

NOMINATION OF JUSTICE WILLIAM HUBBS REHNQUIST

TUESDAY, JULY 29, 1986

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

The committee met, pursuant to notice, at 4:30 p.m., in room SD-106, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

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

Staff present: Dennis Shedd, chief counsel and staff director; Duke Short, chief investigator; Frank Klonoski, investigator; Reginald Govan, minority investigator; Mark Gitenstein, minority chief counsel; Cindy Lebow, minority staff director; Melinda Koutsoumpas, chief clerk; and Jack Mitchell, investigator.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

The Honorable Warren E. Burger has announced his resignation as Chief Justice of the United States. Chief Justice Burger has run a long and distinguished service to this country. Our Nation has greatly benefited from his dedicated and capable leadership of the Court.

The President has nominated Justice William Hubbs Rehnquist to replace Chief Justice Burger. This afternoon we begin our consideration of the nomination of Justice Rehnquist to be the 16th Chief Justice of the United States.

Several years ago during the nomination hearings on Justice Sandra Day O'Connor I outlined the qualities I believe a Supreme Court Justice should possess:

Unquestioned integrity—honesty, incorruptibility, fairness;

Courage—the strength to render decisions in accordance with the Constitution and the will of the people as expressed in the laws of Congress;

A keen knowledge and understanding;

Compassion—which recognizes both the rights of the individual and the rights of society in the quest for equal justice under law;

Proper judicial temperament—the ability to prevent the pressures of the moment from overcoming the composure and self-discipline of a well ordered mind; and

An understanding of, and appreciation for, the majesty of our system of government—in its separation of powers between the branches of our Federal Government, its division of powers between the Federal and State governments, and the reservation to the States and to the people all powers not delegated to the Federal Government.

In his almost 15 years on the Supreme Court, Justice Rehnquist has displayed these qualities. He is widely acknowledged as a formidable scholar and articulate judge. His ability and intellect, his understanding of the role of the judiciary, and his performance as a member of the Supreme Court are exemplary.

Today, we begin the historic task of reviewing the nomination of Justice Rehnquist to undertake the duties and responsibilities of Chief Justice of the United States, a position many have called first among equals.

When one thinks of the duties of the Chief Justice, his more visible responsibilities with the Supreme Court immediately come to mind. He is the symbol of the Court. He administers the oath of office to the President. He presides over public sessions and Court conferences, and he assigns the writing of Court opinions when he is in the majority. However, the Chief Justice has many other responsibilities.

One of his greatest is to head the Federal court system. This alone has become a massive task. Overseeing 692 active judges, 267 senior judges, and almost 3,000 support staff, the Chief Justice also makes hundreds of judicial assignments and generally appoints members of special or temporary courts. Additionally, the Chief Justice handles personnel and securities matters for the Court. In fact, Chief Justice Burger has stated that administrative responsibilities consume one-third of his time.

While the responsibilities of the office of Chief Justice are enormous, it has been said that the real eminence of this position comes not from the office itself but from the qualities a person brings to it. Of all the attributes one could bring to this job, perhaps the most critical is that mysterious quality called leadership. In this regard, Justice Rehnquist's record is outstanding. His leadership ability comes not only from a keen intellect and knowledge of the law but is also based on an understanding of the Court and the entire judicial system learned through active participation.

Justice Rehnquist has experience with almost every aspect of the American judicial system. He has appeared before the State courts of Arizona, and he has practiced before the Federal courts at the district, circuit, and Supreme Court levels. He has also served as an Assistant Attorney General in the Department of Justice, which is the executive department most closely involved with judicial issues.

His keen understanding of the Supreme Court has been nurtured and refined as a law clerk, as an author-commentator of the Court, and as a Justice for 14½ years. It is difficult to imagine a background which would result in a more complete understanding and thorough knowledge of the court.

Justice Rehnquist, we welcome you, again, to the committee along with your wife Nan and your family, and congratulate you on the honor President Reagan has bestowed upon you.

Before calling upon the panel of distinguished Senators and before the introductory remarks of Justice Rehnquist, each member of the committee will be recognized for brief opening remarks.

The Chair now recognizes the distinguished ranking minority member, Senator Joseph Biden of Delaware.

Senator Biden.

**STATEMENT OF HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR
FROM THE STATE OF DELAWARE**

Senator BIDEN. Thank you, Mr. Chairman.

Welcome, Justice Rehnquist and your family.

To state the obvious, this is truly a historic occasion not only for the nominee but for the committee and the Senate as a whole, for we must decide on behalf of the American people who will lead the third and I am emphasize coequal branch of our National Government, not simply for some legislative period or a presidential term but as an appointee for life, almost certainly and hopefully well into the next century. Our decision on this great question may be as important or more important than the selection of the President of the United States of America.

The Chief Justice not only serves longer than any President but also with his colleagues on the Court exercises the power limited only by conscience and principle.

And that power goes to the very heart and character of our Nation as a republic, and in the end, it's that power that determines whether or not we are a government of laws or a government of men.

This is, therefore, perhaps the most awesome responsibility we will face on this committee, and I suspect as Members of the U.S. Senate.

It requires all of us to have the most searching inquiry and the utmost candor, not only because it is a responsibility that the Constitution imposes upon us but also because of the consequences our decision will have inevitably, if not altogether predictably, upon our future as a Nation.

In our two centuries as a republic, 40 men have served as President of the United States of America, and scores as leaders of the legislative branches, but only 15 have donned the robes of Chief Justice of the U.S. Supreme Court. Only 15 people.

The men who have been entrusted with this highest office are among the greatest in our history—John Jay, John Marshall, Roger Taney, William Howard Taft, Charles Evans Hughes, Harlan Fiske Stone, Earl Warren are among those who preceded Warren Burger to the chair of Chief Justice.

And we've long been in the habit of recognizing the impact of Chief Justices not only upon our law but upon our whole society. This is evident by the way in which we refer to eras in the Court's history by the names of the Chief Justice. For example, the Marshall Court is often referred to or the Warren Court.

An effective Chief Justice is the fulcrum upon which the decisions of the Court largely turn, and there is no doubt that the Supreme Court has been at the crux of the major changes that have