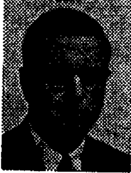

John P. MacKenzie

End Plays for Rehnquist

ONCE AGAIN the Nixon administration has confounded critics of Supreme Court nominee William H. Rehnquist by being the first to disclose a possible embarrassment from out of his past.

In late October the Justice Department made public Rehnquist's 1964 opposition to a public accommodations law and his 1967 support of de facto school segregation. "I think," a Justice official said, "we've headed off what could appear to be a big expose."

This week Sen. Roman L. Hruska (R-Neb.) — moving so swiftly that he seemed to supply an answer for which there had been no question — delivered another such disarmer.

Into the record of the Rehnquist confirmation hearing Hruska read a Nov. 9 letter from George H. Boldt, the federal judge who doubles as chief of the Nixon Pay Board. The judge dismissed as a mere "misunderstanding" his 1960 clash with Rehnquist, then a lawyer in Phoenix, "for what I considered disrespect to the court or something of that kind."

The incident apparently was known to only a few of the persons who filled the Senate Judiciary Committee's hearing room. But, whatever the flap was about, it was the result "of my own misunderstanding of what Mr. Rehnquist said or did during the proceeding," the judge declared.

Three weeks ago, few would have cared much whether Boldt, chief judge of the federal district court at Tacoma, Wash., had harsh words for Rehnquist 11 years ago during one of the judge's frequent visits to help out the federal court in Phoenix.

But on Oct. 21 President Nixon went on television to announce his choices of Lewis F. Powell Jr. and Rehnquist for the Supreme Court. The following day he tapped Judge Boldt to be the wage freeze czar.

Unless the 1960 words were very harsh indeed, few might care even after the two men became so prominent. Since Hruska did not provide the words used, the hearing was left uninformed about the seriousness of the encounter. One Rehnquist critic, Sen. Birch Bayh (D—Ind.), told Houska he had heard something of the episode, had dismissed it as "irevelant" and wondered why Hruska was so uptight about it.

Hruska replied that he had been "reliably informed that an issue would be raised and a disclosure would be made." Hruska knew that the press had been inquiring of Judge Boldt and the Justice Department case—and that the judge's response was directed not to the inquirers but straight to the Judiciary Committee.

THE 1960 RECORD discloses that the judge accused the future Supreme Court nominee of "highly reprehensible" conduct. Though it is not uncommon for a judge to lecture a lawyer, Boldt's criticism of Rehnquist was unusually vigorous.

"I don't believe you were acting in good faith," the trial transcript reads, "and I charge you with misconduct as an officier of the court."

THE TRIAL record continues:

"I believe you deliberately have violated two different rulings of the court in a manner that is highly reprehensible, and I charge you with it and I believe you to be so. I am not going to punish you for contempt in this instance, but I regard it as contempt. Your attitude and the manner in which you have approached the matter, in my judgment, was a deliberate and flagrant violation of what you know to be the spirit of the ruling made."

Rehnquist, representing a former officer of an insolvent insurance company in a fraud trial, kept attempting to introduce evidence of a kind which Judge Boldt had already ruled inadmissible. In conference in the judge's chambers, Rehnquist complained that Boldt had prejudiced his client's case, and asked for a mistrial. The judge replied:

"Now, the ruling may be wrong, but a reputable attorney does not, after ruling has been made, deliberately try to pettifog before the jury material that the court has ruled and said specifically and emphatically is not to be addressed to the jury, and that is what you did, and I believe you did it deliberately and with malice aforethought."

Right after the incident, Judge Boldt said in his Nov. 9 letter, he repented and asked other lawyers to convey his apologies to Rehnquest.

The letter, starting "I do recall . . . ," was obviously solicited by the administration —fresh evidence of the President's anxiety not to repeat the errors of two previous court confirmation campaigns.