

EDITORIALS

Succession at the Court

We applaud the selection of judges based upon demonstrated merit. Last month, the United States Supreme Court commenced its 1993 term and Ruth Bader Ginsburg took her place as the Court's 107th Justice. We congratulate Justice Ginsburg on her confirmation and wish her many insightful and productive years on the Court. The speed and relative harmony culminating in her swift confirmation underscore the high esteem in which she is held by the legal community. It was a welcome relief for many who regard recent nominations that were bitterly contested as damaging to the stature of the Supreme Court as an institution.

Justice Ginsburg has excelled in all of her legal endeavors. She was an outstanding student at Cornell, Harvard and Columbia universities, served as mentor to many students while a professor at Rutgers Law School, was a potent advocate, and served as a meticulous and deliberate judge on the United States Court of Appeals for the District of Columbia. She has been described by Charles Alan Wright as a person who always deals with issues in a manner of "calm reason and confidence." We trust she will distinguish herself further as a Supreme Court Justice.

Justice Ginsburg's thinking on the Court will be influenced by her intellect, her personal values and her experience. But, history has demonstrated that her role on the Court is difficult to predict. That is why the selection of a justice should never revolve around a few "litmus test issues." Many a president has been surprised by the decisions of his Supreme Court appointees.

What we do know is that Justice Ginsburg has succeeded to the seat of a model justice, although Justice White's understated gentlemanly manner has often been unappreciated. He was intense and self-confident. Justice White's curriculum vitae — Valedictorian at Yale Law School; U.S. Supreme Court Law Clerk; Rhodes Scholar; college football All-American; professional football player while attending Yale Law School; World War II naval officer; and Deputy

Attorney General charged with civil rights enforcement — led some to speculate when he was appointed that he would be one of the most flamboyant justices ever to sit on the Court. However, Justice White's personality and his respect for the power, solemnity and majesty of the Court, has yielded an opposite result.

During his 31 years on the Court, Justice White was not easily identified philosophically or as a member of any judicial clique on a diverse and sometimes fractious Court. He, nonetheless, demonstrated a great legal intellect while deciding cases pragmatically, rather than ideologically.

Occasionally, he has stated his positions forcefully. In 1966, during his fourth year on the Court, he strongly dissented in *Miranda v. Arizona*, 384 U.S. 436 (1966), criticizing the majority for creating "new public policy." Eighteen years later, in *Leon v. United States*, 468 U.S. 897 (1984), he wrote for a majority that upheld a conviction based upon evidence discovered through the use of a defective search warrant as long as law enforcement officials acted in "good faith." For some, his dissents in denials of petitions for *certiorari* were themselves the model of instruction for the bar. See *Lakeside Bridge & Steel Co. v. Mountainside State Construction Co., Inc.*, 445 U.S. 907 (1980).

The manner of the announcement of his retirement personified his character. There was no fanfare; there were no press conferences, only an exchange of letters in which Justice White noted that during his tenure, the justices "have gotten along remarkably well" and that "[t]he Court is a great institution."

The United States Supreme Court moved from one ideological pole to the other during Justice White's tenure. It will move again in unpredictable ways in the future. What is critical is that the justices possess the intellect and temperament demanded by the task. Despite the plea of former Senator Hruska, there is simply no room for mediocrity on the Court. Justice White was certainly not mediocre and neither is his successor.