

# Confirmation Of Rehnquist Voted, 68-26

By John P. MacKenzie  
Washington Post Staff Writer

12/11/71

The Senate yesterday confirmed the Supreme Court nomination of Assistant Attorney General William H. Rehnquist, the fourth successful appointee in President Nixon's drive to change the thrust of court decisions.

Rehnquist was approved by a 68-to-26 vote, which came swiftly after the collapse of opposition led by Sen. Birch Bayh (D-Ind.).

Bayh, who spearheaded the defeat of two previous Nixon nominees to the high court, abandoned his lonely effort to stage a lengthy and sharp floor debate when it appeared that four days of discussion had won few if any converts and that further talk might actually reduce the opposition vote.

Rehnquist's supporters — 38 Republicans and 30 Democrats in the final vote—failed in their first attempt to invoke cloture and automatically shut off further debate. That vote was 52 for cloture—11 shy of the necessary two-thirds—and 42 against.

Bayh then failed by a 70-to-22 margin when he moved to postpone the vote until the new session of Congress with an ironclad agreement to vote on Jan. 18. At that point, with the Senate's Democratic and Republican leadership committed to remaining in session until the nomination was acted upon, Bayh consented to a prompt final vote.

Rehnquist, 47, a Phoenix lawyer who became head of the Justice Department's office of legal counsel in 1969, is expected to be sworn in some time next month and take the junior seat on the court. Lewis F. Powell, the Richmond attorney who was confirmed last week by an 89-to-1 vote, has indicated that he needs time to wind up the business of his private practice.

Powell was named to replace the late Justice Hugo Black. Rehnquist will fill the vacancy created when Justice John Marshall Harlan retired



WILLIAM H. REHNQUIST  
... new justice

in September because of spinal cancer.

Together, the nominations appear to give a commanding majority to jurists who resisted many of the key movements of the Supreme Court under retired Chief Justice Earl Warren. The two new members join Chief Justice Warren E. Burger and Justice Harry A. Blackmun as Nixon appointees to the bench.

See NOMINEE, A6, Col. 1

## NOMINEE, From A1

The outlook is for further slowdown in the court's activity in uncharted fields of the law and a halt, perhaps leading to a reversal, of a trend toward enlarging rights of persons accused of crimes. Both nominees testified at their confirmation hearings that they consider some major civil rights issues, such as desegregated public education, to be settled.

If the four most recent appointees voted as a bloc on controversial cases—which is not a certainty—they would need to pick up only one more vote, probably that of either Potter Stewart or Byron R. White, to prevail. Three justices—William O. Douglas, William J. Brennan Jr. and Thurgood Marshall—remain to carry the identification of the Warren court.

President Nixon, who stressed the need to reverse the court's direction in campaign speeches, last night emphasized the caliber of both Powell and Rehnquist, saying that "the quality of the court decisions could be enhanced for years to come."

Although the President had been criticized in some quarters for considering "mediocre" court candidates, he ultimately chose two men whose ability was not questioned.

Powell, a former president of the American Bar Association, sailed through with little opposition. But Rehnquist, a frequent administration spokesman on controversial issues, drew fire on civil rights and civil liberties grounds.

Rehnquist's avowedly conservative philosophy differed significantly from that of many senators who voted for him yesterday, such as Adlai E. Stevenson III (D-Ill.), William Proxmire (D-Wis.) and Charles McC. Mathias (R-Md.).

But opponents fell far short of attracting the group of Senate centrists who made the difference in the 1969 defeat of Clement F. Haynsworth Jr. and the 1970 rejection of G. Harrold Carswell. The only Republicans voting against confirmation were Edward W. Brooke (Mass.), Jacob K. Javits (N.Y.) and Clifford P. Case (N.J.).

An 11th-hour disclosure of a memorandum Rehnquist said he wrote in 1952—which Bayh argued was potential "dynamite" against the nominee—failed in the end to excite widespread Senate interest.

The memorandum written when Rehnquist was a law clerk to Justice Robert H.

# Senate Vote On Rehnquist Confirmation

United Press International

The 68-to-26 rollcall by which the Senate confirmed the Supreme Court nomination of William H. Rehnquist:

<b>Democrats—For: 39</b>	
Allen (Ala.)	Long (La.)
Bentsen (Tex.)	McClellan (Ark.)
Bible (Nev.)	McGee (Wyo.)
Burdick (N.D.)	McIntyre (N.H.)
Byrd (Ind.-Va.)	Montoya (N.M.)
Byrd (W.Va.)	Pastore (R.I.)
Cannon (Nev.)	Pell (R.I.)
Chiles (Fla.)	Proxmire (Wis.)
Eagleton (Mo.)	Randolph (W.Va.)
Eastland (Miss.)	Sparkman (Ala.)
Elliender (La.)	Spong (Va.)
Ervin (N.C.)	Stennis (Miss.)
Gambrell (Ga.)	Stevenson (Ill.)
Hollings (S.C.)	Symington (Mo.)
Jordan (N.C.)	Talmadge (Ga.)
<b>Republicans—For: 38</b>	
Alken (Vt.)	Hansen (Wyo.)
Ailoff (Colo.)	Hatfield (Ore.)
Baker (Tenn.)	Hruska (Neb.)
Beall (Md.)	Jordan (Idaho)
Bellmon (Okla.)	Mathias (Md.)
Bosse (Del.)	Miller (Iowa)
Brock (Tenn.)	Packwood (Ore.)
Buckley (Cons.-N.Y.)	Pearson (Kan.)
Cook (Ky.)	Roth (Del.)
Cooper (Ky.)	Saxbe (Ohio)
Cotton (N.H.)	Schwelker (Pa.)
Curtis (Neb.)	Scott (Pa.)
Dole (Kan.)	Stafford (Vt.)
Dominick (Colo.)	Stevens (Alaska)
Fannin (Ariz.)	Taft (Ohio)
Fong (Hawaii)	Thurmond (S.C.)
Goldwater (Ariz.)	Tower (Tex.)
Griffin (Mich.)	Weicker (Conn.)
Gurney (Fla.)	Youngs (N.D.)
<b>Democrats—Against: 23</b>	
Bayh (Ind.)	Kennedy (Mass.)
Church (Idaho)	Magnuson (Wash.)
Cranston (Calif.)	McGovern (S.D.)
Fulbright (Ark.)	Metcalf (Mont.)
Gravel (Alaska)	Mondale (Minn.)
Harris (Okla.)	Moss (Utah)
Hart (Mich.)	Muskie (Maine)
Harke (Ind.)	Nelson (Wis.)
Hughes (Iowa)	Ribicoff (Conn.)
Humphrey (Minn.)	Tunney (Calif.)
Inouye (Hawaii)	Williams (N.J.)
Jackson (Wash.)	
<b>Republicans—Against: 3</b>	
Brooke (Mass.)	Javits (N.Y.)
Case (N.J.)	
<b>Paired: Percy (R-Ill.), for; Mansfield (D-Mont.), against. Absent or not voting: Anderson (D-N.M.), Bennett (R-Utah), Mundt (R-S.D.), Smith (R-Maine).</b>	

Jackson while the court was grappling with what became the school desegregation decisions of 1954, was an argument for judicial restraint in civil rights and a reaffirmation of the 1896 Plessy vs Ferguson ruling in favor of "separate but equal" facilities for whites and blacks.

Rehnquist said his best recollection after 19 years was that he prepared the memo at Jackson's request for his use when the court met to discuss the case and that it expressed the justice's tentative personal views.

Bayh and Brooke, backed by University of Chicago law professor Philip B. Kurland, custodian of the Jackson papers, argued that the explanation was implausible, both because Jackson held more liberal views on race relations and because he didn't use his research assistants for such chores.

Late Thursday, minority leader Hugh Scott (Pa.) released a cable from Donald Cronson, Rehnquist's fellow clerk under Jackson, who corroborated the nominee's recollection that the memo did not reflect Rehnquist's personal views.

But Cronson offered a different explanation of the memo's context. Cronson said both he and Rehnquist had written an even earlier memorandum criticizing the 1896 doctrine and that they also teamed up to write the memorandum for reaffirming it when Jackson called for an opposing view.

Bayh insisted yesterday that Cronson's recollection clashed significantly with Rehnquist's and refuted the nominee's suggestion that the views were Jackson's. Bayh said the Senate should pause in its adjournment rush, obtain the newly disclosed memo from Cronson and weigh whether Rehnquist had been candid with the Senate.

In a telephone interview yesterday from Gstaad, Switzerland, Cronson went beyond his cable to say that both he and Rehnquist arrived at the view in 1952 that the Plessy doctrine was wrong and should be overturned.

Cronson, an oil company lawyer based in London, refused to discuss Jackson's personal views and said he was reluctant to make public his copy of the first memorandum.

He said he wouldn't divulge the memo without first talking with Rehnquist—"some-

thing I haven't done in 20 years" — and even then he would still have to resolve questions of propriety.

In Chicago, Kurland said the memo cited by Cronson was not in the files left by Jackson. He said he had given liberal access to the Jackson papers, including the controversial memo, to scholars during the several years he had been using them for a biography of the justice.

Kurland noted that the files also contained a partial draft by Jackson of a 1954 opinion which, if completed and delivered, could have become a concurring opinion to Warren's opinion for the court in *L. Brown vs. Board of Education*.