

## STATEMENT OF GRIFFIN B. BELL

## BEFORE

## THE COMMITTEE ON THE JUDICIARY

## UNITED STATES SENATE

## IN SUPPORT OF THE NOMINATION OF

## HONORABLE WILLIAM H. REHNQUIST

## TO BE CHIEF JUSTICE

I appear in support of the President's nomination of Honorable William H. Rehnquist, now an Associate Justice of the Supreme Court of the United States, to be Chief Justice of the United States. I have known Justice Rehnquist since shortly after his appointment and confirmation to be an Associate Justice of the Supreme Court and have followed his career as well as his writings on the Supreme Court. In fact, I have followed the opinions of the Court throughout the period of his service.

In addition, several years ago I served while a member of the federal judiciary as Chairman of the Division of Judicial Administration of the American Bar Association. Justice Rehnquist took and takes a keen interest in the activities of the lower courts of our nation and was the principal speaker at one of the annual meetings of the Division of Judicial Administration.

I am familiar with the Office of Legal Counsel at the Department of Justice and know of the service of Justice Rehnquist as Assistant Attorney General in charge of that office just prior to his service on the Supreme Court. I am not familiar with his service as a lawyer or his activities as a law student. I do know of the brilliant record that he made as a law student at Stanford.

We are inclined as court watchers to divide the members of the Court into liberals, moderates or centrists, and conservatives. Some of the justices move from one category to another, depending on the subject matter before the Court. Probably, Justice Brennan is more steadfast in his

positions on the liberal side than any other member of the Court or as much so, and perhaps Justice Rehnquist occupies an opposite position on the conservative side.

Justices Brennan and Rehnquist are true leaders on the Court because they are bright, articulate, well-versed in Constitutional and statutory law and judicial philosophy, and because they reason from a firmly held, philosophical view of the Constitution and the role of the Court in American society. As such, they are similar in that they render reasoned decisions based in most part on their philosophical leanings, and as such are predictable. The thing most lacking in American law today is predictability, and these two Justices in particular give some hope to the American lawyer and the American public toward a day when we can again predict to a reasonable degree what the law is and will be in the foreseeable future.

Justice Rehnquist is a leader on the Court because of his towering intellect, his well-known and recognized capacity as a Constitutional law scholar and because he is, beyond doubt, greatly respected by the other members of the Court. These are the elements required for one to be a great Chief Justice.

As an aside, it may well be that his views will be tempered somewhat as he begins to live with the discipline that comes from the responsibility of being Chief Justice and the necessity to forge majority opinions on the great issues of our time. In recent years we have seen too many plurality opinions. There is some consternation in our nation in certain areas of the law because we have never been able to receive a solid majority view from our Supreme Court. Affirmative action is but one example. There are certain matters that should be put to rest by the Court; our nation deserves to know what the law is on some of the difficult social issues.

It has been said that Justice Rehnquist takes conservative positions in criminal law. Some equate the individual rights of criminal defendants with the great

concepts of social justice for the downtrodden. This is a good approach but one that sometimes overlooks the rights of society. Among the criminal defendant class are many people who are trafficking in drugs or dealing in violence and are not downtrodden at all. Society needs to be protected from them.

The criminal justice system must be workable, and Justice Rehnquist has adopted views that tend in that direction. The Burger court has not set aside landmark decisions such as those that have afforded the right to counsel, Miranda rights, or the exclusionary rule. In some instances Justice Rehnquist has joined in making those great rights more workable and thus preserving them. The good-faith exception to the exclusionary rule is a good example of Justice Rehnquist's role in saving the exclusionary rule from its own excesses.

The same may be said of some of the Fourth Amendment rulings of the Court in which Justice Rehnquist has participated. We can be proud that our Constitutional rights have been preserved; we can be reassured that they have been fashioned, refashioned, and preserved in a system where Justice Brennan and Justice Rehnquist and those other Justices with views in between have debated, reasoned and reached conclusions that are in the interests of the individual and society. This has not been the work of extremists but of justices of good will reasoning together within mere liberal-conservative parameters.

Justice Rehnquist apparently believes that the original intent of the drafters of the Constitution should be ascertained when interpreting the Constitution where possible. It has been said that he also contends that the Fourteenth Amendment was drafted to prevent racial discrimination and should not have been extended beyond that. He is certainly entitled to these views. As to the latter position, he has had little success in preventing the Court's expansive use of the due process and equal protection clauses of the Fourteenth Amendment far beyond racial matters. It is highly unlikely at

this point in our history that such a view of the Fourteenth Amendment, if he holds such a view, will ever prevail.

Justice Rehnquist's views on the First Amendment and Freedom of Religion rest on his reading of the framers' intentions and his belief based thereon that the Constitution does not require government to be neutral as between religion and irreligion. This view has substantial underpinnings in history and is by no means unreasonable.

Justice Rehnquist has a decent respect for federalism. This should not be a ground for criticism. Our government is structured on federalism. Senators for a large part of our history were elected by the state legislatures to represent the states. The states occupy a very important role in our governmental structure, especially in health, safety and education. I believe that senators still have a duty to see to the interests of the states along with the interests of the people and the federal government despite the fact that we amended the Constitution to provide for popular election of senators.

Lastly, I would like to note that under our Constitutional system the power to nominate the Chief Justice and the Associate Justices was and is vested in our President. This came after considerable debate at the constitutional convention where some urged that the Senate be in charge of appointing judges. The matter was resolved by placing the power in the President with the right and responsibility to advise and consent being placed on the Senate. I think it important that we take care not to denigrate our constitutional system by attempting to substitute the Senate for the President in the nomination process.

One of the most important issues in any presidential campaign is what type of justices and judges will the particular candidate appoint to our courts. President Reagan

carried forty-nine states, and the people were well aware of his views on the judiciary. He intended to appoint conservatives. That was an issue that was resolved by the election. He is entitled to his nominees in my judgment if they meet suitable levels of qualification based on integrity, ability, intellectual attainment, and good health. A modicum of common sense is also important. It seems to me that Justice Rehnquist meets all of these standards and that the President's nominee for Chief Justice should not be rejected. His public record of 15 years on the court supports this conclusion.

Were I a senator, I would vote to confirm Justice Rehnquist as Chief Justice. I would do so with the decided view that he would serve our Supreme Court and our nation well.

Thank you.