

Statement on a personal evaluation of Lewis E. Powell, Jr. and William H. Rehnquist, nominees to be associate justices of the U.S. Supreme Court

Senator Hiram L. Fong Papers

Public Relations, Speeches, statements, and messages, Box PR26, Folder 17

<https://hdl.handle.net/10524/86514>

Items in eVols are protected by copyright, with all rights reserved, unless otherwise indicated.

UHM Library Digital Collections Disclaimer and Copyright Information

From the office of

SENATOR HIRAM L. FONG

of Hawaii

Statement by Senator Hiram L. Fong
On A Personal Evaluation of Lewis E. Powell, Jr. and
William H. Rehnquist, Nominees To Be Associate Justices
of the U.S. Supreme Court
On the Floor of the Senate
December 6, 1971

Mr. President: I rise in support of the nominations of Lewis E. Powell, Jr. and William H. Rehnquist to be Associate Justices of the Supreme Court of the United States.

Because of the questions which have been raised in connection with these nominees, I should like to state my analysis of the qualifications of these candidates and my reasons for reaching the conclusions I have.

Mr. Powell is a person of unusual professional competence. His outstanding legal ability is universally recognized.

His personal integrity is unimpeachable.

His sensitivity to the problems which his stockholdings present under the Canons of Judicial Ethics and his efforts to minimize these problems, even where it will probably be at considerable financial cost to him, so as to avoid even "the appearance of impropriety," is further indication to me of his sensitivity to and commitment to the concept of assuring not only equal

justice under law to all Americans, but of avoiding any appearances which may lead to questions as to the basis of his actions.

As my colleagues are well aware, I am most concerned about preserving our Constitutional rights and especially the rights of the people guaranteed under our first ten Amendments to our great Constitution -- our Bill of Rights.

I am one of only four Senators who voted against final passage of the Omnibus Crime Bill. I did this because of its provisions which I am convinced are in derogation of these most sacred Constitutional Rights.

At the hearing on Mr. Powell's nomination before the Judiciary Committee, I very carefully and at length questioned Mr. Powell as to his position in regard to these most valuable and valued guarantees of the liberty and very safety of minorities -- and we are all members of some minority in these United States -- against the oppression and tyranny of the majority or of the Government.

The Supreme Court of the United States is the last bulwark of freedom and justice for all our peoples.

I am fully satisfied of Mr. Powell's complete and sincere dedication to the preservation of these vital, constitutional rights and of his ability to so interpret our great Constitution

as to assure equal justice under law to all persons in this country.

I urge my colleagues to confirm the nomination of Lewis F. Powell, Jr. to be Associate Justice of the Supreme Court of the United States.

Now, I turn to the nomination of William H. Rehnquist which is also before us for confirmation to be Associate Justice of the United States Supreme Court. In Mr. Rehnquist, we have before us a much younger man, one likely to serve in that exalted capacity for many, many years.

Fortunately, in Mr. Rehnquist, we have a person of outstanding legal ability and scholarship and unquestioned personal integrity. Even his most severe critics have not questioned these qualifications, which he so abundantly has demonstrated.

What four of the distinguished Senators who opposed Mr. Rehnquist's nomination in the Judiciary Committee and various witnesses questioned was largely Mr. Rehnquist's interpretations of and dedication to the concepts contained in the Bill of Rights.

In fairness to Mr. Rehnquist, his various utterances on these subjects should be put in context of time and circumstances.

Much is made of his opposition in 1964 to a proposed Phoenix public accommodation ordinance and to a letter to the Editor published in the Arizona Republic on the proposals of the

Phoenix school officials to eliminate de facto segregation in that city.

Little is made of the nominee's actions at those times or his very humble and human confession of error of an earlier judgment.

Throughout the period in question, Mr. Rehnquist's own children attended fully integrated schools in the downtown area of Phoenix. Surely, his recognition of the benefits of integration to the children he loved and cared for most, his own children, must give credence to his recognition of the value of equality of opportunity for all, else he could readily have chosen to live in one of the suburban areas where de facto segregation was almost assured. In view of his actions in this regard, I feel compelled to conclude the nominee does not endorse or practice segregation.

It takes a big man to reverse himself -- a bigger one to admit in public he was wrong -- and a still bigger one to alter his course of conduct.

While Mr. Rehnquist did oppose a proposed public accommodations ordinance in 1964, in 1966 as a member of the Arizona delegation to the National Conference of Commissioners on Uniform State Laws he supported the proposed public accommodations provision of the draft Model State Anti-Discrimination Act.

And, when he appeared at the confirmation hearings before

the Judiciary Committee, he admitted he was wrong in his 1964 opposition; that he was aware of that error of judgment and that his understanding of the significance of need for and scope of the concept of equality had changed and broadened since that time.

As my colleague, the distinguished senior Senator from Pennsylvania (Mr. Scott) brought out at the hearing, Mr. Rehnquist altered his course of thinking and he reflected this in his conduct.

In 1969, the opinion of the Comptroller General of the United States was that the Philadelphia Plan was unconstitutional. The Philadelphia Plan, as my colleagues well know, required, as a condition of receiving a Government construction contract, a commitment to achieve certain goals of minority hiring. -- This was to overcome the fact that certain unions did not have minority race members.

Through the efforts of Mr. Rehnquist, the Attorney General upheld the legality and constitutionality of such plans. -- This was a major breakthrough in the fight for equality in employment opportunity -- a basic right to be afforded all men equally under law.

On the subject of civil rights, I am fully satisfied as to the nominee's position and commitment to equal rights.

Insofar as Mr. Rehnquist's approach to civil liberties

and the Bill of Rights is concerned, I questioned Mr. Rehnquist very carefully on the subject of wiretapping and electronic surveillance, and on the subject of certain Federal grand jury practices which I fear are in violation of the Fifth Amendment.

I spelled out to him at considerable length my long and firmly held conviction that if wiretapping and eavesdropping practices were allowed on a wide scale we would soon become a nation in fear -- a police state. I also indicated that, whether based on fact or fancy, many people in all walks and areas of life fear they are under surveillance, so that in my opinion, we are coming close to being a nation in fear.

While Mr. Rehnquist as the Attorney to the Attorney General had spoken in support of positions of the Justice Department, his response to my questions and his prior statement when he addressed a symposium on law and individual rights held in December, 1970 at the University of Hawaii clearly indicated to me that despite his advocate's position and the attorney-client relationship with the Justice Department, the nominee himself is fully aware of the, as he put it, "chilling effect on one's feeling of freedom" of certain alleged Government procedures and is capable of disassociating himself therefrom.

Again, I quote his response in part, "I believe that I could divorce my role as an advocate from what it would be as a Justice of the Supreme Court should I be confirmed."

When I pressed him on comments made by a Phoenix Democrat but representative of other such comments, that he was a "retrograde" in terms of race relations, "a supporter of police methods," "restrictive" on free speech, etc., his response, even under the pressure he was subjected to, showed his humanness, a sense of humor and the approach to be expected from him to problems presented to him as a Justice of the Supreme Court.

He stated at Page 144 of the Hearings before the Committee on the Judiciary:

My first comment would be I can defend myself from my enemies but save me from my friends.

But then in a most serious vein, he continued

I think that that is not a fair characterization even of my philosophical views. My hope would be if I were confirmed to divorce as much as possible whatever my own preferences, perhaps, as a legislator or as a private citizen would be as to how a particular question should be resolved and address myself simply to what I understand the Constitution and the laws enacted by Congress to require.

From the office of

SENATOR HIRAM L. FONG

of Hawaii

- 8 -

I am satisfied Mr. Rehnquist is a man of esteemed legal and intellectual ability, a man of great integrity, whose personal philosophy as shown by his actions may, in fact, prove to be not too far removed from that of his critics.

In any event, I feel as a Justice of the Supreme Court he would apply his great talents "simply to what (he) understood the Constitution and the laws enacted by Congress to require."

I will therefore vote for his confirmation.

I urge the confirmation of his nomination to be Associate Justice of the Supreme Court of the United States for I am certain he will serve all the people of this great country with distinction.

COPY

A personal evaluation of Lewis E. Powell, Jr.
and William H. Rehnquist, nominees to be
Associate Justices of the U. S. Supreme Court.

Mr. President: I rise in support of the nominations of Lewis E. Powell, Jr. and William H. Rehnquist to be Associate Justices of the Supreme Court of the United States.

Because of the questions which have been raised in connection with these nominees, I should like to state my analysis of the qualifications of these candidates and my reasons for reaching the conclusions I have.

Mr. Powell is a person of unusual professional competence. His outstanding legal ability is universally recognized.

His personal integrity is unimpeachable.

His sensitivity to the problems which his stockholdings present under the Canons of Judicial Ethics and his efforts to minimize these problems, even where it will probably be at considerable financial cost to him, so as to avoid even "the appearance of impropriety," is further indication to me of his sensitivity to and commitment to the concept of assuring not only equal justice under law to all Americans, but of avoiding any appearances which may lead to questions as to the basis of his actions.

As my colleagues are well aware, I am most concerned about preserving our Constitutional rights and especially the rights of the people guaranteed under our first ten Amendments to our great Constitution--our Bill of Rights.

COPY

I am one of only four Senators who voted against final passage of the Omnibus Crime Bill. I did this because of its provisions which I am convinced are in derogation of these most sacred Constitutional Rights.

At the hearing on Mr. Powell's nomination before the Judiciary Committee, I very carefully and at length questioned Mr. Powell as to his position in regard to these most valuable and valued guarantees of the liberty and very safety of minorities--and we are all members of some minority in these United States--against the oppression and tyranny of the majority or of the Government.

The Supreme Court of the United States is the last bulwark of freedom and justice for all our peoples.

I am fully satisfied of Mr. Powell's complete and sincere dedication to the preservation of these vital, constitutional rights and of his ability to so interpret our great Constitution as to assure equal justice under law to all persons in this country.

I urge my brethren to confirm the nomination of Lewis F. Powell, Jr. to be Associate Justice of the Supreme Court of the United States.

Now, I turn to the nomination of William H. Rehnquist which is also before us for confirmation to be Associate Justice of the United States Supreme Court. In Mr. Rehnquist, we have before us a much younger man, one likely to serve in that exalted capacity for many, many years.

Fortunately, in Mr. Rehnquist, we have a person of outstanding legal ability and scholarship and unquestioned personal integrity. Even

COPY

his most severe critics have not questioned these qualifications, which he so abundantly has demonstrated.

What four of the distinguished Senators who opposed Mr. Rehnquist's nomination in the Judiciary Committee and various witnesses questioned was largely Mr. Rehnquist's interpretations of and dedication to the concepts contained in the Bill of Rights.

In fairness to Mr. Rehnquist, his various utterances on these subjects should be put in context of time and circumstances.

Much is made of his opposition in 1964 to a proposed Phoenix public accommodation ordinance and to a letter to the Editor published in the Arizona Republic on the proposals of the Phoenix school officials to eliminate de facto segregation in that city.

Little is made of the nominee's actions at those times or his very humble and human confession of error of an earlier judgment.

Throughout the period in question, Mr. Rehnquist's own children attended fully integrated schools in the downtown area of Phoenix. Surely, his recognition of the benefits of integration to the children he loved and cared for most, his own children, must give credence to his recognition of the value of equality of opportunity for all, else he could readily have chosen to live in one of the suburban areas where de facto segregation was almost assured. In view of his actions in this regard, I feel compelled to conclude the nominee does not endorse or practice segregation.

COPY

It takes a big man to reverse himself--a bigger one to admit in public he was wrong--and a still bigger one to alter his course of conduct.

While Mr. Rehnquist did oppose a proposed public accommodations ordinance in 1964, in 1966 as a member of the Arizona delegation to the National Conference of Commissioners on Uniform State Laws he supported the proposed public accommodations provision of the draft Model State Anti-Discrimination Act.

And, when he appeared at the confirmation hearings before the Judiciary Committee, he admitted he was wrong in his 1964 opposition; that he was aware of that error of judgment and that his understanding of the significance of, need for and scope of the concept of equality had changed and broadened since that time.

As my colleague, the distinguished senior Senator from Pennsylvania (Mr. Scott) brought out at the hearing, Mr. Rehnquist altered his course of thinking and he reflected this in his conduct.

In 1969, the opinion of the Comptroller General of the United States was that the Philadelphia Plan was unconstitutional. The Philadelphia Plan, as my colleagues well know, required, as a condition of receiving a Government construction contract, a commitment to achieve certain goals of minority hiring. -- This was to overcome the fact that certain unions did not have minority race members.

Through the efforts of Mr. Rehnquist, the Attorney General upheld the legality and constitutionality of such plans. -- This was a major

COPY

breakthrough in the fight for equality in employment opportunity--
a basic right to be afforded all men equally under law.

On the subject of civil rights, I am fully satisfied as to the
nominee's position and commitment to equal rights.

Insofar as Mr. Rehnquist's approach to civil liberties and the
Bill of Rights is concerned, I questioned Mr. Rehnquist very carefully
on the subject of wiretapping and electronic surveillance, and on the
subject of certain Federal grand jury practices ^{which} I fear are in violation
of the Fifth Amendment.

I spelled out to him at considerable length my long and firmly
held conviction that if wiretapping and eavesdropping practices were
allowed on a wide scale we would soon become a nation in fear--a police
state. I also indicated that, whether based on fact or fancy, many
people in all walks and areas of life fear they are under surveillance,
so that in my opinion we are coming close to being a nation in fear.

While Mr. Rehnquist as the Attorney to the Attorney General had
spoken in support of positions of the Justice Department, his response
to my questions and his prior statement when he addressed a symposium
on law and individual rights held in December, 1970 at the University
of Hawaii clearly indicated to me that despite his advocate's position
and the attorney-client relationship with the Justice Department, the
nominee himself is fully aware of the, as he put it, "chilling effect
on one's feeling of freedom" of certain alleged Government procedures
and is capable of disassociating himself therefrom.

COPY

Again, I quote his response in part, "I believe that I could divorce my role as an advocate from what it would be as a Justice of the Supreme Court should I be confirmed."

When I pressed him on comments made by a Phoenix Democrat but representative of other such comments, that he was a "retrograde" in terms of race relations, "a supporter of police methods," "restrictive" on free speech, etc., his response, even under the pressure he was subjected to, showed his humaneness, a sense of humor and the approach to be expected from him to problems presented to him as a Justice of the Supreme Court.

He stated at Page 144 of the Hearings before the Committee on the Judiciary:

My first comment would be I can defend myself from my enemies but save me from my friends.

But then in a most serious vein, he continued:

I think that that is not a fair characterization even of my philosophical views. My hope would be if I were confirmed to divorce as much as possible whatever my own preferences, perhaps, as a legislator or as a private citizen would be as to how a particular question should be resolved and address myself simply to what I understand the Constitution and the laws enacted by Congress to require.

I am satisfied Mr. Rehnquist is a man of esteemed legal and intellectual ability, a man of great integrity, whose personal philosophy as shown by his actions ~~(even if not in his private life)~~ may, in fact, ^{prove to} not be ~~not~~ too far removed from that of his critics.

In any event, I feel as a Justice of the Supreme Court he would

COPY

apply his great talents "simply to what (he) understood the Constitution and the laws enacted by Congress to require."

I will therefore vote for his confirmation.

I urge the confirmation of his nomination to be Associate Justice of the Supreme Court of the United States for I am certain he will serve all the people of this great country with distinction.

COPY

Again, I quote his response in part, "I believe that I could divorce my role as an advocate from what it would be as a Justice of the Supreme Court should I be confirmed."

When I pressed him on comments made by a Phoenix Democrat but representative of other such comments, that he was a "retrograde" in terms of race relations, "a supporter of police methods," "restrictive" on free speech, etc., his response, even under the pressure he was subjected to, showed his humaneness, a sense of humor and the approach to be expected from him to problems presented to him as a Justice of the Supreme Court.

He stated at Page 144 of the Hearings before the Committee on the Judiciary:

My first comment would be I can defend myself from my enemies but save me from my friends.

But then in a most serious vein, he continued:

I think that that is not a fair characterization even of my philosophical views. My hope would be if I were confirmed to divorce as much as possible whatever my own preferences, perhaps, as a legislator or as a private citizen would be as to how a particular question should be resolved and address myself simply to what I understand the Constitution and the laws enacted by Congress to require.

I am satisfied Mr. Rehnquist is a man of esteemed legal and intellectual ability, a man of great integrity, whose personal philosophy as shown by his actions may, in fact, prove to be not too far removed from that of his critics.

In any event, I feel as a Justice of the Supreme Court he would