

What the Supreme Court Needs

President Nixon's appointment of Warren E. Burger as Chief Justice strikes us as a fine selection on a number of different grounds.

We agree, first of all, with the President's desire for a Chief Justice likely to work against the Court's often heavyhanded intervention into all areas of political life, and in particular its recent tendency to promulgate new rules of criminal procedure that make convictions increasingly difficult to achieve. In Judge Burger's 13 years on the U.S. Court of Appeals for the District of Columbia, he has left little doubt about his position on this issue.

We particularly commend his view that while the changes in criminal procedure were intended for purposes with which nearly all Americans would agree, they have made trials an increasingly stylized contest in which the actual facts of a case play an ever-dwindling role. As he put it in a recent dissent, "Guilt or innocence becomes irrelevant in the criminal trial as we flounder in a morass of artificial rules poorly conceived and often impossible of application."

We also consider it important, though, that Judge Burger is no doctrinaire conservative. His very strong views on criminal procedure are balanced with far more "liberal" opinions about such matters as civil rights for minorities. Especially at this point, the High Court does not need a doctrinaire approach from either left or right. It needs to pay more heed to legal schol-

arship and craftsmanship. Judge Burger's background is far more judicial than political, which suggests he may serve this need well.

It's highly significant, finally, that Judge Burger was chosen for his judicial record rather than any personal or political ties. Unfortunately, this has become an exception. Chief Justice Warren was originally appointed in part to meet President Eisenhower's political debt to him. President Kennedy appointed Justice White, a personal friend of long standing. President Johnson appointed former Justice Fortas, then proposed to elevate Mr. Fortas to Chief Justice and complete the Court with Homer Thornberry, another crony.

With this background, we suppose it's understandable that much of the speculation on the first Nixon appointment suggested he might choose his campaign manager or one of a number of close personal friends. After Mr. Fortas' resignation, that kind of appointment would have been a grave mistake; that President Nixon avoided it vindicates his judgment and his decision-making processes.

So the new appointment gives the Court something less of a political tinge, may give it a little more craftsmanship and should give it less of a tendency to write its own social notions into the Constitution. The appointment of Judge Burger, in short, promises to give the Supreme Court precisely what it needs.