



Mr. Nixon On The Serpentine Path

Marshall Jay

It is not given to ordinary men to fathom the calculus by which the mind of Richard Nixon finally fixed upon Lewis Powell and William Rehnquist as nominees for the Supreme Court. It was a serpentine path, indeed, which wound its way at last to their door; but considering the qualifications of the gentlemen in question, one is bound to wonder whether and why a straight line wasn't thought possible in the first place.

It is generally conceded that both Powell and Rehnquist will be confirmed without much fuss or fireworks. It is also generally conceded that the Liberals have been had. The long knives were drawn, and the saliva was running; but when dinner-time came, there wasn't any racist roast to carve. Liberals, who jerk their knees up whenever anyone from south of the Potomac is nominated for anything, will harumph and puff about Powell, if for no other reason than that he hails from Virginia and is known to be less than wildly enthusiastic about massive bussing and coddled criminals. But try though they may — and it is not likely that they will — Lewis Powell simply cannot be made to look like Harold Carswell.

Similarly, it will be whispered that Rehnquist's political ties with the Nixon-Mitchell axis are unseemly in a man about to don judicial robes, but such an argument will not be taken seriously this side of Ramparts or *The New York Review of Books*.

Barring some hitherto undiscovered skeleton, in short, the likelihood is that Powell and Rehnquist will be confirmed before the *New York Times* can think up forty-seven reasons why residence in Virginia or employment with the

Justice Department ought to be *per se* disqualifications for service on the Court during Republican administrations.

All this, however, might have been foreseen weeks ago — or so one supposes. Richard Poff, that admirable gentleman, might have been spared the anguish of knowing that his life's ambition will now remain unfulfilled. The country might have been spared the anguish of imagining Robert Byrd upon the Court. And the "ABA Six," especially Mrs. Lillie and Mr. Friday, might have been spared needless embarrassment.

Was it really necessary to put the nation through four weeks of political gymnastics in order to get two conservatives (at least one of whom had to be a Southerner) on the Court? We shall, of course, never know the whole truth. Even the most determined Nixon-haters will not accuse him of having planned this one from the outset. It's simply too neat, too perfect, too "too." There are others, however, who not only think that the caper was planned in exquisite detail from the outset but praise it as the most artful political fandango of Richard Nixon's long career.

The whole thing really began, they say, when it appeared that the Liberals — contrary to earlier indications — were going to raise a stink about Poff. Ever since the Carswell defeat, it had been generally acknowledged in Congress that Poff was next in line for the Southern seat and that, because of his long service and many friendships on the Hill, he would be confirmed with only token opposition. The Poff strategy, unfortunately for

that most private of public men, ran afoul of two stubborn facts: (1) the Liberals, with the election only a year away, were desperate for issues and, barring anything else immediately on the horizon, another Supreme Court nomination fight appeared as good as any; (2) there were *two* seats open.

And so it was that the Liberals signaled their intentions: Poff would be confirmed if and only if the other seat were given over to a certifiable Liberal. This proved too high a price for the President, who had his sights set on both seats. Poff, who only a few days before had been viewed as a great boon for the Southern strategy, all of a sudden became a liability. His removal, whether by choice or force (or both), ushered in the new game plan, which called for decoys to draw the Liberals' fire.

Whether Powell and Rehnquist were part of the plan from the outset, we shall probably never know. What we do know is that the Liberals used all, or nearly all of their firepower in what turned out to be a mere preliminary skirmish — indeed, ambush. When the noise died down and the smoke cleared, there was the President on prime time television, every eye in the nation focused on him, dropping not one but two — count 'em — conservatives into the hopper. Altogether, a splendid victory for the forces of judicial restraint — and for Richard Nixon.

One hopes, however, that it will not prove to have been bought at too high a price. The Court, alas, has fallen upon hard days. Some believe it to be in peril. The egregious excesses of the Warren era, the Fortas and Douglas scandals, the Thornberry caper, the Haynesworth and Carswell nomination fights — these are damaging blows to an institution whose most important line of defense is the esteem of the people. One more such blow, and the Court may be done in altogether. One hopes that the Republicans, in their understandable zeal to redress the imbalance of the recent past, will not succumb to the opinion that the solution lies in creating a conservative counterpart to the Warren Court. That might please some real or imagined Republican majority in the short run, but it would do so by destroying the function of the Court as the authoritative voice of a Constitution. The principles of which cannot be surrendered to party line or popular whim. □

"GEORGE MCGOVERN is running for President. His problem is that not many people really care. McGovern cares. He journeyed to the college campuses. Boldly, in front of all those students, he promised that, if elected, he would grant amnesty to all draft evaders. Guts."

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CORRESPONDENCE



Interdepartmental Missive

From a Senior Editor

I hope we can mention somewhere in our magazine the vindication of Mrs. O'Leary's cow. As you know, the cows of this country are tired of the treatment they have been receiving. They have been milked for the benefit of white and black Americans — a clear case of exploitation. They have been left to wander in pastures that lack all amenities, including day-care centers. And one of them has been stigmatized and dehumanized — I mean deprived of her bovine dignity — by being unfairly blamed for the great Chicago fire.

We have been warned of the cows' growing discontent, but insensitive Americans that we are, we have failed to heed the warnings. The most important warning was the Report of the Cornpone Commission, chaired by Governor Cornpone of Illwithnoise. The Cornpone Commission warned that, "We are moving toward two societies: one cow; one non-cow." Emmett, I hear that even if we now try to do justice to the cows, we are too late. I hear Brayings from the barnyard. I hear menacing moos in the distance. Pass the skim milk, brother; the Revolution is at hand.

Cordially,
Terry Krieger

To the Editor:

My congratulations to R. Emmett Tyrrell, Jr. for his editorial in the November 1971 *Alternative*. Seldom have I seen such a good imitation of a Rothbard or a Rand spouting invective — brilliant satire! I've always envied people who could write 1,500 word articles without saying anything of substance — it's certainly a lot easier than being scholarly!

However, on the off-chance that Mr. Tyrrell was being at least somewhat serious I would like to comment on his assertion that "Women's liberation is philosophically illiterate. It's ideas are idiotic and contradictory. No one has written a coherent analysis of the subject, because it coheres around not one valid question of essential significance. Women's liberation is a blunderbuss aimed by misanthropes and idiots at the productive elements of society."

In fact, many coherent analyses of the subject have been written. One of the first, certainly of interest to libertarians and conservatives, is John Stuart

Mill's *On the Subjection of Women*, which, along with *On Liberty*, has become highly popular reading among women's groups and has just been re-issued as a paperback by Fawcett. His defense of women's rights (that is to say rights women should have because they are people, but have been denied because they are women. E.g., the right to accept a job in a mine or an establishment serving alcoholic beverages — two restrictions existing in Indiana) is from a purely libertarian position and is tightly reasoned and argued. (He incidentally argues for a volunteer army. Perhaps your next satire should be on men who consider women's rights trivial but expect women to be indignant at the immorality of the draft — a subject that is as "irrelevant" to them as abortion is to men.) Other good books are Germain Greer's *The Female Eunuch*, dealing with psychological and social problems involved in being "feminine," and Caroline Bird's *Born Female* dealing with the economic and business world problems attendant in being a woman.

Lynn Kinsky
Reason

Santa Barbara, California

To the Editor:

Gobin Stair, Director of Beacon Press in Boston, Massachusetts urges faculty members to give their generous contributions to support a public edition of the "Pentagon Papers." He pretends that this project would serve the interest of the general public.

Since the Supreme Court ruled against the government and gave the "liberal" papers full freedom to resume the publication of top secret documents of the Pentagon Vietnam war study, those papers will be tried in the court of American public opinion. The general public should be informed that Beacon Press and other publishers of the Eastern "liberal" Establishment refuse to publish the official documents, named by the U.S. Army "Operation Keelhaul." This operation forced the repatriation of millions of Russian citizens against their will to Russia for liquidation or slave labor after the Second World War. This action violated the elementary principles of international law.

It is obvious that the publication of those documents would not confirm the aspirations of our "liberals" to undermine public confidence in our military actions in Indochina; and it would expose the crimes against humanity committed by the Russian Communists.

The publication of the Pentagon Vietnam war study by our leftist papers gave aid and comfort to our enemies. Those of us who are not brainwashed by our TV networks and some papers call such actions high treason. Since Beacon Press urges faculty members to support its project to publish those documents, it asks faculty members of our universities and colleges to help the undermining of the very foundation of this country. As a faculty member, I despise those who dare to send me requests of this kind.

It is useless and pointless to argue with Beacon Press and papers which have recently published American secret documents. The time has come to end permissiveness and to take off our gloves. Those who give aid and comfort to our enemies should be confronted with all kinds of boycotts and social ostracism by the silent majority.

Dr. Alexander V. Berkis
Professor of History
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PETR PATR

(continued from page 17)

But those of us who are intent on listening to the very best performances of our persecuted master will have to choose more judiciously. Argenta is still my favorite on the F Minor and either Toscanini or Cantelli are far ahead on the B Minor. Also I have kept my copy of Cantelli's *Romeo and Juliet Overture* throughout the Cold War and I shall not replace it with this performance.

Other Recordings of Merit

Beethoven: *Sonata No. 29*, Rudolph Serkin, Columbia M30081

Brahms: *Klavierquartet No. 1*, Gilels, Branin, Schidlof and Lovett, Deutsche Grammophon 2530133

Debussy: *Quartet in G Minor*, Revel: *Quartet in F Major*, The Juillard Quartet, Columbia M30650

R. Emmett Tyrrell, Jr.

CONTINUING CRISIS

(continued from page 2)

kangaroo bird was found; Norway curtailed the killing of Polar Bears and the Rt. Hon. Paul McCloskey told Portland conservationists that no more dams should be built in the United States to spoil the streams. Even better news came from Florida where it was estimated that by 1977 as many as 16,000,000,000,000 African snails may establish residence. The Pittsburgh Pirates won the World Series, and thousands of "booing, hissing" fans showed up in Lagos, Nigeria to enjoy Nigeria's national pastime, the public execution of thieves. Seventy-five public executions have been held in Nigeria in the past year — always to capacity crowds. The anti-ballistic missile system breezed through the Senate while the House voted 210-152 to establish day care centers throughout the United States.

• In Mexico controversy raged over the identity of Mr. Julio Herschfeld Almada's kidnappers. Some say the left did it to discredit the right. Others say the right did it to discredit the left. And still others assert that it was simply the work of good, clean, high-minded criminals, out for a dishonest buck. Egyptian students astonished government officials and most of the world's agnostics when they took to the streets to

(continued on page 21)