

Court Nominees Face Hearings Today



LEWIS F. POWELL JR.

Supreme Court nominees Lewis F. Powell Jr. and William H. Rehnquist face their first encounter today with the Senate Judiciary Committee, battleground of previous fights to confirm President Nixon's choices for the court.

A contest was assured over Rehnquist, 47, head of the Justice Department's office of legal counsel and a top aide to Attorney General John N. Mitchell, when the Leadership Conference on Civil Rights voted yesterday to oppose him.

Powell, a 64-year-old Richmond lawyer, appeared to have no significant opposition. Both men are slated to be introduced by the senators from Arizona and Virginia before the committee settles down to hearing testimony, a process that will carry over at least through next week.

The staff of Chairman James O. Eastland (D-Miss.) declined to discuss the witness schedule.

At the White House, press secretary Ronald L. Ziegler confirmed that President Nixon had conferred with Powell Oct. 19, one day before the American Bar Association disapproved two preferred nominees for the two vacancies and two days before his selection of Powell and Rehnquist was announced on national television. Ziegler said he was sorry that he had been "wrong" in telling newsmen otherwise.



WILLIAM H. REHNQUIST

Powell Approval Seems Likely

By John P. MacKenzie
Washington Post Staff Writer

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"We all have our private arsenals," said the president of the American Bar Association, Lewis F. Powell Jr. "I have three shotguns, two rifles and two pistols and I have been trying to hit birds since I was a little boy."

Powell was addressing the ABA's legislature, the House of Delegates, on the only major crime issue on the agenda of the bar association's 1965 convention at Miami Beach. In retrospect,

Powell then was displaying some of the qualities that seem certain to win him confirmation as a justice of the Supreme Court with scant opposition.

The subject was federal gun control legislation and whether the ABA would go on record as favoring it. A parade of old-time bar leaders had extolled the virtues of self-reliance and the con-

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Rights Unit Opposes Rehnquist

By Leroy F. Aarons and Ken W. Clawson
Washington Post Staff Writers

Hordes of newsmen and civil libertarian investigators descended on Phoenix, Ariz., last week, some of them with the undisguised intention of "getting the goods" on William Hubbs Rehnquist, the Arizonian who is expected to be the primary target of opponents of President Nixon's Supreme Court nominations.

By week's end there was an accumulation of material sufficient to brand Rehnquist

with the label of extreme conservative, but nothing to incriminate him in the manner of G. Harrold Carswell's exclusive country club membership or Clement Haynsworth's business dealings.

There was also the fascinating phenomenon in which Arizona Democrats and liberals had high praise for Rehnquist's abilities and character, while at the same

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stitutional right to bear arms.

"In all seriousness," Powell told the delegates, "this bill is a moderate and rational approach to an admittedly difficult problem. It will give enforcement officers a strong hand in the war on crime."

Powell and other bar officials snowed under the old-timers and the legislation was endorsed by a lopsided voice vote. Smoothly and in the most subdued and modulated tones, Powell had talked to his colleagues of the bar in a way they could understand.

This is the nominee who from all accounts did not agree at first with President Nixon that the Supreme Court is "the fastest track" for a lawyer. For him the private practice of law was the fastest track but taking an exposed position was not the best way of running on it.

Regulation of firearms sounded hard on sportsmen, but Powell could make it sound like one of the most effective crime-fighting measures. Federal funding to help the poor get legal services sounded socialistic, but Powell could package it as the salvation of the legal profession and its tattered public-be-damned image.

Skillful Politician

Never a candidate for public office—his Richmond law firm would permit only the appointive public service of city and state school boards — he has been rated one of the ablest politicians in Virginia.

Apparently a consistent advocate of keeping the public schools open in the Old Dominion, he nevertheless maintained close ties to the ruling Byrd political family without embracing their massive resistance to desegregation.

For all his reputed moderation in the racial sphere, however, Powell at 64 has begun to speak out more stridently and more colorfully about crime, patriotism and the duties of the legal profession.

Slogans don't usually win lawsuits, but Powell has turned out some fairly shrill

rhetoric.

"The radical left — expert in such matters — knows the charge of repression is false. It is a cover for leftist-inspired violence and repression.... The attack has focused on wiretapping. There seems almost to be a conspiracy to confuse the public. The impression studiously cultivated is of massive eavesdropping and snooping by the FBI and law enforcement agencies."

Reprinted by FBI

These lines, written for the Richmond Times Dispatch, so pleased the FBI that they were reprinted in the October Law Enforcement Bulletin.

Noting, with the abandon of one who did not expect to be on the Supreme Court, that the issue was before the justices, this term for a decision, Powell spoke of the needs of government to protect itself by wire tapping. As for "domestic" subversives where the federal power was not so clear, he said "there may have been a time when a valid distinction existed between exter-

nal and internal threats. But such a distinction is now largely meaningless. The radical left, strongly led and with a growing base of support, is plotting violence and revolution..."

The precise legal issue, however, is not how grave the danger may be from either internal revolt or foreign aggression, but whether the electronic search for subversives must have the approval of courts in the form of a warrant. The issue for Powell the justice will be how strictly to construe the Fourth Amendment, which forbids search warrants except on "probable cause" and a law officer's sworn word that such cause exists.

All speeches by bar presidents use words like "balance" and "moderation," because the ABA is a 150,000-member conglomerate of legal specialists with a significant number of liberals as well as conservatives in high positions. This explains some of Powell's frequent calls for a return-swing of the "pendulum" toward the interests of society rather than the criminal. But it does not explain the depth of his opposition to the criminal law decisions of the Warren Court.

Opposed Decisions

In the dissent written by Powell for himself and other members of President

Johnson's National Crime Commission, Powell opposed not only the Miranda v. Arizona confessions ruling of 1966, but several other Supreme Court decisions, some much less well known.

For example, the court ruled in 1965 that a prosecutor may not comment on the refusal of a defendant to take the witness stand in a state court. Powell said a constitutional amendment should be considered to overcome this ruling.

To many, a prosecutor's comment had been long considered a penalty against the defendant for exercising his right not to be a witness against himself, a dramatic way of prejudicing a jury by insinuating that the defendant has something to hide. Since under the American system the accused isn't supposed to have to prove anything, the prosecutor's taunt smacked more of the European inquisitional system of justice. That is a system Chief Justice Warren E. Burger has admired along with others who think city crime and the "right to silence" don't mix.

Powell's record as a city and state school board leader remains to be fleshed out in Senate hearings beginning today—unless the Judiciary Committee abandons all critical questioning.

Civil rights workers are displeased at the thought of confirming anyone who was even remotely connected with the five-year shutdown

of public schools in Prince Edward County. Defeated nominee Clement F. Haynsworth Jr. was roundly condemned for pronouncing the school closings perfectly constitutional since they fell with equal weight on both races and rich and poor alike.

Board Accused

Nevertheless, the leadership Conference on Civil Rights decided yesterday to take no stand on Powell while actively opposing Assistant Attorney General William H. Rehnquist. The judgment on Powell seems to be that his role was far from central though the state board of education, which Powell headed, is accused in pending litigation of violating the Constitution by doing little to desegregate Virginia schools since 1954.

Figures subpoenaed from the state government during the long trial over Richmond's racial education patterns showed that Powell's law firm received \$43,915 from the state and localities for defending desegregation suits.

More than half that amount came from a friend-of-the-court brief filed in last spring's Supreme Court busing cases. It was the first desegregation business since 1960 for the firm, which made a corporate decision to cease civil rights work for the state about that time.

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time deploring his anti-civil rights sentiments.

Herbert Ely, Arizona Democratic chairman, went so far as to write a letter to the Senate Judiciary Committee recommending that Rehnquist be confirmed.

"If I were President I would not have appointed him, but if I were a senator I would vote to confirm him," Ely told The Washington Post.

Investigators like Richard Seymour of the Washington Research Project Action Council, a lobbying organization, sought to ferret out evidence of immorality, illegality or just plain nastiness and feed it back to Sen. Birch Bayh (D-Ind.), the Leadership Conference on Civil Rights and other groups expected to oppose Rehnquist.

Seymour and his wife spent a week on the project. There wasn't much to say:

• On Sept. 18, 1958, Rehnquist appeared with others, including Willis Stone, founder of the Liberty Lobby, on a panel discussion involving federal income tax. The panel was sponsored by a group known as Arizonans for America, a spin-off of a national organization, now defunct, called "For America," with headquarters in Washington.

"For America" was headed by Clarence E. Manion, an anti-Communist crusader. The Arizona chapter disintegrated in the early 1960s' some people say because its members began getting involved with the John Birch Society.

There is no evidence that Rehnquist was ever a member of the Arizonans for America or the John Birch Society. Those who know him say that he was not a joiner. His participation in the anti-income tax panel could imply that he was at least playing footsie with the far right in those days, but, as Walter Meek, a reporter for the Arizona Republic, remarked.

"In this state, five or ten years ago, anybody invited to speak even before an ultra-conservative outfit would go and do it... and,

again, if you're a Republican you're likely to have friends in those outfits."

And by the mid 1960s, when the Birchers were struggling to capture the Republican Party, Rehnquist was staunchly in the corner of the Barry Goldwater-Richard Kleindienst wing, which at that time was considered the liberal wing of the party in Arizona.

• When Rehnquist was nominated for the Supreme Court, a former Arizona president of the NAACP, the Rev. George Brooks, charged that in 1965 Rehnquist confronted him outside the State Capitol and argued in abusive terms that a civil rights act later passed by the State Legislature should be opposed.

The Arizona NAACP promptly passed a resolution saying Rehnquist "openly harassed and intimidated the immediate past president of the NAACP... during a peaceful attempt to reach the legislative bodies to present grievances."

By the end of last week, Brooks was telling a different story. He now says that the discussion with Rehnquist was calm. "The tone was professional, constitutional and philosophical," he said.

He was neither harassed nor intimidated, Brooks added, but he said that in his opinion, Rehnquist is a "philosophical racist."

Scandal-seeking was a thankless task for the scores of investigators in Phoenix. It was far easier to compile a dossier of quotes, statements, letters to the editor, the contents of which would

make a card-carrying liberal cringe.

Letters Released

Two of the most damaging were letters to the editor in 1964 and 1967 in which Rehnquist opposed both a public accommodations law and a school integration proposal for Phoenix. Both letters were released by the Justice Department last week to take the steam out of an attack on Rehnquist by civil rights groups.

There was also a statement by Rehnquist before

the June 15, 1964, meeting of the Phoenix City Council, which subsequently passed the public accommodations law. Rehnquist was one of three persons opposed to the law, compared with 30 speakers who favored it.

On Sept. 9, 1957, at a luncheon meeting of the Maricopa County Young Republican League, Rehnquist accused Supreme Court Justices Earl Warren, Hugo Black and William O. Douglas of "making the Constitution say what they wanted it to say." He called them "left-wing philosophers" but added that he was not accusing them of communism or Communist sympathies.

Rehnquist's background shows that he was clearly in sympathy with the positions he helped formulate after he joined the Justice Department in 1969.

But many of his aides and other government officials whom he worked with saw a broadening of his intellect and a softening of some hardline positions when he addressed himself to national problems. Rehnquist himself acknowledged in a recent interview that a broadening process had occurred and he felt he was less parochial than he was as a private lawyer in Phoenix.

Liked by Associates

He is one of the best-liked officials by career Justice Department employees, who see his role as the super lawyer who provides the legal underpinning for opinions by Attorney General John M. Mitchell and President Nixon. His opposition to civil rights proposals back in Arizona were not known by most of his co-workers until the last few days.

Edward Layton, 56, a black messenger who has worked for the government 31 years — the last three assigned to Rehnquist's office — doesn't believe his boss is anti-civil rights.

Layton said he was a GS-1 for all the years he worked for the government. Within six months after Rehnquist took office, Layton said, he was instrumental in upgrading Layton to GS-2 and upgrading another messenger,

Carl Wellmon, to GS-3.

The whole thing grew out of Rehnquist's desire to talk sports, "any kind of sports," Layton said, pointing out that Rehnquist's son plays football and basketball for Langley High School in suburban McLean, Va.

John P. Frank, a leading constitutional and Supreme Court expert in Phoenix who is a Democrat, has seen all sides of Rehnquist and his family since they moved to Phoenix in the mid-1950s. This is his appraisal:

"If I were to divide the categories (of criteria for Supreme Court candidates) in terms of legal ability, he is simply top notch.

"His character is absolutely unimpeachable. He is a thorough gentleman. I have no serious doubts that he should be confirmed.

"On the other hand, given my premises, he is enough of an extreme conservative that it is a deplorable appointment. He will represent the Goldwater view on the Supreme Court. Bill has been an intellectual force

for reaction. I do not believe he will put the manacles back on the slaves, but I'm sure from his point of view it will be more than a pause there will be backward movement. In terms of race relations, I would expect him to be retrograde. He honestly doesn't believe in civil rights and will oppose them. On criminal matters

he will be a supporter of police methods in the extreme. On free speech, Bill will be restrictive. On loyalty programs, McCarthyism, he'll be 100 per cent in favor."

But by the normal standards of Supreme Court appointments, Frank says unequivocally that Rehnquist is entitled to be confirmed, regardless of his philosophy.