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THE MacNEIL/LEHRER REPORT **Air Date:** June 16, 1980

Ramsey Clark Interview

[Tease]

RAMSEY CLARK: *[on videotape]* We went because we believe that the American idea of freedom demanded it. That the ultimate un-American act would be not to go.

ROBERT MacNEIL: Former Attorney General Ramsey Clark, back from Iran.

[Titles]

MacNEIL: Good evening. Former Attorney General Ramsey Clark, back from his controversial visit to Iran, today proposed a nine point plan for ending the hostage crisis. Clark returned yesterday after pausing a week in Paris, to consider the political fuss caused here by his participation in a 54-nation conference on American crimes against Iran. Mr. Clark and nine other Americans made the visit in defiance of a presidential ban on travel to Iran. President Carter has said he thought Mr. Clark should be prosecuted for violating the ban, but the Justice Department has yet to take any action. At a news conference in New York, Mr. Clark called for a new approach to Iran involving an end to economic sanctions and congressional investigation to expose what he called 'the full truth' about U.S. intervention in Iran. Mr. Clark said the mood in Teheran is much better than at any time since the hostages were seized last November 4th. Tonight, a conversation with Ramsey Clark. Jim Lehrer is off. Charlayne Hunter-Gault is in Washington. Charlayne?

CHARLAYNE HUNTER-GAULT: Robin, this is not the first time Ramsey Clark has gotten into hot water publicly. In fact, it was during another presidential year, 1972, that he defied a U.S. ban on private travel to North Vietnam. At that time, the United States was engaged in an undeclared war with that country. Accompanied by the actress Jane Fonda, among others, Clark told of the extensive damage done to areas in North Vietnam by United States bombing. The Justice Department refused to prosecute either Mr. Clark or any of his group, and in a move, Congress decided to try and provide prison penalties for citizens visiting countries engaged in armed conflict, and that failed. This latest trip to Iran marks Mr. Clark's second effort at finding some way out of the present crisis. In fact, back in November, Mr. Clark was sent by President Carter to negotiate the release of the hostages. But that mission was aborted when the Iranian government decided not to receive Mr. Clark. This time, he went right in. Now back, he is with Robin in New York. Robin?

MacNEIL: Mr. Clark, you say the mood is better in Teheran. How precisely is it better, and how is that relevant to the fate of the hostages, do you think?

CLARK: It's a subjective judgment, but I think the mood is the determining factor. It's the real power in Iran. It's what makes things possible. And I think after seven months of showing defiance to the United States and resisting the United States by holding the hostages, as irrational and wrong as that is, that people are tired of it. They feel, 'Now, we've shown we can defy, we can resist,' and I think they're— I'm optimistic. I think they're in a mood that makes it possible for the Majles, or the parliament of Iran, to release the hostages if it will. If there are further agressive acts that anger, irritate the Iranian people toward the U.S., why, that won't be possible.

MacNEIL: What do you mean by 'further aggressive acts'?

CLARK: Well, a military strike or tightening of sanctions, or threatening, or bullying statements from our government.

MacNEIL: I'm going to come back to the sanctions question in a moment. But you went, as is well known, without administration blessing, and in fact, in defiance of their wishes. But isn't it true that you had extensive contacts with the State Department right up to the time when you went, before you went?

CLARK: Well, I wouldn't say 'extensive contacts'. From November through the end of 1979, I certainly had extensive contacts, probably nearly daily, but they thinned out. I doubt if I talked once every— maybe two or three weeks, even. In mid-February, I told the State Department that I planned to go. I'd been invited to a conference that was then to be held in late May, as I recall. And that conference was cancelled. And a new conference was scheduled, and I was invited by the government of Iran. I again told the State Department that I would go, and they never said anything until the eve of the departure for Iran, when they said that 'your travel is opposed by the U.S. government.'

MacNEIL: Why do you suppose they waited until the eve of the departure to say that to you? Do you have any understanding of what happened?

CLARK: No, I don't. You know, I've heard, and I think even read, that there were internal debates and disputes within the State Department, perhaps the White House, as to whether we should go with government blessing or government silence or government opposition. But at last they decided that they should communicate their opposition.

MacNEIL: And what did you say to them when they communicated the opposition?

CLARK: Well, I said that I was going to go.

MacNEIL: The more loudly the administration has protested your visit, the more it has led some— a few people to think that that's really a cover, and that you were really there as a sort of clandestine envoy of the administration. What is your comment on that?

CLARK: Well, if that's true, it's their secret. They didn't cut me in on it. It could have saved a lot of pain and grief among our people. There were ten of us. There was a lot of sleepless nights, I'll tell you. A woman with an 11-year-old child has to think a long time about taking such responsibility on herself. But the government not only didn't make it easier for us, their acts deprived us of the company of some people who would have been very effective. There were four or five Iranian experts, people that— you know, you've had on your program, who speak Farsi, who know Ayatollah Beheshti, who, had they been there — and who wanted to go very much — could have been more effective than we could have been, because of their knowledge. But they couldn't go.

MacNEIL: Among the many things that were said against your visit was the remark by Senator Schmitt of New Mexico, who said that you were — last week — that you were presenting yourself as an unpaid diplomat, but that you were actually serving as a paid legal advisor to Khomeini, the Ayatollah. Are you under a retainer— Are you paid by Khomeini or the regime as a legal advisor?

CLARK: I assume that the purpose behind that question is whether in fact I'm doing what I'm doing because I'm being paid. I'd really like to talk to the senator about that some time. I've never met the man. I'd very much like to know where he gets his facts. We were told at the conference that American lawyers were being paid $300-400,000 a month in fees. I have never received a penny. My law firm has never received a penny. We will not accept a penny from the Iranian government or Iranian interests in this situation. We commit a third of our time to human rights and public interest litigation, and we commit another third to reduced rates for those who can't afford to pay in the public interest area. And we'll continue to do it. I think Senator Schmitt's confusing his morals with mine. He finds money so much more attractive, that he assumes people will only do hard things if they're paid. And that's not true.

MacNEIL: He is not wrong— I mean, he is wrong?

CLARK: He's absolutely wrong.

MacNEIL: You are not a paid legal advisor to Khomeini?

CLARK: There's absolutely no basis for it. I have never asked for and would not accept a penny and there's no basis for what he says, and he ought to be ashamed of himself.

MacNEIL: Thank you. Charlayne? Can't hear you, Charlayne, I don't think. Can you?

CLARK: No.

HUNTER-GAULT: Can you hear me now?

MacNEIL: Yes, we can.

HUNTER-GAULT: Oh, good. You said during a news conference, I believe today, that 'There is no Khomeini regime. It is near chaos there.' What is the source of that chaos, and how is it manifesting itself?

CLARK: Well, the source of it is different people thinking and doing different things, and it's manifested by their acts.

HUNTER-GAULT: What people specifically?

CLARK: The way I see it generally is this, that there was an incredible unity in Iran that arose among the people in opposition to the shah. And it was as wide and strong as any national unity that I've seen — take the U.S. in World War II. But once the shah was gone, then the unifying force, to a very considerable degree, had dissipated. And all the old divisions, all the natural desire for power, for fame, all the divisions inherent in a society that has many different minorities, large minorities, came to the fore. And unity was lost. You know, we somehow or other assume that the period after a revolution is easy. And yet all of history tells us it's very difficult. Jefferson told Lafayette at the beginning of the French Revolution that 'You must not expect to be carried from despotism to liberty on a feather pillow.' And what happened? The Reign of Terror, and the Napoleonic era, and all the rest. It's extremely difficult, and the divisions there are enormous.

HUNTER-GAULT: Well, in your view, what is your impression about where those divisions are and where the sources of power lie within Iran?

CLARK: The dominant power probably all lays with — at least, when it's exercised, but uniquely in Iran today — it's public opinion, Charlayne. It's in large part because the public is aware that it was they who ended the regime of the shah. That it was millions of people pouring out onto the streets, who closed factories, who closed shops, who closed schools, who closed bazaars, who closed the country down. And finally, all the military might in the world couldn't make all the people refusing to act as the force [audio lost] would want them to do, couldn't prevail. So, public opinion knows its power. And leaders there have to play to and yield to public opinon.

HUNTER-GAULT: Well, what about those poles of power that we have come to associate in Iran, the Ayatollah, Bani-Sadr, the parliament? I mean, how are those poles of power inter-relating, or not inter-relating?

CLARK: Well, the parliament's awfully new, and we can't really tell yet how it will shake down. I think all who want to see stability there, and social justice there, of Iranian choosing, not some foreign intervention, hope that the Majles, or the parliament, will prove to be a real center of power. They hope that it will support constitutional government. But it's hardly proven yet. They've barely begun. The Revolutionary Council still holds a lot of power, yet within the Revolutionary Council there are many divisions. There are the conservative religious segments. There are the secular segments. There are the socialist and marxist groups in there. You know, when you start looking around the country, you see 12 million Azerbaijanis. You can see the arabs in Khuzistan, the oil area, the Turkomans, and the Baluchis, and the Baktiaris, and these are groups that have never really been dominated by Farsi-speaking people, by the Persians, by the shah himself. So, it is going to be some challenge to bring stability there. Yet clearly, to me, stability is essential to the interests of the free world, and to freedom in the world. Because instability there creates a vacuum, and the high probability has to be that the eastern bloc and the Soviet influence will fill that vacuum. And you can see it already there now. You see Rumanian and other Eastern European countries present and trading, because there's not a lot of choice with the U.S. blockade.

HUNTER-GAULT: Were you permitted to see the hostages?

CLARK: No.

HUNTER-GAULT: You were not?

CLARK: No.

HUNTER-GAULT: It was reported that one of the purposes of your trip was to bolster the moderates. Did it, in your view?

CLARK: Well, I guess I'd not be in too good a position to judge that. My hope was to be able to communicate with some of the Iranian people, and I think in that respect, we had a unique opportunity. I had a 40-minute speech that went out on television in full to the Iranian people, in which I called for the release of the hostages now. And in which I said, if it would in any way relieve tensions, I would take the place of any single hostage. In which I pointed out that they were violating their new constitution, of which they were so proud, because they were not presuming innocence in their speech, they were not authorizing the appointment of counsel, there was no access to the courts as their constitution guaranteed. There was not a statement or specification of the charges within 24 hours. There had been no arraignment after seven months. I think those things are— were, you know, very telling. Whether it supported the moderates— I'm not there to support the moderates, or the conservatives, or anybody else. I'm there to try to show that there are Americans unafraid to tell the truth about the past, to recognize, to the extent that we know it, that the United States has not played a role in accordance with our principles, that we did help restore the shah to his throne, as William Colby, former director of the CIA, has suggested or stated. It's none of— That's not anything for America to be doing. That Americans are not afraid to say that, but that still their seizure of our people is wrong. Morally unjustifiable in the name of humanity, in the name of the Iranian revolution, because this is disrupting it terribly, and finally in the hope for world peace, they ought to let the hostages go now.

HUNTER-GAULT: Thank you. Robin?

MacNEIL: You said in the nine points that you printed in— in an article in *The Nation* and then elaborated at your news conference today, that the American sanctions, economic sanctions, should be ended. Why?

CLARK: Because they don't work as we would have them work. In the conference, we were told that they are probably costing Iran about $50 million a day, a million dollars a hostage a day, nearly, which is what— is a lot of money even for an oil-rich country, but the oil's not flowing like it was. But the most that the economic sanctions can do is weaken the country. They can cause more unemployment, more instability, the possibility of more violence, and that's not what the United States should ever want. It will make more probable Soviet increased influence. Who's gonna supply the guns, then? Who's going to supply what they need, then? Who will trade with them, then? Why do we keep driving countries like China, as we did in '49, and Indochina, as we did in '46, and Cuba, as we did in '59 and later, why do we keep driving them into the Soviet sphere of influence? Why can't we say, 'Look, we want to practice the American principles toward you as we want to practice them toward our own children. We believe in democracy, we believe in freedom, we believe in justice. We're not going to support tyranny in your country.'

MacNEIL: But isn't there evidence that the economic sanctions, as intended by the administration, are beginning to increase pressures on Iran and therefore the need for a settlement? For instance, the Ayatollah in a speech last week, which many experts here regarded as a very important change in tone, referred to the economic crisis which was threatening the revolution. Now, if that is in part due to the economic sanctions, are they therefore not successful?

CLARK: I don't know who the experts are, but just as a matter of human nature, anyone who believes that Ayatollah Khomeini, who has spent the major part of his adult life in resistance and defiance of authority, would now yield to force, misunderstands his character terribly, in my opinion. He will not be bullied. He has lived a life of resistance, and the only reaction that he knows — his whole mature life has been committed to it — is defiance to authority of that nature. And as he said to the delegates there, he spoke to us for about 30 minutes, he said, 'If we have to travel on burros and eat oats, we will never yield to economic pressure or force of any nature.' And I happen to think that's exactly the psychology that prevails in Iran today. For 25 years they struggled to get out from under the shah. They will now submit to an economic blockade?

MacNEIL: Turning to the call for a congressional investigation, since the hostages appear to be the pawns lost in a struggle between various factions for power in Iran, how would gestures like a congressional investigation help anything?

CLARK: I wouldn't do it as a gesture. I really don't believe in gestures. And I don't know why Americans always want to trade. Why don't we just do something because it's right? Perhaps it's more important to America finally than it is to Iran to know what our agents did. Can democracy work if the people aren't informed about the activities of their government?

MacNEIL: You don't think that is sufficiently on the record already from the various congressional investigations into the CIA, and what has come out since the Iran crisis?

CLARK: I certainly don't. I certainly don't. And we don't have any willingness or apparent capacity in the government to acknowledge it. They say, 'we'll talk about it later.' Well, we won't talk about it later. And we're still supporting tyranny. I think the— this is important to the Iranians for two reasons. The integrity of history. They believe they have suffered a lot, been through a lot, and they want the truth known. As an end in itself. It's really a part of Islam. It's a basic principle of Islam that the truth as an end in itself is of utmost importance. But there's a more practical element, and that is, that they believe, unless there is a clear understanding, a clear recognition, a clear acknowledgment of past misconduct of this sort, there is no deterrent to its repetition in the future. That those who are ignorant of the past are condemned to repeat its mistakes. And this is of fundamental importance to them always, and I think this why President Bani-Sadr specified this to me as something he would like for me to try to do. It's a little hard for a private citizen.

MacNEIL: Thank you. Charlayne?

HUNTER-GAULT: Mr. Clark, there have been charges of violence and human rights violations and executions. What's your sense of how widespread that is in Iran?

CLARK: Well, I think it's pretty distressing. I went there a year ago April. As you know, I've opposed capital punishment for many years. I remain the only attorney general in our history to oppose capital punishment. I would love to see the United States have the courage to abolish it now. It would be— For a super-power to do that, would be a model to the future. I went there in April of last year hoping to get them to stop the executions. At that time, there had been about 150. It was a terrible thing. Although the shah was executing, on the record, about 500 people a year, and off the record, God knows how many. But— and you'll recall also that last spring of '79, Ayatollah Khomeini twice declared moratoriums on executions. I was assured when I was there in April that they wouldn't go above 200. Well, actually they've gone above 700. And— something I spoke about at some length on this trip. I hope that they can be stopped. You know, it's kinda like comparing the 15,000 that were killed in the Reign of Terror in France to the millions of broken bodies in the centuries of despotism that went before the Reign of Terror. It doesn't justify the Reign of Terror at all, and I don't mean to call what's happening in Iran a reign of terror, but there's a quality and a quantity of violence that I oppose and would like to see cease. They talk in terms of the need of— to satisfy public opinion, which is what we say on our excecutions, you know. We're so angry at a horrible murder, that the public demands that someone be killed. They say that if it's not done by government, it will be done by vigilante justice, and therefore that it has to be done. But hopefully, it's nearly over, if things will settle down.

HUNTER-GAULT: Speaking of public opinion, you've charged President Carter with political motivations in this whole hostage crisis, but it seems for the most part, he has taken his lumps for being too moderate. What's your response to that?

CLARK: Well, I'm not sure I've charged him with being politically motivated. I've heard that suggested a number of times. I did say, when he talked about prosecuting me, that he shouldn't mix law and politics. That he shouldn't be politicizing the possibility of a prosecution. It ought to be handled in, you know, in legal channels. But I think that— you know, President Carter did something that has to be lawless, because it is too dangerous. As Hugo Grotius said in *The Law of War and Peace*, 'It is this care to preserve the society that is the source of our law.' And it's unthinkable, under constitutional government, that a single person could send a heavily armed force halfway around the world with orders to shoot to kill if necessary, to accomplish his end, in a place where he has no jurisdiction, in a place where you can kill the hostages themselves, where you can kill their captors, where the liberators— or purported— the hopeful liberators can killed, or a war can ensue. That is absolutely lawless and unthinkable. And the American people have to come to grips with that. We're not the world policeman. We have no jurisdiction. We cannot send armed people around the world like that. We only do it because they're weak. We wouldn't do it in the Soviet Union. We wouldn't do it where someone could hit back.

HUNTER-GAULT: There are many American people who feel that the Iranian act of seizing the hostages in the first place was lawless.

CLARK: Well, it was. There's no question about it. And it was wrong. There's no question about it. And I said that about as clearly and forcefully as I can speak, while I was there. And I said it many times. And then, when I would walk into the cemetery or walk down the street, people would not be offended by it. They were prepared to hear that and accept that. In fact, I have said, and I believe that the vast majority of the Iranian people know it's wrong. But they're not going to be bullied.

HUNTER-GAULT: Thank you. Robin?

MacNEIL: I wouldn't like to get into a contest with you over this, because you're an expert on the Constitution, and as former attorney general, and I am not, but surely it is not illegal under American law for the president to make that order, or under the United Nations charter for a country to use force to protect its own citizens, as a final resort when other methods have failed. Is it not legal in both those senses?

CLARK: No.

MacNEIL: It is not?

CLARK: No. No, it— You know, if— The Constitution is worth nothing, the First Amendment, none of the amendments have any value if the chief executive at his whim can send an armed force any place he chooses at any time to engage in a police action. There has to be a law that authorizes it. There is no law that authorizes it. There could be no law that authorizes the invasion of a foreign country with a military force without a declaration of Congress and a declaration of war, to engage in what could become a full-scale military action. The War Powers Act is, you know, barely a comma in the essay that would have to be written on that. If an executive has that, then there's no restraint on executive power. And it's unthinkable in terms of international law, that any nation can engage in a military strike in any other nation— that would be utter chaos.

MacNEIL: My understanding of the War Powers Act was that it specifically exempted certain acts by the president from necessary prior approval by Congress when, in circumstances like Iran when American lives were in danger— with approval by Congress to be required later.

CLARK: Well, I think you're right. I never thought very highly of the War Powers Act, and I remember saying so in 1974 on your program.

MacNEIL: So, it's really the War Powers Act that you are—

CLARK: No. No, no. No, quite the opposite. Without the War Powers Act, which purports to be a limitation on executive authority, not a conveyance of power, without the War Powers Act, it's lawless. With the War Powers Act, it's a little more lawless, that's all.

MacNEIL: I see. Well, we have to end it there, and I'll leave it to people more knowledgeable than I to argue that point with you. Thank you very much for joining us tonight. Good night, Charlayne.

HUNTER-GAULT: Good night, Robin.

MacNEIL: That's all for tonight. We'll be back tomorrow night. I'm Robert MacNeil. Good night.

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The hidden numbers

ISIDORE SILVER

THE ELECTION of 1980 is a landmark election—because of the numbers. The relevant numbers are 74, 72 (three times), 71, and perhaps 65 and 63, the ages of seven present members of the Supreme Court. Since the average age of retirement or death while in service of the ninety-two Supreme Court Justices who have served throughout our national history (apart from the present nine) is 68, it is likely that the next president will have a major opportunity to reshape the court in a way not seen since 1908 or 1920. Clearly if Ronald Reagan is elected *and* re-elected, for instance, it is virtually certain that he will appoint at least six Justices. Ironically, while everyone talks of Reagan's age (often by not talking of it), few think about the implications of a "Reagan Court" making social policy well into the next century.

How likely is it that the next president—whoever he is—will actually have the opportunity described above? After all, Justices die or retire at different ages, and some may "hang on" (as Earl Warren tried to do twelve years ago) until assured that a successor will be chosen by the "right" president. The answer seems clear. Five Justices will reach their 75th birthdays within the next four years and a sixth, Justice Stewart, will be just about 70. While some titans have served until 90 (Oliver Wendell Holmes) or 85 (Hugo Black), they are rare when compared with the host of compatriots who have retired in their early and mid-70s. Moreover, the "timing" of a resignation for political (or assumed political) purposes has recently been regarded with distaste, so that we can assume that most Justices will choose to retire when they feel it to be necessary. It may be surprising to realize that the average retirement age of twentieth century Justices is 69, exactly the same age as their nineteenth century compatriots, despite presumed advances in longevity.

It is true that we should not be misled by "averages" since they tend to reveal little about the specific characteristics of the "population" studied. In the case of Supreme Court Justices, "averages" are skewed by early resignations (John Jay at 50, Arthur Goldberg at 57) to pursue other careers or, at the other end, by those who persistently refuse to resign because of pride, fear, or other strong emotional reasons for remaining in the seat of power. Yet, because of the fact that skewing operates in both directions, it may be true that "average" may well be useful for assessing the age at which problems of performance and productivity arise. Perhaps a more sophisticated data base would tell us something more about the relationship of "productive age" to "average retirement age," but it would suffice for the moment to note that the two may differ only by a few years. Thus, the five present Justices over 72 would certainly be within what might be called a range of probable retirement age. Even Justice Stewart, who is not yet 70, but who has served for 22 years, may be or soon become tired or bored.

There are significant and interesting parallels between 1908 and 1980 (apart from the reversal of numbers). William Howard Taft was elected president in 1908 and, in his one term (his only term) had the opportunity to appoint six Justices. That opportunity arose, in part, because four Justices were over 70. Taft actually made five appointments (in one additional case, he shifted a sitting Associate Justice to the Chief Justiceship when that position became vacant), and his influence dominated the Court for several decades, including the early New Deal.

Indeed, the historical parallels are discomforting. In addition to the five Justices he appointed as president, Taft influenced the appointment of another four (including himself) under Warren Harding's abortive presidency. Thus, two Republicans, serving a total of six years, appointed ten Justices, three of whom served into the New Deal—and formed the crux of the opposition to fundamental political reform of the nation. In contrast, Woodrow Wilson, a two-term president, only had the opportunity to appoint three Justices, two of whom served into the New Deal. In all fairness, it must be noted that one of the most implacable reactionaries was a Wilson appointee (the other was Louis Brandeis). Also, F.D.R. had to wait for one presidential term to expire before *he* could start making Supreme Court appointments to break the Taft-Harding axis which represented a discredited legal and political philosophy. The replication of the Taft-Harding "sandwich" in the form of Nixon-Reagan—who between them may be responsible for nine or ten appointments to the Court—may yet occur.

PARALLELS aside, it has been fashionable for liberal historians, commencing with Arthur Schlesinger in 1960, to argue that there really *is* a difference between Democrats and Republicans. Many have argued, today, that there will be little to choose from between Carter and Reagan, just as differences

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between Kennedy-Nixon in 1960 and Johnson-Goldwater in 1964 and Humphrey-Nixon in 1968 were perceived as being meaningless. Ironically, it appears that the greatest distinctions lie precisely in the realm of judicial appointments rather than in the world of politics. For some reason yet to be established, the general records of Democrats seem to be better, or at least different, ideologically different, in the realm of judicial appointment. In 1980, that difference promises to take on critical dimensions.

While it might be difficult to forecast what types of judicial appointments (especially Supreme Court ones) might be made by Reagan, a pattern of potential Carter appointments can be discerned. Carter has appointed more women and blacks, highly qualified women and blacks, than any predecessors, and one scholar recently called their credentials "even more distinguished than the overall credentials of the white males chosen by Carter and previous administrations." While Carter continues to appoint Democrats, for the most part they are able Democrats.

In contrast, the Republicans in general have had not one but two traditions. What might be called the Hoover-Eisenhower-Ford tradition has stressed appointment of men fundamentally conservative but with open minds. Herbert Hoover chose Benjamin Cardozo in 1932 because Cardozo was the most eminent judge in the nation; the fact that the appointee was a liberal, a Jew (and would be the second one ever appointed and would sit along with Brandeis, the first, who was still on the Court) seemed to be irrelevant. Hoover also picked Charles Evans Hughes, a "reform" Republican to be Chief Justice in 1930. Among Eisenhower's choices were, of course, Earl Warren, a "progressive" former Governor of California, the scholarly John Marshall Harlan, an independent Wall Street lawyer, and William Brennan, an independent liberal Catholic Democrat. Ford's appointment of John Paul Stevens a few years ago was well within this tradition. The contrasting Taft-Harding-Nixon pattern is too painful to comment on (although, in the case of the latter, Senate Democratic opposition insured that a modicum of quality replaced outright mediocrity as the selection touchstone).

Elections often turn out to be less significant than they seem at the time, but the 1980 vote is likely to be a silent referendum about the future composition of the Supreme Court, an always important (if subterranean) issue in our society. As with the Taft and Harding triumphs in 1908 and 1920, the final meaning will lie in a realm quite different from that publicly debated at the time. If history is to repeat itself (it never quite does) and a Republican is to become president, one can only hope that he will opt for continuance not of the Republican Taft-Harding-Nixon pattern but of the independent Hoover-Eisenhower-Ford tradition of judicial selection, one which has proven itself compatible with the visionary, broadly humanitarian role we have come to expect of the Supreme Court in our society.

ANALYSIS

B-4 C Santa Barbara, Calif., News-Press, Sunday, July 27, 1980

The message is GOP clear

By James Reston
N.Y. Times News Service

Question — Have you learned the Republican message, brother?

Answer — Down to the last cliche.

Q. — Let's be sure. Where does America stand today?

A. — In mortal danger, and also on the brink of disaster.

Q. — Very good! What does the Republic face?

A. — It faces a gathering storm at a turning point in history.

Q. — Precisely, and who is responsible for this dreadful prospect?

A. — Carter.

Q. — Which one?

A. — Jimmy and Billy-boy, assisted by Zbig, Ham, Jody....

Q. — That's enough. What is the road from Georgia to the White House littered with?

A. — It is littered with broken promises and broken dreams.

Q. — Surely President Carter has given us something in the past four years?

A. — He has given us the worst inflation rates in our history, and the worst interest rates since the Civil War.

Q. — Is that all?

A. — Also, the worst rate of personal savings in 33 years and the worst rate of unemployment since the Depression.

Q. — Is there any good news?

A. — In six months, Carter will be gone to his well-earned retirement.

Q. — And then?

A. — We will have strong, steady hands at the helm that will guide the Ship of State toward the light at the end of the tunnel.

Q. — No mixed metaphors, please. Who is the man who says we must never again send American boys to fight and die in a war we don't intend to win?

A. — Ronald Reagan of California, the next president of the United States!

Q. — Who is this man who says children should not be forbidden to pray in the schools?

A. — Reagan.

Q. — Who is this man who would abolish the 55-mile-an-hour speed limit?

A. — Good Old Ronnie!

Q. — Who would oppose giveaways like the Panama Canal and sell-outs in Taiwan?

A. — Jesse Helms of North Carolina?

Q. — Right, but anybody else?

A. — Governor Reagan.

Q. — Who would defend the women of America from an Equal Rights Amendment to the Constitution, and give them an amendment banning abortions?

A. — Same stout fellow.

Q. — I take it then that you believe in the future of the Republican Party and America?

A. — Yes sir, they're sound as the dollar!

A Mud Bath of Special Favors

MEG GREENFIELD

It was just about a year ago that President Carter started talking up a storm about "malaise"—a kind of low-grade, epidemic insanity, as I understood it, that he thought we all had caught. I remember thinking at the time that it was the diagnosis, not the population, that was crazy. But I have changed my mind. This year, I think not only that we are having a well-deserved bout of malaise, but that we would be certifiably crazy not to.

These grim thoughts have been provoked by the sight of life in the national political sandbox over the past few weeks. I have in mind, of course, the riot of all those well-known budget balancers and austerity types jostling and shoving to be first and most lavish and least serious in promising the voters a juicy tax cut. But there were also the who-got-what stories just prior to the Congressional recess. Something for this pressure group, something for that, an incautious benefits increase here, a wholly ill-founded subsidy there—the legislation reads like somebody's will.

I am aware that Congress, more or less honoring the obligations set forth in its commendable budget reforms of a few years ago, has been a good deal less wanton and chaotic in its dispensations than it used to be. Now at least there are some limits and there is a recognition that expenditures and receipts are not wholly unrelated. But within its self-imposed confines, and responding to its Presidential candidates, Congress is still—perhaps more than ever—paying shut-up money to the voters. You could call it something nicer, like "tribute," or something less nice, like "extortion," but this is essentially the relationship that has developed between the public and its elected representatives in both the legislature and the higher reaches of the executive branch.

Reforms: A friend of mine at the Labor Department was telling me the other day, in a matter-of-fact, unexcited voice, how there were several legislative measures the more responsible souls in government would like to see enacted that would achieve a number of much-desired economic goals, but that they wouldn't dream of trying to get such legislation introduced. And why not? Because, my friend explained (and I have heard the same from others), the goodie-machine on the Hill is so strong and the capacity to resist so weak that opening up an old statute for improvements is now too risky. The thing comes back from Congress in a Santa Claus suit, a bagful of special elf-made favors slung over its shoulder, and you are worse off than before. The new Washington wisdom is to let bad enough alone.

There is a school that holds that all this is the logical consequence of various "reforms" of Congressional procedure and campaign-financing law. The theory is that loose discipline within Congress and the rise of the political-action-committee lobbying techniques and so forth have brought us to our present wallow in a mud bath of special favors and gratifications. But I don't believe it. The reforms are merely an accessory after the fact. Then whose fault is it? The public blames our condition on the politicians and the politicians (by implication) blame it on the public, and I think both are right—but that the public is ever so much righter. The political folks *invite* extortion and they also invite the contempt they inevitably get from those who are so successfully putting the arm on them.

The political folks invite extortion and they also invite the contempt they inevitably get.

When I say the politicians blame the people, what I have in mind is that phrase that is the death knell for restrained or reasonable actions of any kind: "before the election." Politicians love to talk about "the American people"; it is their most sonorously articulated phrase. But what they generally mean by "the American people" is Idiots, Inc., a vast population they discern of dumb and greedy citizens who need regularly to be bought off and who are simply incapable of the act of imagination required to make a short-term personal sacrifice for a long-term community gain. The politicians are not exactly subtle about this, or no more subtle, anyway, than adults who ostentatiously S-P-E-L-L their secrets in the presence of pre-literate children.

But the voters are not kids and they are neither greedy nor dumb, and an unfortunately large number of them can read. Last winter, to the amazement of those who thought otherwise, many Iowa farmers let it be known that they would countenance the proposed grain-sales embargo against the Soviets on the ground that it would be a nationally honorable and dignified and useful thing to do. And there are innumerable like examples. But (witness the farmers' later change of heart) just as soon as the public sees yet again that the politicians aren't serious or constant, that they don't have the guts to see their policies through if the heat gets too high or the polls drop too low, well, then, naturally the public gets off its nobility kick. Everyone becomes just a little more rapacious and mean-minded.

Ambition: And what else would you expect? Sometimes it seems as though our political leaders have no consistency, no coherence, no staying power, no theory that puts it all together—only ambition and anxiety. The economists will tell you that someone, lots of someones, are going to have to hurt before we can make even rudimentary progress toward stability in this country. We hail it as "courage" in a politician when he calls on some group other than our own, whichever it is, to make the sacrifices, yet fight like tigers when he looks our way. But that is because of a political default. When policy doesn't last between newspaper editions, we know it's not serious. We know you don't get a big tax cut, a big increase in defense spending and a balanced budget all at once. We know they don't mean it. So we start agitating to get our hunk of whatever it is they are giving away at the stand on the corner.

Nothing is proof against this. I note that even the interesting and briefly serious-seeming idea of "reindustrializing" the country is now being reinterpreted by some to mean a kind of new political payoff to everyone's old constituencies. The men at the top merely sigh and explain that the public won't accept the really hard things required—at least *not before the election.* Why don't they try us?

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