LETTER FROM WASHINGTON

Wine Turns To Vinegar

Lou Cannon, Washington correspondent for Ridder Publications and author of Ronnie and Jessee: A Political Odyssey, *recently wrote the following letter to Jud Clark, Associate Editor of* California Journal:

We were sitting around a long table in the House of Representatives dining room, one of the few government eating places where one can legally order a bottle of beer, and listening to young people question their California congressmen about Washington.

A public relations man who was also at that table spoke up when the subject turned to congressional reform and indicated, in an oblique defense of the seniority system, that congressmen, like wine, grow better with the aging.

"That's not necessarily true," remarked Rep. Charles S. Gubser of Gilroy, a conservatively moderate congressman who has become steadily more responsive to reform notions. "Some wines improve with aging while others turn to vinegar."

The remark is symbolic of the emerging belief here that the once sacrosanct seniority system, if not on the way out, faces almost certain change in the forthcoming congressional session. The most likely reform, the so-called "rule of three" in which the party caucus or some other instrumentality would choose among the top three in seniority, strikes those who have manned the barricades against the seniority nonesense as altogether inadequate.

It may, however, prove the chink in the wall that ultimately will topple the entire seniority edifice.

What is worst about the system, with the possible exception of its unfairness to true two-party states such as California, is the sense of powerlessness that it has inflicted upon congressmen who have spent the better part of two decades doing a reasonable facsimile of the job to which they were elected.

"I can't even get the committee schedules," grumbled one 20-year veteran of a committee whose chairman is nearly 80. "But the way our chairman runs his shop, it wouldn't make much difference if I did."

This feeling of dismay among the people who are supposed to be running the country is compounded by the knowledge that the executive branch is responsible for much of the information possessed by Congress and that it dispenses this information most selectively.

Gubser, again, put it well in a recent newsletter with the story of a businessman who asked his secretary to order lunch sent to his office.

"The secretary listened to the office snack bar enumerate at least a dozen different sandwiches which were available," Gubser wrote. "She grew tired of writing and told her boss that he could have either ham or cheese. He chose ham thinking he had made a decision. But the area of his decision-making had been arbitrarily limited before he made his decision."

Gubser's solution, which is worthy of serious consideration, is to "Wire Congress into executive branch computer systems" upon which decisions are supposedly based. He argues, persuasively, that Congress should have information other than that which is regularly "spoon fed" to it by the administration.

But the argument will be even more convincing if the House committees become able to use the information they acquire, a condition that will require a widespread realization among the members that old wines *do* indeed sometimes turn to vinegar and a consequent reform that is grounded upon this recognition.

Some Random Postscripts

Speaking of reform, one searches in vain these days for the many liberals who righteously maintained a few months ago that Rep. Jerome Waldie's attempt to declare "no confidence" in Speaker John McCormack (D-Mass.) would keep him in office. If Waldie (D-Antioch) was supposed to get the blame for McCormack's retention, one wonders if he shouldn't also share in the credit for the speaker's abrupt retirement . . . The congressional liberals from California, however, are more concerned these days with the battle for majority leader than with the fight to reform the seniority system. The choice of many Californians (though not, incidentally, of Waldie, who supports Rep. Morris K. Udall of Arizona) is Rep. John E. Moss of Sacramento, a man widely respected on both sides of the aisle. But few of the congressional handicappers give Moss a serious chance despite his homestate support. Most of the liberals probably will have to decide between Udall, whom they prefer on foreign policy, and Rep. James G. O'Hara (D-Mich.), who has a more palatable liberal record on domestic questions, particularly labor issues.

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Democratic gubernatorial nominee Jess Unruh, making his third and most effective Washington appearance in the past six months, was the featured guest at a reception held at the Georgetown home of David Ginsburg, an attorney who is highly regarded in Democratic circles here. The reception brought out a range of Democratic congressmen, national columnists and old Unruh friends, among them Health, Education and Welfare Dept. Undersecretary Jack Veneman, the former Republician Assemblyman from Modesto . . . Another Democratic nominee, U.S. Senate aspirant John V. Tunney, is preparing for his November showdown with incumbent Rep. George Murphy in a less-than-happy frame of mind. Tunney, who has received fewer offers of financial support than he expected, is stung by national accounts unfavorable to his campaign against Rep. George Brown of Monterey Park. "Some of these people act like I lost the election instead of won it," Tunney complained to one friend.

While most Democratic congressmen, some reluctantly, are going along with Berkeley Councilman Ron Dellums, the upset winner of his party's primary in the 7th Congressional district, he won't have the outright endorsement of at least one Democrat. That would be Jeffery Cohelan, the incumbent whom Dellums beat for the nomination in a campaign that the loser regards as markedly unfair.

Lou Cannon

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Killing Fetus Is Not Murder

On June 12th the California State Supreme Court ruled that California's present law against murder does not cover the killing of a fetus. Murder is defined as "the unlawful killing of a human being, with malice aforethought" under Penal Code Section 187. "We are called upon to decide whether an unborn but viable fetus is a 'human being' within the meaning of the California statute defining murder," the court's decision read. "We conclude that the Legislature did not intend such a meaning."

The case which prompted the ruling involved a man who discovered that his former wife was pregnant by another man. From evidence presented at a preliminary hearing, it was ascertained that he "pushed (his former wife) against the car, shoved his knee into her abdomen, and struck her in the face with several blows." Soon afterward the fetus, estimated to have been at least in its 31st week of development, was delivered stillborn, having suffered a skull fracture and cerebral hemorrhaging. The court was asked to decide whether or not the man was guilty of murder.

Legal History

Citing historical background, the majority opinion, which was written by Justice Stanley Mosk and concurred in by Justices McComb, Peters, Tobriner and Peek, argued that the California law defining murder, as originally enacted in 1850 followed the "settled common law meaning" and did not consider the fetus to be a human being. According to the court's majority, when the Legislature rewrote the Penal Code in 1872 and adopted the definition of murder which remains in effect to this day, it intentionally decided against a feticide law similar to those in existence in other states at that time. Thus, they concluded, "in adopting the definition of murder in Penal Code Section 187, the Legislature intended to exclude from its reach the act of killing an unborn fetus."

It was argued before the court that progress in medical service rendered obsolete the earlier concept that a fetus was not really a human being until born alive. The court's majority acknowledged that medical progress since 1872 has greatly altered the survival rate for the normally developed fetus born at 28 weeks or more. However, they rejected the conclusion that this fact altered the meaning of the law, arguing that to so rule in this case would be an invasion of the Legislature's role in defining crime, as well as a denial of due process to the defendant who could not have known in advance that his act would be judged a crime.

Dissenting Opinion

A strongly-worded argument was presented in the dissenting opinion by Acting Chief Justice Burke, with Justice Sullivan concurring. The dissent found the majority opinion "to frustrate the express intent of the Legislature, and defy reason, logic and common sense." Burke contended that in common law the killing of a viable fetus was indeed a serious crime. Moreover, he argued, the term "human being" in the homicide statutes is a "fluid concept to be defined in accordance with present conditions . . ." Hence it was the duty of the court to define murder in the light of the present facts of life. The court's decision in a case 23 years earlier provided sufficient warning, in Burke's opinion, that the court might construe the definition or murder to include the killing of a viable fetus.

New Legislation Proposed

Under present California law, as a result of the court's decision, the killing of a fetus is punishable only under the lesser offense of illegal abortion. On June 24th, however, Assembly Majority Floor Leader Craig Biddle introduced amendments to add to the Penal Code a definition of the term "human" to include "a fetus which has advanced to or beyond the twentieth week of uterogestation." Biddle said that the bill is intended to "spell out the Legislature's intent that after 20 weeks you can not murder an unborn child."

Left, Right Attack Judges

The California Supreme Court on June 10th publicly censured Santa Clara County Superior Court Judge Gerald S. Chargin for "improper and inexclusable" remarks made to a Mexican-American youth during a court hearing last year, the first such public censure in the state's history.

The court transcript of September 2nd, 1969 quoted Chargin telling the teenager, who had been convicted of incest with his mentally retarded sister, "You ought to commit suicide . . . Maybe Hitler was right. The animals in our society probably ought to be destroyed because they have no right to live among human beings." Elsewhere in the transcript Chargin was quoted as saying, "Mexican people, after 15 years of age, (think) it's perfectly all right to go out and act like an animal."

Judge Apologized

On two separate occasions, Judge Chargin has apologized for his remarks. After being censured by the Supreme Court, he said:

> "To my fellow Americans of Jewish faith, I repeat my earlier statement that I never intended approval of anything Adolf Hitler did and particularly his program of genocide. Hitler represents to me the very embodiment of evil.
>
> "To my fellow Americans of Mexican ancestry, I restate my regrets and express my apology for any offense you may have been caused by my words. There is no place in our society for judgment of any on the basis of his race, ethnic origin or creed."

The State Commission on Judicial Qualification, which recommended the censure to the Supreme Court, said Chargin's action constituted "conduct prejudicial to the administration of justice that brings the judicial office into disrepute," but also noted that Chargin's overall record reflected a "tolerant and compassionate attitude" toward minority groups.

Assemblyman Alex P. Garcia had earlier introduced a resolution in the Assembly to impeach Chargin. On May 26th, however, the Assembly Rules Committee tabled the resolution on grounds that avenues of redress through the judicial system had not been exhausted.

Impeachment Resolutions

Resolutions have been introduced in the Assembly to impeach two Los Angeles Superior Court judges for ruling unconstitutional the policy of