

APPENDIX

STATEMENT OF THE WASHINGTON LEGAL FOUNDATION
ON THE NOMINATION OF JUSTICE WILLIAM REHNQUIST
AS CHIEF JUSTICE OF THE UNITED STATES

The Washington Legal Foundation ("WLF"), a non-profit, public interest law and policy center, respectfully submits this statement to the Committee in connection with the nomination of William H. Rehnquist to be Chief Justice of the United States.

WLF, with some 200,000 members and supporters nationwide, engages in litigation, administrative proceedings, and publications and studies on a wide variety of legal and policy issues affecting the public interest. WLF is especially active in federal appellate litigation in general and Supreme Court cases in particular. We have participated in over 20 major cases before the Supreme Court over the past ten years, and are exceptionally familiar with the work of the Court and of its individual justices.

Objective testimony to WLF's knowledge regarding the Supreme Court's work is reflected in the fact that WLF attorneys are repeatedly called upon by television networks and radio stations to offer expert commentary on Supreme Court cases in news and informational programming.

While WLF does not take an organizational position on individual judicial nominations, we feel compelled by circumstances to submit our informed testimony on the excellence of Justice William H. Rehnquist as a jurist, a justice, and a faithful champion and defender of the United States Constitution. A person more qualified for the position of Chief Justice would be difficult to find.

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William Rehnquist graduated first in his law school class at Stanford University; served successfully as law clerk to Supreme Court Justice Robert Jackson; was highly successful in private law practice in Phoenix, Arizona; excelled as an Assistant Attorney General of the United States; and has established himself as a genuine giant of constitutional jurisprudence during his fifteen-year tenure on the High Court. Perhaps the highest testimony of all is to be found in the openly-stated respect and affection extended to him by his brethren on the Court -- even though several of them differ sharply with him in terms of judicial philosophy. The other Justices, who know him best, are ungrudging in their recognition of his decency and his exceptional legal capacities.

Given these facts, one would assume that the confirmation of Justice Rehnquist should be swift, smooth, and uncontroversial. Yet a spate of insidious newspaper stories, based on innuendo and distortion, has strained to cast a cloud over this superb nomination. And a small group of partisan, ideological interest groups have openly stated their intent to use these nomination hearings as the basis for an all-out assault on Justice Rehnquist and his record.

This campaign of smear and innuendo must not be allowed to sully the reputation of a great Justice and soon-to-be Chief Justice. The Committee should not allow the legitimate discussion and debate of the confirmation process to provide the forum for insidious and pointless character assassination.

Much of this malicious campaign depends upon the distortion

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and exploitation of certain private memoranda written by Justice Rehnquist when he was law clerk for Supreme Court Justice Jackson in the early 1950's. The criticism centers on claims that these memoranda reflect views that were insufficiently progressive -- by present day standards -- with respect to racial integration issues.

The lame and desperate nature of this line of criticism underscores the illegitimacy of this campaign to villify and slander a great American. These memoranda were examined at length 15 years ago, when Justice Rehnquist's record and character were exhaustively scrutinized in his 1971 confirmation hearings for Associate Justice.

After those hearings, the Senate Judiciary Committee voted favorably on the Rehnquist nomination by a 12 to 4 vote. The full, Democratic-controlled Senate then voted to confirm him by a margin of 68 to 26.

The truly relevant evidence for purposes of the present nomination is found in the 15 years of Justice Rehnquist's crisp and lucid opinions, which set forth his legal views and constitutional philosophy for all to see. With such a clear and public record of Justice Rehnquist's actual performance as a sitting Justice, it is nothing short of absurd to ascribe any significance to obscure and private clerks' memoranda of the remote past. The same holds true for the trumped up stories inaccurately alleging some sort of insensitivity or impropriety by Rehnquist in connection with poll-watching activities in Arizona. It is recycled irrelevance.

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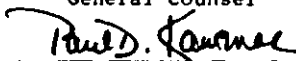
Further, with respect to the arguments regarding integration contained in the criticized law clerk's memoranda, it has been demonstrated that these were presented as "devil's advocate" positions to help sharpen the issues, rather than an expression of the young Rehnquist's personal views. Even if one assumes that the memoranda did involve Rehnquist's personal views, those views reflected what was then a perfectly moderate and mainstream position in the context of those times.

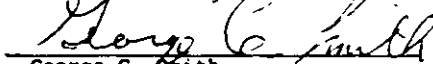
Only recently, Supreme Court Justice William Brennan -- whose legal positions are often at odds with those of Justice Rehnquist-- was asked what kind of Chief Justice he thought Rehnquist would be. Without hesitation, Justice Brennan stated that Rehnquist would be an excellent Chief Justice.


Do the partisan political activists who have been attacking the Rehnquist nomination know better than Mr. Justice Brennan? We think not. By any fair and objective measure, Justice Rehnquist is superbly, perhaps uniquely, qualified to serve as Chief Justice in this critical era.

Thank you for considering the Foundation's views.


 Daniel J. Popeo
 General Counsel


 Paul D. Kamehar
 Executive Legal Director


 George C. Smith
 Director of Litigation


 Michael P. McDonald
 President, Legal Studies Division

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