

NOMINATION OF JUSTICE WILLIAM HUBBS REHNQUIST

THURSDAY, JULY 31, 1986

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee convened, pursuant to adjournment, at 10:20 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Mathias, Laxalt, Hatch, Grassley, Specter, McConnell, Broyhill, Biden, Kennedy, Metzenbaum, DeConcini, Leahy, Heflin, Simon, Byrd, and Denton.

Staff present: Duke Short, chief investigator; Frank Klonoski, investigator; Dennis Shedd, chief counsel and staff director; Cindy LeBow, minority chief counsel; Melinda Koutsoumpas, chief clerk, Mark H. Gitenstein, minority chief counsel, and Christopher J. Dunn, minority counsel.

The CHAIRMAN. The committee will come to order.

Is Justice Rehnquist here yet?

Mr. SHORT. He is on the way down now.

The CHAIRMAN. While we are waiting for him, if there is no objection, there are two Congressmen here who want to just take a couple of minutes on this Rehnquist nomination, Senator Stevens and Representative Rudd. If you gentlemen would come forward, we will hear you right now while we are waiting on the Justice to come.

You may proceed, Senator Stevens.

STATEMENT OF HON. TED STEVENS, U.S. SENATOR, STATE OF ALASKA

Senator STEVENS. Thank you, Mr. Chairman and members of the committee.

I had asked to appear the other day, and I had just returned from an overnight flight from Alaska, and I am sure you understand that that was a difficult appearance to make.

The CHAIRMAN. We are glad to have you with us.

Senator STEVENS. I ask that you place my statement in the record in its entirety, if you would.

The CHAIRMAN. Without objection, the statement will be placed in the record.

[The statement follows:]

STATEMENT OF SENATOR TED STEVENS ON BEHALF OF JUSTICE WILLIAM HUBBS
REHNQUIST

Mr. Chairman, I consider William Rehnquist a good friend. He and I first came to Washington as young lawyers in the early 1950's. I was greatly impressed by his legal skills and enjoyed our many discussions about the law. I also enjoyed the more light-hearted talks that we shared.

Since those days, our careers have moved in different directions. Unfortunately, this has meant that our paths now rarely cross. I have, however, followed his career with interest. It was a pleasure to participate in the confirmation of his nomination as an Associate Justice of the Supreme Court in 1971. Now, on the occasion of his nomination to be Chief Justice of the United States, I am appearing before you to reaffirm my belief that he is a fine judge, and a great man.

You must decide whether Justice Rehnquist is qualified to serve as Chief Justice of the United States, the head of the Federal judiciary. After reviewing his record as a judge and an individual, there should be no doubt in anyone's mind that he is an appropriate choice to be our Nation's next Chief Justice. In fact, he is a superior choice.

The Chief Justice is responsible for the administration not only of the Supreme Court but also of the entire Federal judicial system. I believe that William Rehnquist's personal demeanor and ability to work well with individuals with whom he does not always agree will enable him to discharge these administrative duties with ease.

The fact that it is a pleasure to know and work with Justice Rehnquist, while important to the administration of the Federal judiciary, is just a part of the question before the committee. Posterity will be interested more in his decisions and his leadership on substantive legal issues than in his record on administrative matters.

Justice Rehnquist's legal philosophy is clear and consistent. During his 15 years on the Court as an Associate Justice, he has written opinions of uniformly high quality, well-known for their sharp legal reasoning. Those opinions are an important contribution to American jurisprudence.

At a time when the Supreme Court often speaks with many voices, the importance of well-reasoned and well-written opinions, even in dissent, goes beyond the merits of the particular case. Those opinions guide the lower courts and shape the future consideration of an issue by the Supreme Court. Justice Rehnquist produces exactly this sort of opinion. I have not always agreed with his conclusions, but Justice Rehnquist leaves no room for doubt of where he stands and what he believes.

It is important to put Justice Rehnquist's overall performance on the Court in perspective. He is not a loner, alienated from the legal mainstream. The man whom Justice Rehnquist would succeed as Chief Justice, Warren Burger, has voted more often with him than any other Justice for 11 of the 15 years Rehnquist has been on the Court.

Justice Rehnquist is also a strong believer in the Federal system. He recognizes that there is no need for the national government to constantly intrude into the governance of the individual States. That is a principle that some find hard to swallow. I believe, however, that it is a basic principle of our Nation's Constitution.

If Bill Rehnquist succeeds in reinstilling a respect for judicial restraint during his tenure as Chief Justice, his ascension to that office will be counted one of President Reagan's greatest achievements. I look forward to the consideration of his nomination by the full Senate.

Mr. STEVENS, Mr. President, I rise in support of the nomination of Mr. William H. Rehnquist to the US Supreme Court. It is my strong belief that Mr. Rehnquist has the intelligence, integrity, legal experience, understanding of the Constitution and qualities of fairness and impartiality which are so important in a nominee to the High Court. My respect for the Court and its vital role in our system of checks and balances would not permit me to vote for a person who does not possess these qualities.

Mr. Rehnquist's legal scholarship and experience are unassailable. After graduating first in his class from Stanford University Law School, where he was elected to the Order of the Coif and was a member of the board of editors of the Law Review, Mr. Rehnquist served as law clerk to Associate Justice Robert H. Jackson of the U.S. Supreme Court. Those who are familiar with our system of legal education and training know that an appointment to a Supreme Court clerkship is one of the most desirable positions available to a graduating law student. Moreover, Justice Jackson, for whom Mr. Rehnquist served from February 1952 until June 1953, is one of the most respected Justices in the history of the Court. I knew Bill Rehnquist personally during this period as I was a young lawyer here in Washington.

From the completion of his clerkship and until his appointment as Assistant Attorney General, Mr. Rehnquist engaged in private practice in Phoenix, Ariz. His outstanding legal ability and achievements are reflected in positions which he held during this period. Thus, he served as president and a member of the board of directors of the Maricopa County Bar Association in Phoenix, as chairman of the Arizona State Bar Continuing Legal Education Committee, as a member of the National Conference of Commissioners of Uniform State Laws, and on the Council of the Administrative Law Section of the American Bar Association.

During the Senate Judiciary Committee's consideration of the Rehnquist nomination, many strong endorsements of his legal scholarship were received. These expressions of support are well documented in the hearing record and committee report, and I will not dwell upon them now, except to mention two which I believe to be of special significance. First, the Honorable Lawrence E. Walsh, chairman of the American Bar Association's Standing Committee on Federal Judiciary, stated in a letter to the Judiciary Committee that:

The Committee is unanimous in its view that he is qualified for appointment to the Supreme Court. A majority of nine is of the opinion that he is one of the best qualified available and thus meets high standards of professional competence, judicial temperament, and integrity.

Commenting on Mr. Rehnquist's legal abilities, Dean Phil C. Neal of the University of Chicago Law School wrote:

Rehnquist was a student of mine at Stanford Law School. He was not only the top student in his class, but one of the best students in the school over a number of years.

I have abstracted certain information which is especially revelatory of Mr. Rehnquist's openmindedness and approach to constitutional issues. With respect to the first matter, I would like to quote again from a letter written to the committee by Dean Neal:

I am confident he is a fair minded and objective man. Any suggestions of racism or prejudice are completely inconsistent with my recollection of him. . . . I believe he would be an independent judge and that he would bring to the Court an unusual capacity for understanding and responding to all dimensions of the difficult problems the Supreme Court may confront. In my judgment, his appointment would add great strength to the Court.

In the same vein, U.S. District Judge Walter Craig, former president of the American Bar Association, testified before the committee as follows:

I believe this man has a humanity about him and a human warmth that would make him, if anything, more sensitive to the needs of people (and the necessity) of improving their life and their society.

Mr. Rehnquist's regard for individual freedom and the Bill of Rights is best summarized in his own words:

I think specifically the Bill of Rights was designed to prevent a majority, perhaps an ephemeral majority, from restricting or unduly impinging on the rights of unpopular minorities.

Regarding the procedural protections in the Bill of Rights, he observed last August:

These procedural guarantees of individual liberty would be regarded by most people as every bit as important to our kind of society as representative institutions are thought to be.

Not only does Mr. Rehnquist recognize the importance of individual rights, he has a keen understanding of the relationship of these rights to society as a whole. In view of the deep concern felt by many Americans that the Supreme Court has lost sight of the proper relationship between individual rights and a free society, I believe that his observations in this area are especially important. Thus, Mr. Rehnquist has stated:

We all assume that under our philosophy of government, the individual is guaranteed the freedom of sanctity of his person—in short, the "right to be let alone." One aspect of freedom is, of course, freedom from unwarranted official detention or other intrusions on one's physical being. But another aspect of this notion is surely the right to be free from robberies, rapes and other assaults on the person by those not occupying an official position. A government which does not restrain itself from unwarranted official restraints on the persons of its citizens would be a menace to freedom, but a government which does not or cannot take reasonable steps to prevent felonious assaults on the persons of its citizens would be derelict in fulfilling one of the fundamental purposes of which governments are instituted among men. A society as a whole has a right, indeed a duty, to protect all individuals from criminal invasions of the person.

In my opinion, this statement and many others which Mr. Rehnquist has made evidence a responsible approach to the Bill of Rights, which was designed by the Founding Fathers to insure the protection of individual rights within the

context of a larger and ever changing society, and is worthy of a nominee to the Supreme Court.

Moreover, I am convinced that Mr. Rehnquist has an understanding and awareness of the needs and aspirations of minority groups. Thus, he stated during the hearings that he has come to realize "the strong concern that minorities have for the recognition of these (civil) rights." In answer to a specific question posed by the Judiciary Committee, he said that he had come "to appreciate the importance of the legal recognition of rights such as this without regard to whether or not that recognition results in a substantial change in customs or practice."

Mr. President, I have known Mr. Rehnquist for many years. During this time, I have been impressed with his character, human warmth, and legal scholarship. As a lawyer, I am fully cognizant of the importance of the Supreme Court in our democratic form of Government and believe that Mr. Rehnquist is eminently qualified to fill the position of Associate Justice and to make an important contribution to the tradition of judicial excellence which has characterized the efforts of many Justices who have served before him.

Senator STEVENS. Mr. Chairman, I would like for you and the members of the committee to know that I have known Justice Rehnquist now since the early fifties. I knew him then as an honest, decent and very sensitive but very brilliant young lawyer. We were part of a group that came here right after we got out of law school, and I had many discussions with him in those days. As a matter of fact, I think we even had one night when we went out on a double-date together. We spent time together as young men.

The CHAIRMAN. So you worked together and dated together; is that it?

Senator STEVENS. That is right.

Senator BIDEN. But not one another.

Senator STEVENS. He was not my date, Mr. Chairman. [Laughter.]

I was pleased when his name was submitted in 1971 to become an Associate Justice, and I supported it then with a statement on the floor, which I will be pleased to put in the record again here today.

But I want the committee to know that I have been appalled at some of the things I have heard here. I have known this man for many years, and I am, I think you all know, a person who prides himself in believing that we have been part of a generation that has brought great change to this country, and Bill Rehnquist has been part of that change. And he has been a very steady member of the Supreme Court. And I would urge that you report his nomination to become Chief Justice. As Senator Biden has said, he is going to be on the Court in any event. He has been a good member of the Court; he has been a very steady member of the Court. And I think he will use his brilliance and his capability to be even a greater leader of the Court as Chief Justice than he has been as a member, as an Associate Justice. He has followed very closely, in my opinion, the lead of the current Chief Justice in recent years, and I consider Chief Justice Warren Burger as a close personal friend, and I have great admiration for him, too.

I think the President has made an admirable selection to be the Chief Justice of the United States, and I would like to go on record as completely supporting his nomination.

The CHAIRMAN. Thank you very much.

Are there any questions of Senator Stevens?

[No response.]

The CHAIRMAN. If not, you are excused, and thank you for your appearance.

Congressman Rudd, we are glad to have you with us.

STATEMENT OF HON. ELDON RUDD, MEMBER OF CONGRESS, STATE OF ARIZONA

Mr. RUDD. Thank you very much, Mr. Chairman.

I am very privileged to appear before this committee with this group of distinguished Senators and your distinguished committee. I thank you for giving me the privilege to come and testify before the committee.

The CHAIRMAN. If you have a statement, you can give it at this time.