the Hare Krishna sect to conduct their solicitation activities from booths.

# White House Pressing Confirmation

Special to The New York Times

WASHINGTON, July 8 — President Reagan was reported today to be urging some of his conservative allies to "keep an open mind" on the qualifications of Judge Sandra Day O'Connor, his newly announced choice for the United States Supreme Court, until her confirmation hearings are completed.

Faced with the possibility of a vigorous campaign by anti-abortion groups against Judge O'Connor, meanwhile, the White House attempted a counterattack by directly rebutting the charge that she had voted on several occasions in favor of abortions.

White House spokesmen asserted further that Judge O'Connor had never been an activist on any issues related to feminism. David R. Gergen, the senior White House spokesman, quoted the Arizona judge on the subject of the Federal equal rights amendment as being "neither as enthusiastic as some proponents nor as alarmed by it as some opponents."

Judge O'Connor, who has been described by the White House as personally opposed to abortions, has said that she will not discuss her views until the time of her confirmation hearings. White House officials acknowledge that the judge regards abortion as a legitimate matter for regulation by the legislative branch.

### Officials Optimistic

By the end of the day, Administration officials said that they were encouraged by the prospects for confirmation of Judge O'Connor in the Senate.

Yesterday, Mr. Reagan had Senator Jesse A. Helms, the Republican conservative from North Carolina, visit him at the White House to assuage his concerns about Judge O'Connor. The President also telephoned the Rev. Jerry Falwell, leader of Moral Majority, which has already come out against her nomination, saying that Judge O'Connor has advocated legal abortions and the equal rights amendment.

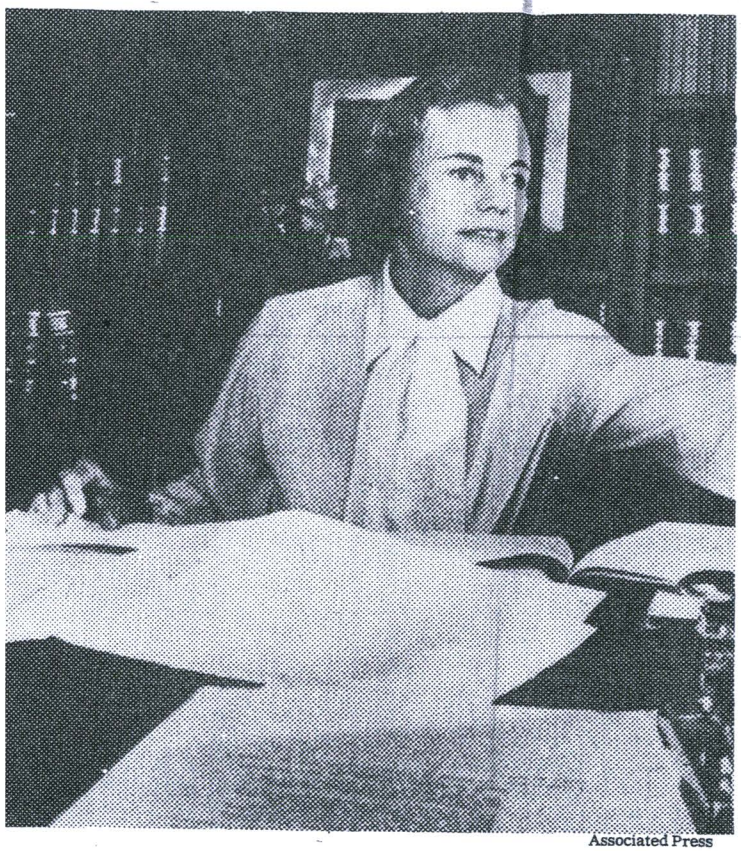
At the White House, Mr. Gergen quoted Mr. Reagan as saying that the reaction to the selection of Judge O'Connor had "generally been very positive."

But this evening, the White House press office released information showing that telephone calls and mail had been running heavily negative ever since the judge's possible nomination was reported in the press last week. Telegrams and mail had been 2,573 against, and 290 in favor, while telephone calls were 1,554 against and 263 in favor.

Mr. Gergen said he had no way of knowing whether there had been an organized telegram or telephone campaign by the anti-abortion movement.

White House officials reacted with some annoyance that someone whom they regarded as a conservative was being attacked by conservative groups on the abortion issue. But they professed not to be surprised and were ready today with a point-by-point rebuttal. At issue appear to be positions taken by Mrs. O'Connor on five separate occasions when she was a State Senator in Arizona.

**Washington Watch**
**Monday in Business Day**
**The New York Times**



Associated Press

Phoenix. Jar of jellybeans was a gift from an anonymous sender.

# Reagan's Court Choice: A Deft Political Maneuver

By HEDRICK SMITH
Special to The New York Times

WASHINGTON, July 8 — With his nomination of Sandra Day O'Connor for the Supreme Court vacancy, President Reagan has won admiring applause from rival politicians for a masterly political stroke as well as a strong judicial choice.

**News Analysis**

This city still recalls that a little over a decade ago President Richard M. Nixon had to face political humiliation when the Senate rejected two of his Court nominees, Clement F. Haynsworth Jr. and G. Harrold Carswell.

Now, Mr. Reagan is being credited with an astute Court selection that immediately won the endorsement of a broad spectrum, from conservatives like Senator Barry Goldwater, Republican of Arizona, to liberals like Senator Edward M. Kennedy, Democrat of Massachusetts.

The President has risked a new breach with the radical right wing of the Republican Party, which has provided his most zealous political support through the years and is now openly dismayed over Mr. Reagan's Court choice.

But in the process, several members of Congress commented, the President has blunted the right-wing stereotype that Democrats were beginning to use against him in the increasingly partisan battle over economic issues.

House Speaker Thomas P. O'Neill Jr., Democrat of Massachusetts, who has been in a toe-to-toe battle with Mr. Reagan on the budget and taxes, called a truce long enough to hail Judge O'Connor's nomination as "the best thing he's done since he was inaugurated." Meanwhile, right-wing leaders were accusing the President of betraying the Republican platform's conditions on Court appointments.

To others, the pragmatic symbolism of Judge O'Connor's selection followed the pattern of some of Mr. Reagan's early Cabinet appointments, which plased mainstream Republicans, irritated hard-line conservatives and enabled the President to broaden his political appeal as his tenure began. Now, they said, Mr. Reagan is once again courting the political center at the expense of the radical right.

### Udall Praises Selection

"This is incredibly smart politics," said Representative Morris K. Udall, a liberal Arizona Democrat. "It's a real strike. You take all the groups in America, and there has been none more distrustful of Reagan than the women's movement. This just cuts the ground out from under them. It will be doubly delicious to the leaders of the women's movement because people like Phyllis Schlafly will be trying to take Reagan's head off."

Mrs. Schlafly, a prominent Republican activist from Illinois, has spearheaded the effort to block ratification of the proposed equal rights amendment to the Federal Constitution. Judge O'Connor is known for having supported the amendment, though White House officials said that more recently she had expressed "some reservations" about it.

"With Ronald Reagan as President, the fact that you can get a woman appointed to the Court is remarkable," Mr. Udall asserted. "The fact that you can get someone as moderate, and as close to the center of the Republican Party as she is, is really stunning. It erases the stereotype opposition to Reagan."

Some Senate conservatives, such as Paul Laxalt, Republican of Nevada, took comfort, though gingerly, in the fact that President Reagan had pronounced himself "fully satisfied" with Mrs. O'Connor "philosophically."

Other members of Congress cited Mrs. O'Connor's conservative reputation, suggesting that initially perhaps both liberals and conservatives were overinterpreting her flexibility on such issues as abortion. As a member of the Arizona Senate in 1974, Mrs. O'Connor voted against a ban on abortions at Arizona University Hospital.

But in the face of a volley of reproof from the National Right to Life Committee and other anti-abortion and far-right political action groups, the White House took a detached view, evidently convinced that the President had effectively isolated the far right on this selection.

"There's going to be a lot of sound and fury," said one Reagan aide, "but it will wind up signifying little or nothing when it's all over."

# Senate Believed Unlikely to Vote on Court Nominee Till September

By FRANCIS X. CLINES
Special to The New York Times

WASHINGTON, July 8 — The Senate's vote on the nomination of Judge Sandra Day O'Connor to the Supreme Court is not likely until September, Senate Republican leaders said today. They also reported no significant opposition developing as yet despite threats from conservative, anti-abortion lobbyists.

"If they're going to start a fight, they're going to find Old Goldie fighting them like hell," said Senator Barry Goldwater of Arizona, Judge O'Connor's chief sponsor, warning Moral Majority and other social-issue groups against "sticking their noses into the everyday operations of government."

That remark from the Republican once admired by some as "Mr. Conservative" underlined the tactical difficulty opponents were likely to have in trying to make a broadly based conservative issue of the appointment.

Some anti-abortion lobbyists conceded as much but said that the two months before a full Senate vote, necessitated by inquiriies in the Senate and the Federal Bureau of Investigation and the legislative recess next month, gave them a chance to mobilize their mailing lists and build constituent pressure against Judge O'Connor.

"It takes certain elements to create a battle, and so far they're not there," said Paul M. Weyrich, director of the Committee for the Survival of a Free Congress, one of a number of conservative groups opposed to the appointment.

Anti-abortion groups met this afternoon to plan a common strategy, and thus far the Senator they look to as their leader, Jesse Helms of North Carolina, has remained a step back from the battle, saying he was still investigating discrepancies between his and President Reagan's views of Judge O'Connor's legislative record on the abortion issue.

"I'm not going to prejudge the lady," said Senator Helms, who led a successful fight at the Republican National Convention last July for an anti-abortion plank that some critics contend Mr. Reagan "betrayed" with his nomination yesterday of Judge O'Connor of the Arizona Court of Appeals. If confirmed, the 51-year-old judge would become the first woman to serve on the Supreme Court.

As a state legislator in Arizona, Mrs. O'Connor at different times endorsed the proposed Federal equal rights amendment and voted against anti-abortion interests. But some Arizonans in both parties contend that, in the larger context of her legislative career, she was not "pro-abortion," as she is now characterized by some lobbying groups here.

### Reagan 'Misled' by Staff

Those groups have avoided blaming Mr. Reagan for their disappointment, taking the view expressed this morning on National Public Radio by Richard Viguerie, the conservative fund-raiser: "He's a busy man who relies heavily on his staff, who have misled him, and he needlessly gave the back of his hand to an important part of his coalition."

David R. Gergen, the senior White House spokesman, said that the President was trying to diffuse potential opposition to the appointment by meeting yesterday with Senator Helms and telephoning the Rev. Jerry Falwell, president of Moral Majority, a religious and political lobbying organization, in the hope that they would "keep an open mind" about the appointment. A spokesman for Mr. Falwell said that he did not commit himself.

### Floor Vote in September

Senator Strom Thurmond, the South Carolina Republican who is chairman of the Judiciary Committee, said he believed that the F.B.I. background check on Judge O'Connor might require two weeks for completion, to be followed by a week's notice for the committee hearing. His current impression, he said, was that Judge O'Connor would eventually be confirmed.

"I'm going to try and help the President all I can," the Senator said this morning. "My plan is to support her unless something comes up at the hearing we don't know about."

A spokesman for Senator Howard H. Baker Jr. of Tennessee, the Senate majority leader, estimated that, at the earliest, the appointment might be dealt with by the Judiciary Committee just before the August recess, with a floor vote in early September. The timing is important because the fall term of the Supreme Court begins in October and Senator Baker has promised to expedite the nomination to meet that date.

Senator John East, the North Carolina Republican who is a member of the Judiciary Committee and is considered to be Senator Helm's protege in the anti-abortion movement, promised "a good hard look" at Judge O'Connor's views on abortion, the equal rights amendment and busing to achieve racial balance in public schools.

He did not flatly announce his opposition to the appointment. But, in reference to the 1973 Supreme Court ruling that abortion was a constitutional right of women, he said: "Regardless of a nominee's views on abortion, I would be reluctant to support any appointee who thought Roe v. Wade reflected sound constitutional law."

If the opposition is to make headway, it must convince such key Judiciary Committee members as Senator Orrin G. Hatch, a Utah Republican who is usually quite sympathetic to the anti-abortion bloc. "I intend to support the President," the Senator said today, "But she has to answer certain questions."

Anti-abortion lobbyists promised to use the August recess to build considerable constituent pressure. Senator Goldwater was stirred to anger when informed of Mr. Falwell's opinion that a wide spectrum of Christian groups could be mobilized against Judge O'Connor.

"Every good Christian ought to kick Falwell in the posterior," the Senator responded.

# Conservatives Feud in Wake of O'Connor Choice

By Fred Barbash
Washington Post Staff Writer

Conservatives feuded yesterday over the nomination of Sandra D. O'Connor to the Supreme Court, while her White House and Capitol Hill supporters expressed confidence that she will be confirmed.

"I don't think there's any problem," said White House counselor Edwin Meese III.

"I intend to support her," said Senate Judiciary Committee Chairman Strom Thurmond (R-S.C.), "unless something comes up."

As they spoke, however, about 60 leaders of the New Right were holding an emergency meeting to mobilize opposition to the nominee because of their objections to her position on abortion.

And as they were meeting, conservative Sen. Barry Goldwater (R-Ariz.) was saying that one of their leaders, Jerry Falwell, deserves a "kick in the ass" for his opposition to O'Connor.

The furor stemmed from several votes O'Connor cast while serving in the Arizona Senate. In one instance, she voted against a football stadium bill that carried a rider prohibiting abortions at the University of Arizona Hospital.

Anti-abortionists opposing her nomination charged that she also supported the legalization of abortion in Arizona in 1970, before the Supreme Court legalized it for all the states in 1973. The 1970 action, however, came on an unrecorded voice vote, according to legislative officials.

Whatever its outcome, the controversy was an important event in Reagan's Washington, for it cleanly split the president from parts of the

See O'CONNOR, A5, Col. 1

# Conservatives Feud on O'Connor; Supporters Expect Confirmation

O'CONNOR, From A1

coalition that helped elect him and, if only for a moment, gave him a new constituency of liberals who praised the nomination.

Most Capitol Hill observers agreed that confirmation is likely. But many also said it might entail O'Connor's going before the Senate Judiciary Committee and, as one put it, "announcing her conversion" on the abortion question.

Early comments by O'Connor on another controversial issue, state aid to private schools, also surfaced yesterday. In a 1970 interview for Phoenix magazine, O'Connor was quoted as saying that such aid was "clearly unconstitutional."

But yesterday's debate centered on abortion. "We feel we've really been challenged on this," said conservative direct-mail king Richard Viguerie. "The conservatives weren't consulted. They just said 'like it or lump it.' I haven't talked to a conservative yet who wasn't disturbed by this."

"The president is going to be suffering a degree of political influenza from which he will not easily recover," added Conservative Caucus Chairman Howard E. Phillips. "It will be a costly fight with people who have been his most faithful supporters."

Phillips said the action might cost Reagan support from conservatives on other issues, such as his economic proposals. "We're going to be redirecting our efforts somewhere else now," Phillips said.

Though the White House would like quick confirmation hearings and an early vote to avoid too much bloodletting, hearings probably won't begin until late July. Confirmation might then come in September, after the August recess.

Some Senate conservatives, ordinarily allies of the New Right organizations, yesterday said they will support the nomination unless something new comes up to dissuade them.

Sen. Orrin G. Hatch (R-Utah) said the president "has assured me personally that she offered her support for the Republican platform," including the sections on the sanctity of the American family. "I also have real questions whether any single issue should be able" to stand in the way of a Supreme Court appointment.

"When Barry Goldwater and Ronald Reagan say she's conservative," Hatch said, "that's hard to question."

Sen. John P. East (R-N.C.), another abortion opponent, said he would withhold judgment until the confirmation hearings. East and Hatch emphasized that O'Connor will be questioned closely about her views then.

Goldwater's comments about the opposition to his friend, O'Connor, were more colorful. "I am probably one of the most conservative members of Congress, and I don't like to get kicked around by people who call themselves conservatives on a nonconservative matter. It is a question of who is best for the court. If it is going to be a fight in the Senate, you are going to find Old Goldy fighting like hell."

Goldwater's comment about Falwell came when asked about an earlier comment from the Moral Majority leader that all good Christians should be concerned by the appointment.

"I think every good Christian ought to kick Falwell right in the ass," Goldwater said.

Meese said he did not think the opposition would hurt the nomination. "I think that a complete understanding of her record on these subjects and her personal viewpoints" will calm the opponents. "With her overall excellence and judicial approach to things . . . I don't think there's any problem with her confirmation," he said.

The opposition could benefit the Reagan administration in some ways by separating it from the single-minded anti-abortion lobby and broadening the potential base of support to include many moderate Democrats offended by the right.

O'Connor's comments on state aid to private schools were reported in a profile that appeared in Phoenix magazine in 1970. It described her as "almost alone in the Arizona Senate in opposing publicly state aid to private schools" though she was a trustee of one, Phoenix Country Day School. " 'Clearly unconstitutional,' " the magazine quoted her as saying.

*Staff writers Martha Barnette and Lou Cannon contributed to this report.*

# Comment

## Consider h Israel

ontribution to Israel's se- with Israel's neighbors ac- ore sophisticated weapons ot be enough in the long ilitary budget of Saudi Ar- stance, in 1979-80 was $14 npared to $3.5 billion for nerican officials have been asking Israeli repre- from time-to-time wheth- rican security guarantee vide the answer. Israel's a conventional military eems to have been shifted ive military action, such ag Iraq's ability to manu- uclear weapons or the destroying Syrian anti- ssiles.

**Strategy**

tegy of preventive action friends profoundly wor- ossibility of going nucle- is now being discussed y, is even more worrying. tly the Center of Strategic Tel Aviv University, pre- by former army intelli- f Aron Yariv, conducted y and Moshe Dayan con- rivate group that Israel o consider a nuclear op- e of the mounting prob- ntaining Israel's conven- riority.

oreign Minister Moshe to be very interested in n security guarantee, ster Begin has never sue, most likely because that the United States certain guarantees in his would be a natural to seek to make such a ble to Congress.

e in the White House

**OLIPHANT**


*'Supreme Court, indeed! Get back in your place, woman!'*

**JAMES J. KILPATRICK**

# From Myra Bradwell to Sandra Day O'Connor . . .

It was just the other day that I was invoking the 19th-century shade of

Mrs. Bradwell appealed. In April 1873, the U.S. Supreme Court also

takes nothing from Thurgood Mar-

men) for a potential draft. No one

# From Myra Bradwell to Sandra Day O'Connor . . .

It was just the other day that I was invoking the 19th-century shade of Myra Bradwell, but with the nomination of Sandra Day O'Connor to the Supreme Court, the old story takes on an especially poignant meaning. From Mrs. Bradwell to Mrs. O'Connor, it's been a long, uphill climb for ladies in the law.

Myra Bradwell, may she rest in peace, was a native of Vermont who moved to Chicago sometime in the mid-1850s. Not long after ratification of the Fourteenth Amendment in 1868, she did a most audacious, unfeminine thing: She applied for a license to practice law. Curiously, she did not rely upon the equal protection clause but rather upon the privileges and immunities clause, but in any event the Supreme Court of Illinois summarily turned her down. No women were to be allowed in court.

Mrs. Bradwell appealed. In April 1873, the U.S. Supreme Court also gave her the brush-off. It was within the police powers of Illinois to limit membership in the bar to males only. Only Chief Justice Salmon P. Chase dissented, and he didn't say why.

Justice Joseph P. Bradley was so shocked by the whole astonishing idea that he wrote a flaming concurring opinion in which two other justices joined. History, nature, the common law, and "the usages of Westminster Hall from time immemorial" argued against the proposition. Bradley felt impelled to expand upon the wide difference in the spheres and destinies of man and woman.

"Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and function of womanhood . . . The paramount destiny and mission of woman are to fulfill the noble and benign office of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases."

**Born Too Soon**

It would be interesting to know what ever became of Myra Bradwell. She was born a century before her time, but the nomination of Sandra O'Connor to the high court vindicates her pioneering effort. The Senate Judiciary Committee expects to expedite confirmation hearings on the nominee, in an effort to complete action before the August recess.

Mrs. O'Connor will be welcome on the court. Members of our highest tribunal come to that bench equipped not only with experience in the law but with all the other experiences of their lifetimes also. It takes nothing from Thurgood Marshall's stature to observe that Lyndon Johnson wanted to name the first black to the court. By the same token, it is evident that Mrs. O'Connor has been chosen over males with much higher qualifications precisely because she is a woman.

Just as the court has benefited in times past from a Western viewpoint, or an academic or a black or a Jewish or a Catholic viewpoint, or the viewpoint of a lawyer in private practice, now we will have some benefit, however subtle, of a woman's viewpoint.

Excellent! In the term just ended, the court disposed of cases having to do with abortion, child custody, teen-aged sex, nude dancing, sex discrimination in employment, property settlements in divorce, and the registration of women (but not men) for a potential draft. No one can say how Mrs. O'Connor might have voted in these cases if she had been sitting on the court. She might have voted just as the departing Potter Stewart voted. But she would have brought to the consideration of these cases a body of personal experience – a cast of mind, if you please – that has not been there before.

None of this, I know, is supposed to matter. Justices in theory approach each case without personal prejudice or bias. They function as carpenters, in one metaphor, who simply lay the boards of law against the square of the Constitution. The theory is specious. Justices are not disembodied spirits. They are mortals, and to this day they have all been mortal men. Now we are to have a mortal woman. Myra Bradwell would be pleased. And so am I.

SANDRA DAY O'CONNOR Associated Press

# Tactics of O'Connor Foes Irritate Sen. Humphrey

By Fred Barbash and Lou Cannon
Washington Post Staff Writers

The New Right escalated its battle against the Supreme Court nomination of Sandra D. O'Connor yesterday with charges that either the Justice Department or O'Connor herself had tried to "cover up" her position on abortion. In the process, however, the conservative group angered another one of its traditional Senate allies, Sen. Gordon J. Humphrey (R-N.H.)

Humphrey said he had taken no position on the nomination but objected to the "hip-shooting of O'Connor's opponents .... They shouldn't categorize or stereotype someone without waiting for full hearings. I don't think they've done themselves any favors."

Sen. Jesse Helms (R-N.C.) said yesterday that O'Connor would come here next week for a meeting with members of the Judiciary Committee, an unusual step to allow questioning by senators about her views on abortion.

Meanwhile, sources said the controversy was beginning to trouble the White House, which began an effort to prepare O'Connor for the confirmation fight ahead. The White House assigned its highly regarded chief lobbyist, Max L. Friedersdorf, to the case.

Day three of the battle began with a dispute about an internal Justice Department memorandum distributed by Conservative Caucus Chairman Howard Phillips and other anti-abortion activists at a morning news conference.

The memo describes O'Connor's responses on the day before her nomination to questions on her record as an Arizona state senator. Kenneth W. Starr, a top Justice Department official, reported that O'Connor indicated "that she had never been a leader or outspoken advocate on behalf of either pro-life or abortion-rights organizations." But Starr also reported that she "has no recollection" of how she voted on a 1970 Arizona bill to decriminalize abortion.

Kathleen Teague, one of the anti-abortion speakers at the news conference, [illegible] the second flap for O'Connor's opponents.

Humphrey, generally a staunch New Right supporter, had not been informed of the purposes of the news conference. When he found out, a press aide began calling reporters to disassociate the senator from the whole enterprise. Humphrey later said he was "quite upset" by the incident.

Humphrey said he has taken no position on the nomination and did not want to be identified with one. Beyond that, he said he objected to the "hip-shooting" of the opponents. "They're objecting to most of her votes as a senator," he said. "I know full well that votes can be misconstrued."

Humphrey's reaction illustrated what appears to be a delicate but clear shift in alliances on the right with implications beyond the O'Connor dispute. Many conservative politicians, including President Reagan, seem anxious to use this opportunity to publicly separate themselves from the far-right organizations that helped elect them and to identify themselves with a more moderate conservatism.

At this point, however, Reagan and the anti-abortion forces are avoiding direct confrontations. Phillips and his allies at yesterday's news conference took pains to place the blame for the nomination on aides to Reagan, who they say misinformed the president.

White House officials have, in turn, decided not to respond to the criticism themselves. Instead, that task has been left to the Justice Department and Starr.

Yesterday, Starr dismissed the "cover-up" allegation. He said the memorandum he wrote "accurately memorialized my conversations" with O'Connor.

The memorandum does suggest that the administration might have been caught off guard by the abortion controversy. The telephone call to discuss her voting record came after officials had already spent hours talking to O'Connor and after Reagan had made the decision to nominate her.

Starr's inquiry appeared to be a last-minute response to pre-

# 3 to 1, House Backs MX Mobile Missile; Site Choice Deferred

Associated Press

The House endorsed the MX mobile missile yesterday by a margin of more than 3 to 1, but at least temporarily sidetracked plans to base it in shelters in the deserts of Utah and Nevada.

Voting 316 to 96, the lawmakers rejected an amendment by Rep. Ronald V. Dellums (D-Calif.) to trim all $2.4 billion for the MX from a $136 billion military spending bill.

But it approved by voice vote an amendment by Rep. James V. Hansen (R-Utah) to delay the desert basing plan, estimated to cost $1.1 billion, until President Reagan decides whether to support it.

The Reagan administration supports the MX, but is reviewing the recommendation of former president Carter to build 4,600 shelters in the West and move the 200 missiles among them to keep the Russians guessing.

Alternatives mentioned during the debate include basing the missiles on small submarines or in Minuteman missile silos to be protected by anti-ballistic missiles.

Opponents said the Carter proposal would not work and might cost more than $100 billion. Supporters said delaying MX development would make the United States vulnerable to Soviet attack.

"It is the height of irresponsibility to vote for a weapons system when we have no idea what it would cost," Dellums said.

Rep. Samuel S. Stratton (D-N.Y.), on the other hand, said, "We have been hearing from a lot of armchair strategists, but the gut point is that the MX system is required."

Hansen's amendment would give Congress 60 days in which to veto, by a vote of both houses, a presidential decision on how to deploy the mobile missile.

The Senate has already passed its version of the military spending authorization bill. It also would permit Congress to override a presidential decision on MX basing.

## TODAY IN CONGRESS

### Senate

Meets at 10:30 a.m.
Committees:

Agriculture subc. on foreign agricultural policy — 9:30 a.m. Open. Hrng. on cargo preference laws as applied to P.L. 480 shipments. 324 Russell Office Building.

Appropriations — 10 a.m. Open. Meeting on budget allocations. S-128 Capitol.

Energy subc. on public lands & reserved water — 9 a.m. Open. Cont.

case.

Day three of the battle began with a dispute about an internal Justice Department memorandum distributed by Conservative Caucus Chairman Howard Phillips and other anti-abortion activists at a morning news conference.

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Kathleen Teague, one of the anti-abortion speakers at the news conference, said the memo showed a "cover-up" by the Justice Department or O'Connor because, among other things, O'Connor co-sponsored the bill in question and voted for it.

That was when events began backfiring on the anti-abortionists. Legislative records in Arizona contradicted Teague's claim that O'Connor co-sponsored the bill, according to the keeper of the records, Greg Jernigan. Consulting the records, Jernigan said the only abortion bill O'Connor sponsored was one giving doctors and hospitals the right to refuse abortions.

Newspaper accounts, however, confirmed Teague's statement that O'Connor voted for the decriminalization proposal in committee.

The anti-abortion group held its news conference in a room reserved in the Capitol by one of Humphrey's Senate staff members. That caused

took pains to place the blame for the nomination on aides to Reagan, who they say misinformed the president.

White House officials have, in turn, decided not to respond to the criticism themselves. Instead, that task has been left to the Justice Department and Starr.

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The memorandum does suggest that the administration might have been caught off guard by the abortion controversy. The telephone call to discuss her voting record came after officials had already spent hours talking to O'Connor and after Reagan had made the decision to nominate her.

Starr's inquiry appeared to be a last-minute response to pre-announcement indications of trouble on the abortion question.

The next round of the fight is expected to revolve around the timing of the confirmation hearings. The anti-abortionists urged the Judiciary Committee to postpone any hearings until late September. The Reagan administration is pushing for hearings by late July.

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Committees:

**Agriculture subc. on foreign agricultural policy** — 9:30 a.m. Open. Hrng. on cargo preference laws as applied to P.L. 480 shipments. 324 Russell Office Building.

**Appropriations** — 10 a.m. Open. Meeting on budget allocations. S-128 Capitol.

**Energy subc. on public lands & reserved water** — 9 a.m. Open. Cont. workshop on public land acquisition and alternatives. 3110 Dirksen Office Building.

**Foreign Relations** — 10 a.m. Open. Cont. nomination hrng. of Edward Rowny to be special rep. for arms control and disarmament negotiations. 4221 DOB.

**Finance subc. on Social Security & income maintenance** — 9 a.m. & 2 p.m. Open. Hrng. on Social Security issues. 2221 DOB.

### House

Meets at 10 a.m.
Committee:
**Ways & Means** — 9:30 a.m. Open. Cont. markup tax cut legis. 1100 Longworth House Office Building.

TWO NUMBERS TO REMEMBER: POST CLASSIFIEDS: 334-6200 POST CIRCULATION: 334-6100

therwise, forget Finlandi-

get interesting. In respect , the United States has ost to a West European e Soviet occupation in a broadly based guarantees pendence and non-align- e choice of a government tives of the Afghan peo- Europeans, the State De- essed regret at Moscow's itial" response.

way of knowing now viets will continue to de- e world recognize their l, or whether further Af- or some other factor will change their mind. Also, e West European plan is t it's in the Finland pat- teresting that the Reagan even while it does what se the costs of the Soviet ns to be aboard the Eu-

ferent. It didn't start out neutral in distant Asia but as a Warsaw Pact ally on what is politically and emotionally the Soviet Union's most sensitive border. One can argue that by playing to Polish nationalism, withdrawing Soviet troops and letting the Poles run their home affairs, Moscow would vastly enhance its security. But this cannot be an easy argument to sell in the Politburo. That is why William Pfaff argues that NATO would have to make certain compensating changes in Western Europe.

For me, Pfaff goes too far. If Poland is to be Finlandized, it will have to be in fact, not in name. The process of making it explicit would be too upsetting to the Western alliance, too hard, and perhaps unnecessary.

One step, however, is necessary. Ronald Reagan must convey that his larger purpose is something other than the destabilizing of the Soviet Union and the deliberate rending of its empire. To the extent that he convinces the Kremlin he is interested in Poland's liberty not for its own sake but for the United States' strategic and ideological advantage, he ensures that Moscow will keep the pressure on the Poles.

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the greatest profit over the long term. But this scheme broke down in 1979 when the price of oil doubled. Saudi Arabia made a strategic error in allowing that price to rise. The Saudis could have controlled it, but they didn't. The result of this miscalculation—as they themselves must now realize—is the destruction of their future oil market and a threat to their internal stability, when their oil income declines below the expectations of their population.

Because of price, oil consumption is falling in the major consuming nations. In the United States, it has dropped by 13 percent in only three years. Oil imports have declined by 30 percent in the same period. This appears to be the beginning of a long-term downward trend, as oil consumers everywhere are conserving, increasing efficiency of energy use and substituting cheaper energy sources for oil wherever possible. Most of the world's oil is used to make heat and steam, something that can be done at less cost with coal, gas, nuclear energy, geothermal or solar energy

*Rowland Evans*
*And Robert Novak*

# Why Did He Choose Her?

A hurriedly prepared, error-filled memo by a young Justice Department lawyer convinced President Reagan to go through with nominating Judge Sandra O'Connor to the Supreme Court, even at grave political risk.

The memo softened O'Connor's pro-abortion record that has stunned Moral Majority elements in Reagan's coalition. That the president accepted it at face value broadened suspicions that his narrow flow of information subjects him to staff manipulation.

Even so, if the president took seriously the Moral Majority and its issues, he would have found it difficult to pick O'Connor. Thus, fundamentalists who turned on Jimmy Carter after they felt deceived by him may feel the same way about Ronald Reagan.

O'Connor surely will be confirmed. But important conservative Republicans in Congress, while keeping mum publicly, grumble privately that the president has lost control of his own administration to moderate forces in general and chief of staff James Baker III in particular.

The remarkable fact is that Reagan was unaware that the right-to-life movement found O'Connor totally unacceptable until her probable nomination leaked out just before the Fourth of July weekend. The resulting avalanche of opposition then gave the president serious pause.

For example, Trudy Camping, one of O'Connor's former state Senate colleagues, sent the White House a decade-old stack of clippings about O'Connor. They revealed a moderate social liberal supporting the Equal Rights Amendment for women, advocating free choice on abortion and urging caution in restricting pornography.

On Monday, July 6, the president telephoned Attorney General William French Smith, who had given Reagan

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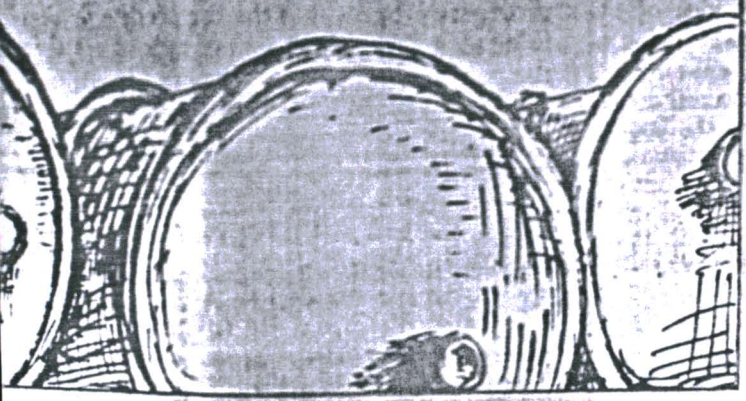
sumers everywhere are conserving, increasing efficiency of energy use and substituting cheaper energy sources for oil wherever possible. Most of the world's oil is used to make heat and steam, something that can be done at less cost with coal, gas, nuclear energy, geothermal or solar energy where appropriate. Long before these substitutions are fully carried out, many regions of the world, including North America, will be essentially self-sufficient, and the market for OPEC oil will have shrunk by a large factor. Competition within OPEC must eventually result in substantial price cutting. But by then, the consuming nations, having made investments in other energy sources, may no longer be willing to return to imported oil—even cheaper oil.



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issues that have stymied the "autonomy" plans called for by Camp David.

Accordingly, the temptation of the Reagan administration may well be to temporize. Camp David, even by some other name, has not been high on its list of priorities.

But events will be bearing in: visits by Egypt's Anwar Sadat in early August; Begin himself a month later; and in the fall the monarchs of Jordan and Saudi Arabia. Sadat, as he reacquires the Sinai, will be under heavy pressure to prove to fellow Arabs that Camp David was no "separate peace treaty" with Israel at the Palestinians' expense.

Sooner rather than later, then, the Reagan administration will have to figure out how tough-minded it is prepared to be in its handling of Menachem Begin. How it deals with him on the tormenting Palestinian issue will determine, in large degree, the success of its larger strategic purposes in the Middle East and the Persian Gulf.

He is only matter-of-fact
'I can truthfully say that
a Korean friend."
es would fail to value a pre-

"non-preferential," class of immigrants —which means that they have little realistic hope of coming to America for five or 10 years at the least.

supporting the Equal Rights Amendment for women, advocating free choice on abortion and urging caution in restricting pornography.

On Monday, July 6, the president telephoned Attorney General William French Smith, who had given Reagan the Justice Department's O'Connor recommendation. Reagan wanted a quick check on this abortion business. Smith turned the task over to his young counselor, Kenneth W. Starr, who telephoned O'Connor herself.

The next day, Starr handed Smith a two and one-half page memo giving O'Connor a clean bill of health on abortion by using legal gymnastics to explain her Arizona legislative record. While Starr's memo said O'Connor "has no recollection" of how she voted on a 1970 bill to legalize abortion, in fact she was a co-sponsor of the measure and voted for it as it was defeated 6-to-3 in committee.

"Judge O'Connor further indicated, in response to my questions," Starr concluded his memo, "that she had never been a leader or outspoken advocate on behalf of either pro-life or abortion rights organizations. She knows well the Arizona leader of the right-to-life movement, a prominent female physician in Phoenix, and has never had any disputes or controversies with her."

Starr did not bother to check with that "prominent female physician"—Dr. Carolyn Gerster, a national anti-abortion activist. If he had, the attorney general's man would have gotten an earful. Gerster told us "I had an adversary position with Sandra O'Connor" in the 1970s when the Supreme Court nominee was "one of the most powerful pro-abortionists in the [Arizona] Senate." Gerster still harbors an 11-year-old grievance, claiming Senate Majority Leader O'Connor broke her word by burying an anti-abortion proposal in caucus.

Based on Starr's memo, Smith reas-

*"The more plausible reason is that Reagan shares the view that the Moral Majority is not vital to his political coalition."*

sured Reagan that O'Connor offered no problems. Baker, David Gergen and other senior presidential aides said the same thing, contending only right-wing kooks were making a fuss. Reagan agreed, telephoning prominent anti-abortion Republicans to reassure them that "she's all right."

Eager to announce the nomination before opposition could build, nobody at the White House bothered to probe O'Connor's record. But right-wingers will bother, not in realistic hope of

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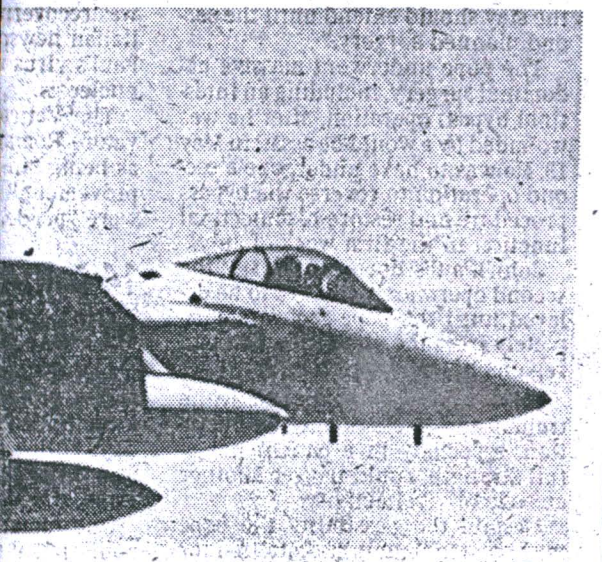

Associated Press

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# Soviet Connection

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forces in the area. Two weeks later, Prince Nayif of Saudi Arabia was in Zambia attacking the United States. In the meantime, Saudi Arabia has been pressuring other Gulf states like Oman to refuse U.S. requests to station forces in these countries, even though such forces would be the principal deterrent to Soviet moves in the Persian Gulf.

Advanced American weapons should be used to protect the Persian Gulf, but, in the interest of American national security, control must be maintained by the United States. Today there are four AWACS in Saudi Arabia being flown and controlled by Americans. This guarantees that the weapons will be used for the intended purpose. In Saudi hands, we do not have this guarantee. If we must provide sophisticated weaponry to other nations to help protect our interests, let us at least supply them to stable, pro-Western, anti-Soviet nations with a capable military and without a history of aggression against their neighbors. In the Middle East, Israel and Turkey best fulfill these criteria.

In contrast to the Reagan administration's policy towards the Soviet Union, its Middle East policy appears to be a retread of the policies of appeasement and weakness pursued by the Carter administration. If President Reagan sincerely wishes to reverse Western retreat in an area where force traditionally breeds respect, he must be prepared to be forceful with Arab sheiks, whose shaky sand kingdoms will cooperate - not with nations which grovel - but with powers willing to use economic and military muscle.

SMITH HEMPSTONE

# Reagan May Get to Name Six to Supreme Court

The retirement of Justice Potter Stewart, effective July 3, points up the fact that President Ronald Reagan, even if he does not serve more than one term, may be able to appoint as many as six justices to the Supreme Court.

Stewart is 66, and apparently in good health. But five other justices – Chief Justice Warrent Burger, and Associate Justices William Brennan, Thurgood Marshall, Harry Blackmun and Lewis Powell – are 72 years old, or older. And four of them (Burger is the exception) are in failing health. The average age at which the 99 men who have served on the court have left it, feet first or otherwise, is 70.

One president naming six Supreme Court justices, dramatic as it would seem, would be far from unprecedented. George Washington – a special case, since he was in office when the court was created – appointed 11.

**Roosevelt Named Eight**

But Franklin Delano Roosevelt, despite his failure to pack the court by enlarging it, named eight (Roosevelt, of course, served more than three full terms in office). Andrew Jackson and William H. Taft (who later became chief justice himself), each had six nominees confirmed.

Abraham Lincoln and Dwight D. Eisenhower each appointed five justices, of which Stewart was one of Ike's. Grant, Harding, Truman and Benjamin Harrison accounted for four each, as did Richard Nixon (Burger, Blackmun, Powell and William Rehnquist, the court's "baby," were Nixon appointees).

The hypothetical importance of being able to name members of the Supreme Court is obvious. Many members of the House of Representatives come and go before one learns their names, or what (if anything) they stand for. It is possible to emerge from a term or two in the Senate virtually anonymous. Even presidents hold center-stage for but a brief hour, before retiring to their libraries to write self-vindicating memoirs.

But members of the Supreme Court, because they are appointed for life (on his retirement, Stewart will have served nearly 23 years), and their rulings become the law of the land, leave deep imprints on the sands of history.

Their influence is the more important in that, as that astute observer of American character and institutions Alexis de Tocqueville, once remarked, "scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question."

Yet a president's ability to see his political proclivities translated into high court rulings is more apparent than real. If this were not the case, the court, which contains only two members appointed by Democratic presidents – Byron R. White, who was named by John F. Kennedy, and Marshall, the court's first and only black, appointed by Lyndon Johnson – would have been handing down decisions far more in accord with GOP theology than has been so.

While it is clear that, in the words of the authors of the Federalist Papers, Supreme Court justices are not expected to be "obsequious instruments of his (the president's) pleasure," many chief executives have been bitterly disappointed by the rulings of men they have appointed to the high court.

**Holmes Appraised**

Theodore Roosevelt, no mincer of words, once characterized his 1902 Supreme Court nominee, Oliver Wendell Holmes, as having less backbone than "a banana." Eisenhower is said to have regarded his appointment of Brennan as one of the worst mistakes of his presidency.

Reagan himself had some experience of this syndrome during his tenure as governor of California. Reagan's first appointee (1970) to the California Supreme Court was Donald Wright, who boasted outstanding judicial and academic qualifications, with a moderate-to-conservative voting record.

Once on the bench, Wright, who retired in 1977, showed himself to be far more liberal than Reagan had expected, declaring the death penalty (which Reagan had favored) unconstitutional.

The president, who sometimes seems wise beyond his years (if that is possible), has made it clear through White House spokesman Larry Speakes that, in filling the first vacancy in six years on the court, he will not insist that the nominee agree with him on all issues, only that he (or she) be highly qualified and hold the "key view" that "the role of the courts is to interpret the law, not to enact new law by judicial fiat."

There are many men (and some women) who fit this mold. But few would be a better choice than former solicitor general Robert H. Bork

# Reagan Accused of Betraying Right

## Coalition Blasts 'Coverup' Of Court Nominee's Record

A coalition of conservative and anti-abortion groups, complaining that Ronald Reagan has ignored them in his administration, yesterday accused the president of political betrayal in his nomination of Sandra D. O'Connor to the U.S. Supreme Court.

The coalition warned that the nomination will cost the president conservative grassroots support for his economic program and will create new political difficulties for Republican senators who vote to confirm O'Connor over the protest of pro-life activists.

But Senate Majority Leader Howard Baker dismissed conservative criticism of O'Connor, saying it is "not likely to be a serious obstacle to her confirmation." He predicted that she "will be confirmed easily by the U.S. Senate."

Sen. Barry Goldwater, R-Ariz., called the coalition's warnings "a lot of foolish claptrap" and said conservative groups were risking their credibility by their attacks on O'Connor.

The White House believes its effort to defuse right-wing opposition to the nomination is working, but opponents vowed not to give up the fight.

Representatives of 21 "New Right" organizations held a news conference yesterday in a Senate conference room to launch a broadside attack against the O'Connor nomination, with the announced intention of making her the Ernest Lefever of the abortion issue.

"Just as liberals were active against Ernest Lefever because of his symbolism, we believe there is important symbolism in this nomination," said Howard Phillips, the national director of the Conservative Caucus.

Lefever's nomination to be the administration's top human rights official at the State Department was strongly opposed by liberals and moderates of both parties, and he withdrew his name after the Senate Foreign Relations Committee overwhelmingly rejected his selection.

Phillips and other conservatives charged that Justice Department officials had misled the president about O'Connor's record on abortion and social issues and suggested that a "coverup" of her record is still going on inside the administration.

"Clearly," said Phillips, "Ronald Reagan and Eleanor Smeal (head of the National Organization for Women) both can't be right. I'm afraid Eleanor Smeal has the facts better than the president."

The "coverup" charge came in response to a Justice Department memo prepared by Kenneth W. Starr, counselor to Attorney General William French Smith. In the memo, Starr said he had interviewed the nominee and "she indicated she had no recollection of how she voted" on a bill to end crminal prohibitions against abortion.

But Kathleen Teague, executive director of the American Legislative Exchange Council, told reporters: "The information we have on her abortion record, when compared with the information contained in the memorandum. . .shows an apparent *prima facie* coverup either on the part of Mrs. O'Connor or on the part of the attorney general's office, or both, of her voting record on abortion."

Trudy Camping, who served in the Arizona State Senate with O'Connor, said O'Connor, the first woman ever nominated to the Supreme Court, had supported pro-abortion legislation "throughout her term in office" despite Reagan's claim that her views on abortion are compatible with his own and the position of the Republican Party platform.

"Those of us in Arizona who have worked long and hard in the trenches to elect our president are shocked by the hurried manner in which this nomination has been handled without careful scrutiny of her record," she said.

Another part of O'Connor's pro-abortion record cited at the news conferencewas her sponsorship of a family planning act which her critics contend would have allowed minors to get abortions without the consent of their parents.

The coalition said its bill of particulars against O'Connor also includes her opposition to mandatory capital punishment, her support for the Equal Rights Amendment, and her vote against restrictions on the sale of pornographic materials.

Meanwhile, Sen. Gordon Humphrey, R-N.H., was embarrassed and angry after it was disclosed that he had arranged for the conservative groups to use a Senate meeting room in the Capitol for the news conference.

An aide said the senator made the room available at the request of the Conservative Caucus, but did not know it was to be used as a setting for the conservative attack on O'Connor.

## Black Reagan Backers Criticize the NAACP

By Jeremiah O'Leary
Washington Star Staff Writer

A group of black Reagan supporters praised the president yesterday and criticized leaders of the National Association for the Advancement of Colored People for their treatment of him.

Spokesman W.O. Walker told Reagan in a meeting in the Cabinet Room that the NAACP leadership, before and after the Denver convention at which Reagan received a chilly reception, had caused his solutions to be ignored or distorted.

He said the NAACP leaders had "poisoned the minds of people" about the president's "sane and practical solutions."

"I wish you'd all been in Denver" Reagan joked. Walker, publisher of the Call & Post newspaper of Cleveland, told Reagan that after reading the NAACP speech, "I am sure that you possess the courage called for in this hour of the nation's great need."

The group of 34 blacks who had supported Reagan's candidacy was thanked by the president. He said it must have required courage for them to support him and added, "There must have been some times when you were a little lonely." Reagan said the leaders were the new hope for a dynamic black leadership.

Walker told Reagan that the White House lacked an effective public relations program for the black media and that this allows Reagan's opponents to have a field day. He said, "The black press is not against you. Your administration is just not using it."

Earlier yesterday, Reagan met with Dr. James Cheek, president of Howard University. They discussed what Reagan called the rich tradition of black universities and colleges.

Reagan told Cheek that the first lady is accepting his invitation to tour the Howard campus and said, I envy her."

# Potential Court Nominee Opposed by Conservatives

## O'Connor View Cited On Abortion, ERA

By Lisa Myers
and Lyle Denniston
Washington Star Staff Writers

The White House has come under extreme pressure from anti-abortion groups to drop Arizona Judge Sandra D. O'Connor as a potential Supreme Court nominee.

Since Friday, scores of letters and telegrams have poured in from various conservative groups denouncing O'Connor as being both for abortion and for the Equal Rights Amendment, according to a senior White House official.

"There's quite a controversy brewing," said a source. "We're hearing from a lot of people on this."

Although President Reagan has said a nominee to replace retired Justice Potter Stewart need not agree with him on every issue, many of those opposing O'Connor are trying to hold Reagan to the letter of last year's Republican platform. The platform calls for appointment of judges who "respect traditional family values and the sanctity of human life."

In conservative code, that means judges who oppose the ERA and abortion.

Dr. Carolyn Gerster of Phoenix, former president of the National Right to Life Committee, said a study of O'Connor's record in the Arizona state senate shows that she is in favor of abortion. A package of material that Gerster claims spells out that record was sent to the White House last night.

Legislative records in Arizona indicated that O'Connor, as a senator, once voted against a football stadium bond issue that included a rider that would have barred free abortions at the University of Arizona Hospital.

That vote was in 1974. Gerster reported last night that there was another vote in 1974 in the state senate, on a bill to ask Congress to propose a constitutional amendment to overturn the Supreme Court decision in favor of the right to abortion.

Gerster said that, when the measure got to the floor of the state senate, it had to have an 18-10 majority among Republican senators, who were in the majority in that chamber. The measure obtained only a 9-9 tie, according to Gerster. O'Connor was one of those voting against the proposal, she said.

Robert W. Tobin Jr., administrative assistant of the Ad Hoc Committee in Defense of Life, said the campaign against O'Connor also was based on her support of the ERA.

Records indicated that O'Connor was a member of a Senate committee that introduced a pro-ERA bill that never emerged from the panel, and that she was a personal co-sponsor of a proposal to submit the question of ratifying ERA to the voters of Arizona for their advice.

That bill, which died in a committee, was viewed as a pro-ERA maneuver because the proposed constitutional amendment often fares better with voters at large than with their elected representatives.

Arizona's legislature has not ratified the ERA.

Paul Steiner, publicity director of the Planned Parenthood group in Phoenix, said yesterday that O'Connor "was not involved" in the abortion controversy in Arizona. He said she had left the legislature by the time abortion and public financing of abortions became major issues.

Steiner said it was his impression that O'Connor also was not an active supporter of the ERA.

John Kolbe, political editor of the Phoenix Gazette, said that "in my mind, she certainly doesn't have that image" of being pro-abortion or pro-ERA.

He said his study of O'Connor's record in the legislature showed she may have taken a position on those issues, "but just barely. She does not have a public image as being a drumbeater for ERA or abortion."

Kolbe said the bills she had introduced in the state senate showed she was primarily in favor of "good government" reform legislation. In his view, he said, her record was of a "moderate Republican, very thoughtful, very civic-minded."

# Aide to Carter Says U.S., Cuba Talked Secretly

A former high Carter administration official disclosed last night that the United States and Cuba maintained a secret negotiating channel set up on Fidel Castro's request without the knowledge of the Soviet Union.

A series of top-level talks were held during a period less of than two years but foundered on the issue of Cuban support for revolutionary activity in Latin America and Africa, the former official said.

"They didn't go anywhere because the Cubans were not willing to address improving their behavior," he said.

Former Carter aides expressed concern that disclosure of that information now could damage U.S. credibility in future negotiations.

According to the former official, Castro sent word to the U.S. government in early March 1978 that he wanted to set up a secret negotiating channel to work toward improved ties. The Cuban president sent his message through the machinery of law enforcement agencies that had been set up to deal with airplane hijackings.

In February 1977, President Jimmy Carter had spoken of possible improved ties with Cuba, but stated concern about Castro's human rights and political prisoner policy and Cuban behavior in Latin America and Africa.

Castro did release some political prisoners, and Carter lifted a ban on American travel to Cuba.

"The message from the Cubans in early March (1978) was they were prepared to discuss movement toward normalization consistent with the president's public statements. That's what got the thing rolling," the former official said.

David Aaron, deputy to White House National Security Adviser Zbigniew Brzezinski, was put in charge of the project that included

# Was O'Connor No. 3? School Now Not Sure

STANFORD, Calif., July 13 (UPI) — Stanford University officials say that Sandra D. O'Connor, President Reagan's choice for the Supreme Court, may not have been No. 3 in her law school class after all.

When the name of the Arizona state appeals justice was first mentioned for the high court last week, The Washington Post reported she ranked third in the Stanford Law School class of 1952, the year Justice William H. Rehnquist ranked first.

[The Post's information came from Reagan administration sources who said they had talked to Rehnquist.]

The school issued a press release dated July 7 that reiterated this information — "a clear error in editorial judgment on our part" because the information was not checked, said Stanford News Service Director Robert Beyers.

When the office started to check, it found no documentation in the registrar's office or in school publications of the rankings of the 1952 law class. Although there were rankings in those days, there is wide disagreement on what they were, university officials said.

Law School Dean Charles Meyers said he has "no notion" of the individual rankings and that O'Connor told him she "never knew what her class standing was."

Beyers said all that is certain is that O'Connor was one of 10 from that class elected to the Order of the Coif, which comprises the top 10 percent of the class.

He said at least three people have claimed to have finished second in that class.

By Craig Herndon — The Washington Post

**Supreme Court nominee O'Connor, arriving in Washington, answers questions at press conference. She is here to prepare for hearings and meetings with senators.**

## *No Commissary Privileges for Carter*

United Press International

Jimmy Carter is not eligible for Defense Department commissary privileges, a White House aide said yesterday.

Edward V. Hickey, who heads the White House military office, said the former president does not qualify for the right to shop at the commissaries, which sell groceries. Hickey said the three service secretaries can determine whether Carter is allowed to make purchases at the post exchanges, which sell other merchandise.

Phil Wise, Carter's chief of staff, inquired several weeks ago whether Carter, who served as an officer in the Navy, is eligible to shop at the commissaries, which sell food at lowered prices to military personnel and their families.

Lady Bird Johnson's household staff at the LBJ ranch near Johnson City, Tex., had been using area commissaries for some five years until they were told by Defense Department officials a few weeks ago that the former first lady is not eligible for the privileges.

# Brow 'Mista Comp

SACRAME (AP) — Gov. Brown Jr., fa political scan tion, said toda were "guilty takes and slop

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that the United States will sustain its commitments to sell to the People's Republic military equipment. Senior Chinese leaders appreciate the complexities of foreign policy decision-making in the U.S. government. Nevertheless, vacillations in U.S. policy could be used by factions in China to weaken the positions of those leaders who have already increased dramatically, rising from $374 million in 1977 to $4.8 billion in 1980. Further liberalization of U.S. policies would foster even stronger ties, and in doing so would contribute to the success of China's modernization effort. Success of that development effort is crucial for political stability in China, and thus is also a vital strategic concern for the United States. Specifically, the can build a long-term relationship with the People's Republic, one that has an identity of its own and can stand apart from our relations with the Soviet Union.

*Lynn D. Feintech is the author of an Overseas Development Council study on China's modernization strategy.*

*Ellen Goodman*

# He's Done It Again

BOSTON—You might have called it an eye-opening week.

First President Reagan, a man notoriously myopic toward women, actually found one to nominate for the Supreme Court. Sandra O'Connor was not only a woman, he said, she was a "person for all seasons."

Then we watched as controversy over this person brewed between the extreme right and the merely right. To see Barry Goldwater representing the moderate middle was enough to clarify anyone's vision.

The coalition of groups alternately labeled "pro-family" or "moral majority" disapproves of Sandra O'Connor. They maintain that her voting record as majority leader in the Arizona Senate was not pure enough to pass the test of the Republican Party Platform.

That platform, you may recall, demanded judges who "respect traditional family values and the sanctity of innocent human life." But anti-abortion groups, the Moral Majority, Inc., and others criticized O'Connor as suspiciously pro-abortion and pro-ERA.

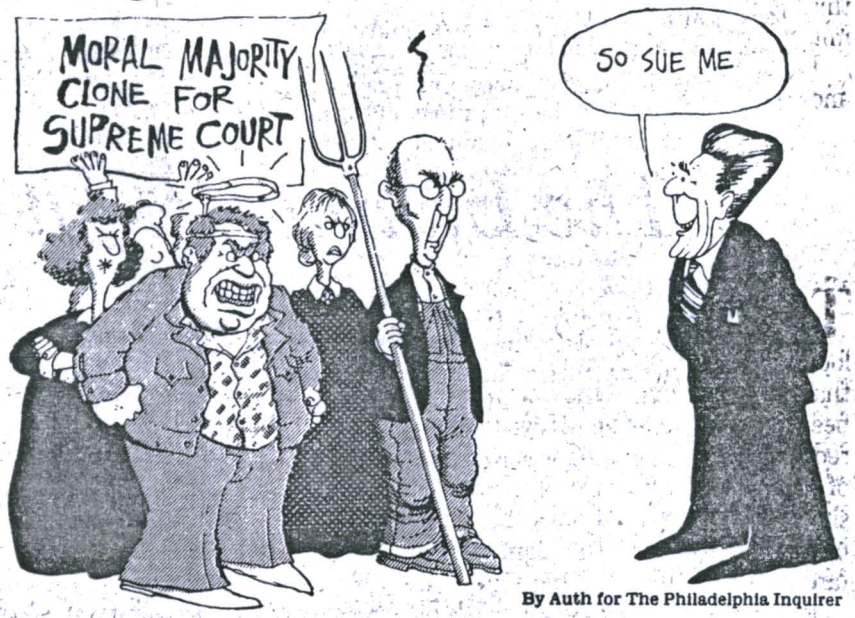
This attitude was enough to put Goldwater's famous jaw out of joint. "I'm getting a little tired of people in this country raising hell because they don't happen to subscribe to every thought that person has," he said. "You could offer the Lord's name for some of these positions and you'd find some of these outfits objecting . . ."

In any case, it was quite a stroke for Reagan, in the midst of all the budget cuts, to find an appointment criticized as too "liberal."

Meanwhile, O'Connor's real record turned out to be about as middle-of-the-road as you could walk. It offers little cause for exhilaration or hysteria on either side.

Those who are against abortion notice that O'Connor voted against prohibiting the use of tax funds for abortion, and also voted against a bill urging Congress to pass the so-called Human Life Amendment.

But those who are in favor of keeping abortion legal notice that O'Connor seems to have personally assured the president she is against abortion.



By Auth for The Philadelphia Inquirer

Those opposed to the Equal Rights Amendment point out that O'Connor was one of those who introduced the amendment into the Arizona legislature in 1972. Those in favor of the ERA point out that she backed off this support.

As a judge of a state appeals court, O'Connor has not ruled on any of these hot social issues. Indeed, her lack of a record, the fact that she is neither an advocate nor an activist in any cause, is a definite advantage to her confirmation.

So O'Connor is not only a person for all seasons but for all reasons.

To begin with, she helps Reagan with his "woman problem." Women were his weakest supporters at the polls and they are still weakening. Sandra O'Connor can help stop this collapse because she is a woman, and a woman with moderate social views.

But she is a safe choice because of her conservative legal views. As someone opposed to an activist judicial role, she is unlikely to use the bench for social change.

At the same time, her appointment solves Reagan's other "problem." The president made a commitment to the far right, to people who would replace the Constitution with the Bible according to Moral Majority leader Jerry Falwell, and return to the most traditional view of men and women. But he also had a commitment to appoint the most qualified woman he could find to the Supreme Court.

Talk about your double binds. It is virtually impossible to find a highly qualified woman who would be ultra-conservative on social issues. A woman jurist by definition is in a non-traditional role. A woman lawyer of experience and intelligence has inevitably become aware of inequality.

As a young graduate of Stanford Law School, Sandra O'Connor, for example, was refused a position in every major law firm in Southern California except one. That one offered her a job as a secretary. She remembers.

So what we have here on the way to confirmation hearings is this person. Sandra Day O'Connor, as much of a conservative as you can find in a qualified woman, and as much of a feminist as you can find in a conservative.

By gum and by grudging, Reagan's done it again.



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Washington Post

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By Margaret Thomas—The Washington Post

upreme Court nominee Sandra D. O'Connor sits with President Reagan and Attorney General William French Smith under trees in the Rose Garden. Story on A8.

**Months, Not 20 Years'**

# asey Says He Knew Hugel Briefly

By Lou Cannon
Washington Post Staff Writer

A Director William J. Casey rday hastened to put some dis- between himself and Max

Washington Post yesterday, however, Casey backed off considerably from this contention, and disputed Hugel.

When Hugel, who resigned from

Casey, told that Hugel had said he had known him for 20 years, replied, "Maybe he knew about me."

Casey's comments were his first on the matter since The Post re-

# O'Connor Keeps Abortion Views To Herself

By Fred Barbash
Washington Post Staff Writer

Supreme Court nominee Sandra D. O'Connor yesterday declined to provide specific answers to senators inquiring about her views on the Supreme Court's rulings on abortion.

Thus, after two days of politicking on Capitol Hill, her views on the one issue that has stirred controversy about her nomination remained unknown outside of her comments Tuesday that she is personally opposed to abortion.

O'Connor told those who asked for more details that she felt it inappropriate to comment on any specific court decisions.

Her responses on all substantive issues were vague during the day. She told Sen. Charles McC. Mathias (R-Md.), a Judiciary Committee member, that the Constitution was a "wonderful document." She discussed camping in the Grand Tetons with Sen. Alan K. Simpson (R-Wyo.). And she remained tight-lipped with reporters, even when trapped for a moment with them in an elevator that refused to stop at the proper floor.

Sens. Roger W. Jepsen (R-Iowa) and Charles E. Grassley (R-Iowa), both staunch anti-abortionists, said they remained uncommitted on how to vote on her nomination after chatting with her yesterday. "She doesn't want to go onto the bench and be disqualified for giving her opinions ahead of time," Jepsen said.

O'Connor began her day at the White House where she met with President Reagan for an hour. "We're delighted to have her here and look forward to when she'll be here, you might say permanently," Reagan said.

Reagan joined leaders of both parties in predicting confirmation without difficulty for the first woman Supreme Court nominee.

Meanwhile, the Moral Majority yesterday disputed press accounts indicating that the group is backing away from its early position that the nomination of O'Connor was a "mistake."

"Our position has not changed any," Moral Majority spokesman Cal Thomas said in a telegram he said he sent to the White House.

Tuesday, Thomas said the group was "working very hard to fall in line behind the president." He described the Moral Majority's early opposition by saying "we should have shut up and not said anything."

The one critical encounter so far missing from O'Connor's tour of Washington is one with Sen. Jesse Helms (R-N.C), a conservative leader who reportedly hinted of a possible filibuster immediately after her nomination.

Justice Department officials said a meeting might be scheduled for today.

Among the senators, Mathias had the longest meeting yet, an hour, with O'Connor. He said he

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Among the senators, Mathias had the longest meeting yet, an hour, with O'Connor. He said he discussed a "wide variety" of issues, including civil rights, the rights of criminal defendants, jurisidiction of the courts, the rules of evidence, "the whole range of matters in which justices of the Supreme Court are involved."

But he indicated that the discussion was general. "We were in total agreement that the personal views of judges were not as important as the fact that the judges apply the law... She made it clear she would apply the law."

O'Connor also met with Sen. Orrin G. Hatch (R-Utah) and Sen. Nancy Landon Kassebaum (R-Kan.).

# *Linguist Shortage Affecting Spy Units*

Associated Press

The CIA's second-ranking official said yesterday the nation's intelligence apparatus has been