Tom Wicker

NEW YORK — President Nixon did the wise thing in appointing an interin director of the F.B.I. immediately after the death of J. Edgar Hoover. Not only does the White House announcement that Assistant Attorney General Gray would serve at least until the November election suggest that ample time will be taken in the selection of a successor; it also makes clear that if Nixon should be defeated in November, the choice would be left to the new president.

'J. Edgar Hoover was one of a kind . . . His death provides a one-of-a-kind opportunity to review. . .'

That should avoid many possible complications. Not only would such a profoundly important nomination in the midst of an election year, unless it were truly impeccable, sorely tempt the Democratic Congress to a confirmation battle that could seriously impair the new man's effectiveness, or even defeat him; but in the event Nixon did lose the election, his successor would be most likely, anyway, to remove the Nixon appointee.

Any of those eventualities would bring to the directorship the aura of political partisanship that J. Edgar Hoover largely managed to avoid in his astonishing 48-year tenure. And with Nixon now forgoing the opportunity to make a nomination until his own mandate can be renewed by the voters, any Democrat who might be elected instead will be under heavy moral pressure to be at least as nonpolitical and responsible in choosing a new director.

ALL OF THIS is important because the directorship of the F.B.I., as that office is now constituted, may well be the single most important and sensitive office in American government; and while it is true that Hoovers personal attributes and manner of operating gave it much of its power, the office itself has far too much potential for abuse, as well as for great achievement, for it to be filled lightly or politically or with someone already damaged by partisan conflict.

Nevertheless, it would be possible to concentrate too much on the IDENTITY of the new director; before too many names are listed, for instance, it might be well to consider what sort of man he ought to be. At least two qualifications come readily to mind; clearly, a new director ought to be a man of established and reassuring reputation for integrity and strength, and — through it unfortunately was not the case with Hoover in recent years — he ought to be a man immersed in, and a part of, his time, not an unbending product of another era.

J. Edgar Hoover was one of a kind. His death provides a one-of-a-kind opportunity to review, not just his work and that of the agency he built, but all the areas in which they operated — the government's activities in fighting crime, espionage, subversion, in working with and training local and state police, in maintaining and disseminating sensitive records, statistics and dossiers.

Max Lerner

NEW YORK — J. Edgar Hoover's death came a day after the award of Pulitzer prizes to the New York Times and Jack Anderson. I don't say these are cause and effect. But the two events — the prizes and the passing of Hoover — together mark the end of an era.

Hoover's career came from his role as guardian of American security against the threat of internal subversion. He thrived in the climate of the cold-war mentality, and that mentality in turn was linked with what has been called the "torment of secrecy."

In the new American climate — that of the latter-day phase of the Vietnamese war — secrecy is no longer regarded as a way of catching spies but as a way of concealing what the people have the right to know. Hence, the prize to The Times for publishing the secret Pentagon Papers, and to Anderson for revealing the secret minutes of a National Security Council action committee on the Indian-Pakistani war.

'Hoover knew where all the bodies were buried. It made him a formidable enemy and a valuable friend . . .'

It was a curious half-century that Hoover presided over, starting with a burst of repression right after World War I, especially in the brutal treatment and deportation of aliens. A great fear descended on the country which had just fought a "war to save democracy" — a war which in turn evoked the Russian Communist regime and the fear of it's spreading through the Western world.

Americans wanted security against this fear. Hoover gave them, if not a security blanket against it, then at least a sense that a group of skilled men were secretly watching the hidden enemy. Despite the attacks from the liberals, this sense persisted, and was one of the reasons why Hoover captured an impregnable position with Congress and became virtually a sacred cow.

THERE WAS ANOTHER STREAM which fed his position of strength. It was the emergence of crime in urban America in an era of new communications, with easily available guns for the criminals, and fast cars and planes for their getaway, and state lines easily crossed, and local police almost helpless to deal with them. Hoover got part of his legendary fame in the '30s and '40s from the capture of some armed desperadoes whom the press and radio had built into national symbols of crime.

Just as crucial to his legend was his use of college-trained agents and of laboratory science in detection. For the common man this blending of science, education, secrecy, derring-do and patriotism, all combined in the search for criminals and spies, formed a powerful potion.

IT WAS INEVITABLE that storms should rage around so stormy a figure, who held so great a power for so long. Hoover always maintained that he didn't want the FBI to become either a national police or a political police. Yet the federal system with the gaps between state enforcement, inevitably made the FBI a national force. And the gathering of the whole array of secret dossiers, and the necessary secrecy of FBI methods, made it a political force.

Given that array of dossiers, Hoover obviously knew where all the bodies were buried. It made him a formidable enemy and a valuable friend, even to Presidents, but most of all a symbol of the age of secrecy. That age is now cracking, and it may be lucky for Hoover that he won't be around to see the face and shape of the new age.

"If this is the Republican Party to whom I am speaking, this is ITT . . . If this is the Democratic Party to whom I am speaking, this is AT&T!"

Rev. Lester Kinsolving

WITHIN ONE WEEK of its release, Irving Wallace's fascinating new novel "The Word" — about a sensational forgery of an entire gospel (according to Jesus' brother James)—had begun climbing the best-seller lists. The novel capitalizes upon a fascination which has been widespread ever since the momentous discovery of the Dead Sea Scrolls in 1947: the possibility of someday unearthing more information about Jesus Christ.

The book is not only as gripping as any detective story ever written, but shows the evidence of Wallace's 10 years of research, during which he consulted scholars all over the world.

The magnificent hoax

During a telephone interview, Wallace expressed amazement and amusement when informed that a forgery similar to that outlined in his book had actually taken place in the U.S. And while not on anything quite like the 30-year scale in his novel, this forgery was perhaps even more astounding, considering the perpetrators and their success.

One day in 1936, two freshmen at Cambridge, Massachusetts' intellectually prestigious Episcopal Theological School (ETS) were stung by the splendor of a sudden thought — while sitting in New Testament class.

WOULDN'T IT be fascinating if a manuscript turned up someday which would settle the dispute about the ending of St. Paul's Epistle to The Romans!" said their professor — with such yearning that the two frosh decided to oblige him.

They purchased a sheepskin from the Harvard Co-Op, buried it for a month — and when that didn't make it look sufficiently ancient, they boiled it in coffee. Then to Harvard's immense library where they learned all that was necessary about the manner of Greek in New Testament manuscripts. The ink was an amalgamation of all the ink available — and mysteriously borrowed — from fellow students. Finally the finished manuscript was rubbed on a rug by the bare feet of one of the two conspirators.

SIX MONTHS after this Manhattan Project of practical jokery had begun, Prof. Norman Nash (afterwards Bishop of Massachusetts) received a letter signed by one "Horace Partridge" — a name selected at random for its piguancy. Mr. Partridge was writing Professor Nash to inform him that having recently traveled through Egypt, he had purchased an interesting-looking but mysterious scroll from a beggar in Cairo.

Excited (but veiled) references to a sensational archeological discovery soon began punctuating the lectures of the seminary faculty — especially those of the widely beloved New Testament professor, William Henry Paine ("Daddy") Hatch, whose eyes glowed with anticipation.

WHEN THE "Partridge Manuscript" passed the scrutiny of the staff of Harvard's Fogg Museum, the Rev. Dr. Hatch took special leave to write a monograph on the exciting discovery. It was then that the two students panicked and confessed all to Professor Nash.

"He wouldn't believe us because we were just freshmen!" recalls one of the hoaxers, the Rev. Reamer Kline — now president of New York's Bard College. "We had to show him the cut edges of the manuscript."

FOR YEARS AFTERWARDS, no one ever mentioned the magnificent hoax in Dr. Hatch's presence. But the beloved professor eventually forgave his students, especially when one of them, Chaplain Barrett Tyler, was killed in the Pacific during World War II.

In the ETS chapel is the Tyler Memorial Window. And in the lower right hand corner is a small but significant partridge—with a scroll around its neck.

Refugees

Law School Dean on Proposed Constitution

Many Things Unchanged in Judiciary Article

This is the fifth interpretation of a part of the proposed new constitution by University of Montana faculty members, under the auspices of the UM Bureau of Government Research.

By DEAN ROBERT SULLIVAN

School of Law

The convention rejected the majority report of its Judiciary committee, voted to debate the minority report, and adopted it with several modifications. In comparison to the present constitution many things remain unchanged. A unified court organization was not adopted. The present three tiers of courts — the Supreme Court, district courts and justices of the peace — would be retained and their autonomous operation preserved. The creation and change of judicial districts and the number of district judges to be authorized would remain in legislative control. Election of judges would be retained with Supreme Court and district judges to be selected as now on a non-partisan ballot and justices of the peace on a partisan ballot.

NEW PROVISIONS

Changes proposed include lengthening the elective terms of all judges — Supreme Court from six years to eight, district court from four years to six, and justice of the peace from two years to four. The legislature could increase the size of the Supreme Court from five justices to seven and "create such other courts as may be provided by law." The justice of the peace would retain status as a constitutional officer. The number would be reduced from a least two in each organized township to at least one in each county, but "the legislature may provide for additional justices" in each county. They would be paid "monthly compensation" and provided facilities to perform their duties "in dignified surroundings."

A significant addition is the proposal to create a "judicial standards commission" with authority to investigate complaints, conduct confidential proceedings, and make recommendations to the Supreme Court for the removal and discipline of judges. The commission would consist of two district judges, one attorney and two citizens who are neither judges nor attorneys.

A less significant change would be made in the selection and retention of judges and in the filling of vacancies that occur during an elected term of office. The provisions would apply to the Supreme Court and to district courts. If an incumbent judge did not run again there would be an election on a nonpartisan ballot. Otherwise, the election would be a contested one if an opponent to the incumbent judge filed for the office. If no opponent filed, the incumbent judge would have to stand for approval or rejection in the general election on the basis of his record. Limitations would be imposed upon the discretion of the chief executive in making appointments to fill vacancies that occur during the term of office of a Supreme Court justice or a district court judge. A replacement would have to be appointed from nominees selected as the Legislature would provide. The replacement must be confirmed by the senate and at the first election following confirmation and after each succeeding term there must be the conventional nonpartisan election which might or might not be contested.

In comparison to the existing method of appointment by the governor and to the merit plan of selection in effect in many states, this would be a cumbersome process and not an improvement of present arrangements.

DELETIONS FROM AUTHORITY

There would be several significant deletions from authority that exists in the present constitution. The assignment of judges by the Suprme Court from one district or county to another for temporary service could be done under the proposed judicial article only "upon request of the district judge." This is not compatible with efficient administration of the work of courts and with the flexibility necessary to accommodate the administration of justice to emerging problems of our society. Rules of procedure would be "subject to disapproval by the legislature in either of the two session following promulgation." This would impede an essential function of the Supreme Court and it disregards the inherent powers of the court as a separate independent entity in a tripartite allocation of governmental authority. An innocuous modernization would delete constitutional status of the clerk of the Supreme Court as an elective office.

COMMENT

Evaluation of the proposed judicial article presupposes some standard of comparison. The consensus of the Conference of Montana Citizens for Court Improvement in 1966 enumerated minimal requirements for modernization and improvement in the Montana judicial system. Of judicial selection and tenure, the concensus provided: "The nonpartisan election system of selecting the judges has not succeeded in removing the Montana judiciary from political pressures and uncertainties. To succeed in bringing the lawyers best qualified for judicial office to the bench of this state, selection of judges should be made by a system based enirely upon merit." The proposed article does not permit merit selection of candidates to succeed an incumbent judge not seeking re-election at the end of a term. Nonpartisan election would be continued. Merit selection to fill vacancies during a term of office would be ineffective under the requirement of Senate confirmation and nonpartisan election.

In the matter of court organization and administration, the concensus concluded that ". . . a unified court system is more desirable than the present autonomous system of courts in Monday today." The continuation o three levels of courts and the deletion of proposed express authority for administrative supervision over lower courts in the section on Supreme Court jurisdiction reflect a policy decision to limit the exercise of control by the Supreme Court. Although there is a provision for "general supervisory control over all other courts," comments to the minority report of the convention's judiciary committee indicate that the phrase did not include administrative control. The minority report provided for ". . . general supervisory and administrative control over all courts." Its comment states: "This addition (administrative control) was made to clarify the supervisory powers of the Supreme Court and to permit the Supreme Court to exercise centralized administrative direction for the entire judicial system." Deletion of this authority in the draft artcle effectively preserves the present autonomous system of courts noted in the Citizens Consensus.

In the matter of courts of limited and special jurisdiction the Citizens Consensus provided:

"The type and quality of justice presently being provided in these courts could be materially improved by adoption of a unified court system which would provide a district court level of judicial quality for all legal proceedings. This unified court system might be materially implemented by incorporating within it a provision whereby, where needed, district court judges might select persons to act as deputy judges or magistrates to assist the district court in supplying continuous court representation in remote areas of this state."

To preserve justices of the peace as elective constitutional officers and to omit authorization for supervision of their judicial activities with the court system are effective prohibitions of a unfied court system.

Amendments to the minority report of the judiciary committee judicial article. The continuance of justices of the peace as constitutional offices and the requirement of one justice for each county may nullify the creation of small claims courts, because the possibility of securing justices of the peace who have the legal education usually considered to be requisite for claims adjudication is remote in counties with small population. The Legislature may provide "jurisdiction concurrent with that of the district court" for other courts. However, the absence of authority in the Supreme Court to supervise and coordinate the activities of other courts limits the flexibility of this provision.

Other standards for comparison are available. What have states similar in geography and population to Montana done? Whether these measures or the consensus statement of the citizen's conference be used as the basis for comparison, it appears that improvements proposed are not significant, while restrictions limit the flexibility to prepare for the problems of the future. The expectation of modernization and improvement in the administration of justice is minimal. Other articles of the proposed consitution may offset these inadequacies. This is conjectural.

(Next: Revenue and Finance)

4 Governor Candidates Pledge Indians Support

MISSOULA (AP) — Four Montana gubernatorial hopefuls pledged their energies to aid Indians in-person at the fourth annual Kyi-Yo Indian Youth Conference at Missoula.

Republican Frank Dunkle and Democrats, Dick Dzivi, Thomas L. Judge and Dallas Howard appeared in a panel discussion before the 300 delegates. Republican Ed Smith sent a delegate.

All agreed that comprehensive Indian programs are needed in Montana and each candidate called for re-establishment of the office of Indian Coordinator.

Senate Majority Leader Dick Dzivi, of Great Falls, said he would select a coordinator from a list of five candidates he would ask to be provided by Montana tribes.

Frank Dunkle, the former Game and Fish Department director and lone Republican candidate present, told the conference he would establish an office of Indian Affairs "headed and staffed by Indians" to coordinate business between reservations and the state as well as federal and state Indian programs.

Dallas Howard, of Missoula, an Assiniboine Indian, charged the state Indian office has always been underfunded. He pledged, if elected, to see that it receives "adequat funds" to be responsive to the needs of Indians.

Lt. Gov. Thomas L. Judge called for a full-time Indian Coordinator in the governor's office and another full-time representative in Washington, D.C.

Republican Ed Smith was represented by Freda Beasly, an Assiniboine Indian. She told the audience that Smith favors preservation of Indian culture and legislation to provide "the best possible services from government" as well as the establishment of an office of Indian Affairs.

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