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Janice Brown: The next U.S. Supreme Court justice?  
DAVID KRAVETS  
Associated Press

SAN FRANCISCO - It's not hard to understand why California Supreme Court Justice Janice Rogers Brown is often mentioned as a potential nominee to the U.S. Supreme Court.

In many ways, her line of thinking mirrors both the Bush administration and recent U.S. Supreme Court precedent. A Christian black woman from the segregated South, Brown supports limits on abortion rights and corporate liability, routinely upholds the death penalty and opposes affirmative action.

As speculation surges about the rumored retirements of Chief Justice William H. Rehnquist and Justice Sandra Day O'Connor this summer, talk of potential replacements is on the rise, and Brown is among them.

"She has some real fans in Washington who are very impressed with what she's done on the California Supreme Court," said Gerald Uelman, a Santa Clara University School of Law scholar who follows both courts.

The first black woman to sit on California's highest court, Brown, 54, is one of the most conservative of the seven justices and a prolific opinion writer, authoring more opinions and dissents last term than any other justice.

She caught the attention of conservatives and the Bush administration with her majority opinion in 2000 striking down a San Jose ordinance that required government contractors to solicit bids from companies owned by women and minorities. Brown's lengthy opinion traced the legal history of race in America, portraying it as ebbing and flowing on whether government should treat all races equally.

Her conclusion, based in part on the California voters' decision to outlaw race- and gender-based hiring practices by approving Proposition 209: all people should be treated equally, regardless of race. Instead of affirmative action, she said, "equality of individual opportunity" is what the constitution demands.

Chief Justice Ronald M. George, in a concurring opinion, attacked Brown's portrayal of affirmative action as "entitlement based on group representation," calling it a "serious distortion of history." George wrote that affirmative action could be viewed as aiding the underrepresented in an effort to create equality.

Still, Brown's opinion meshes well with the philosophy of the Bush administration, which has told the U.S. Supreme Court in a pending case that it opposes the University of Michigan's race-based admissions policies.

The daughter of a sharecropper from rural Alabama who brought his family to Sacramento after joining the Air Force, Brown graduated in 1977 from the University of California, Los Angeles School of Law.

She was admitted at a time when the university's affirmative action program had an expressed goal of producing "ethnic and racial diversity," said law school spokeswoman Jessica Copen. Still, "no one would have been admitted to the law school unless they had the ability to do well," she said.

Brown hasn't given media interviews for years and declined to be interviewed for this story.

Close friend Douglas Kmiec, departing dean of the Catholic University of America's Columbus School of Law, where Brown gave a commencement address last month, said she became a lawyer after her grandmother espoused the virtues of civil rights attorney Fred Gray, who defended Rosa Parks and Martin Luther King Jr.

"That was held out to her at an early age," Kmiec said.

Brown also finds inspiration in her religion, Kmiec said. While introducing Brown to the graduating law students on May 24, he said she formulates opinions "in prayer and quiet study of the Bible." And in her commencement address, she criticized philosophers and scientists for trying to mold society "as if God did not exist."

The law, she said, is the "terrain on which Americans are struggling to decide what kind of people they are."

Brown worked for 12 years as a state government lawyer before joining a lobbying and legislative law firm led by former Republican Gov. George Deukmejian's chief of staff, Steve Merksamer. Then she became Republican Gov. Pete Wilson's legal affairs secretary before he nominated her to a state appellate court.

Two years later, Wilson nominated her to the California Supreme Court. She was confirmed in 1996 over the concerns of the state's judicial vetting committee, which rated her "not qualified" because of her limited judicial experience.

Brown, who has two children and lives in Sacramento with her husband, jazz musician Dewey Parker, is a "very private person," Merksamer and others said.

"When you grow up as a sharecropper's daughter in the segregated South, I think you have a certain perspective when you're able to come out of that and go to college and law school," Merksamer said.

While well known for her affirmative action opinion, Brown's rulings have shown sympathy at times to the plight of minorities.

Last year, the state Supreme Court upheld the conviction of a black bicyclist who was stopped by police for riding his bicycle the wrong way on a one-way street. Police searched Conrad McKay and found methamphetamine. He was sentenced to nearly three years.

The majority, in upholding the conviction, left it to the "judgment of the arresting officer" on whether to arrest or follow a "cite-and-release procedure" whereby violators of non-criminal infractions could be ticketed and released. Brown, in a lone dissent, said the decision left open the door to racial profiling.

But when it comes to the death penalty, Brown routinely affirms death sentences. Two years ago, she wrote that "murderers do not deserve a fate better than that inflicted on their victims."

The White House, which is trying to expand the use of federal death penalty statutes, declined comment on rumors



that its lawyers have interviewed Brown in the event a seat on the high court opens. Merksamer wouldn't confirm whether he has been interviewed by White House lawyers on her behalf.

Others being talked about as potential nominees include Alberto Gonzalez, who as White House counsel is a close Bush adviser; Harvie Wilkinson III of the 4th U.S. Circuit Court of Appeals and Edith Jones of the 5th U.S. Circuit Court of Appeals, and Deputy Attorney General Larry Thompson.

Just whom the White House might nominate is one of Washington's most closely guarded secrets.

"No one at this point has mentioned any intention to retire," White House spokesman Scott McClellan said. "It would be speculative to start discussing the possibility."

On the abortion front, Brown wrote a scathing dissent in 1977 to a ruling which struck down a parental consent law, calling her colleagues on the court "philosopher kings." And when it comes to corporate liability, she wrote three years ago that companies should be shielded from paying exorbitant civil damages, a move endorsed by the U.S. Supreme Court this year.

In terms of gun control, Brown's thinking appears to align closely with Attorney General John Ashcroft's policies. Both support the right to firearm ownership, but believe the government may impose certain restrictions.

"Her writings have indicated an appreciation of the right to self defense and the practical reality that firearms are an effective tool for that purpose," said Chuck Michel, an attorney with the California Rifle and Pistol Association. Michel added, however, that some of Brown's thinking on gun control is "ill conceived."

Some scholars suggest Bush would have a struggle to confirm Brown, given Senate Democrats' recent filibusters on two conservative federal appellate nominees.

"Her name is being circulated," said Erwin Chemerinsky, a University of Southern California legal scholar who has taken several cases to the U.S. Supreme Court this term. "I think the question is: Does the Bush administration want to have a confirmation fight?"

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