For an Examination of Mr. Rehnquist's Civil Liberties Record

Your editorial "The Senate, the Court and the Nominee—II," which appeared on Sunday, Nov. 28, should be read by every member of the United States Senate. It is hard to believe that any true supporter of civil liberties could vote for the Rehnquist nomination to the court, after considering the points that you discussed.

Senator Fannin's "rebuttal" (Letter, Dec. 2) only reinforces the Post editorial. By quoting banal generalities, Senator Fannin concedes that the specifics of Mr. Rehnquist's anti-Bill of Rights views cannot stand the light of day. For example, Senator Fannin quotes a Rehnquist statement favoring a free press, but doesn't mention his efforts to pressure The Washington Post not to print the Pentagon Papers. Senator Fannin quotes Mr. Rehnquist in favor of the Fourth Amendment, but does not mention his position that wiretapping for "domestic subversion" without even a court order is a reasonable and legal search and seizure. He quotes Mr. Rehnquist in favor of a fair trial, but fails to mention his support for preventive detention, his opposition to the exclusionary rule and his belief in restricting the use of habeas corpus.

Weak as is Mr. Fannin's defense of Mr. Rehnquist in the area of civil liberties, he makes no defense whatever of the Rehnquist civil rights record. Nor could he. This record is such that no thoughtful black person could expect a fair trial in any court where Mr. Rehnquist would be the judge. The extent of his participation in schemes to deny Negroes the right to vote is incredible.

Over the years, there has been only one area of civil rights legislation where conservatives, liberals and even some of the Deep South members of the Senate and House could reach agreement. That is the right to vote. Thus, because of his personal and organizational involvement in denying Negroes the right to vote in Arizona, Mr. Rehnquist is out of step even with many segregationists who welcome voting by colored Americans.

Mr. Rehnquist's participation in attempts to bar voters from casting their ballots took two forms. First, he personally was present in some precincts when unconscionable attempts were made to prevent elderly and timid black citizens from voting. He says he was there to halt abuses by others. In contradiction there are witnesses who have signed sworn affidavits alleging that it was Mr. Rehnquist, himself, who was interfering with the voters. Neither the White House nor the United States Department of Justice has dared to let Mr. Rehnquist return to the Senate Judiciary Committee to answer these charges in person. Also, Sen. James Eastland (D.-Miss.) has asserted that FBI reports do not mention that Mr. Rehnquist was personally trying to prevent anyone from voting. If these reports by the FBI are so exculpatory, why do Senator Eastland and the Department of Justice ask us to take their word for what is in these documents? Surely, the investigation of complaints of voting discrimination can stand public scrutiny. As long as these reports are not made public, there is a strong suspicion that a full revelation of what these reports contain would show that Mr. Rehnquist was more than a foot soldier in the Arizona army that was mobilized in the 1960's to reduce the number of Negro and Mexican-American voters.

The second aspect of the Rehnquist operation on voting is very troublesome. It will be remembered that in 1964 the Congress passed a law prohibiting the giving of oral literacy tests, unless the Attorney General gave a special exemption. Even the Rehnquist supporters admit that there were extensive efforts in Arizona to give so-called tests to Negro voters by asking them to read or recite parts of the United States Constitution. This campaign was so well organized, so widespread and so obstructive that one observer of what was going on said, "It is a wonder someone didn't get killed." Mr. Rehnquist's role in this campaign has been given various descriptions. Sometimes he is pictured as the benign lawyer who was opposed to what was happening. Sometimes he is cast in the part of a relief man who dropped in to the polling places to give others a rest period. One report credited him with being in charge of "ballot security." Whatever may have been his rank or serial number, one thing is clear. He was deeply involved in a scheme which, on its face, seems to have been a violation of federal law.

The public has a right to know just what Mr. Rehnquist was doing. Did he get the program started? Did he advise the troops that trying to make would-be voters pass oral literacy tests was illegal? Did he sanction the sending of letters warning people that they might get arrested for voting? These and many other questions have not been answered in an open hearing. As long as Mr. Rehnquist, or the Justice Department or the White House take the position there will be no more appearances by Mr. Rhenquist one can only conclude that there is something ugly and possibly shocking that is being concealed; something, so enormously embarrassing, that it would show Mr. Rehnquist should not have been nominated in the first place.

The Post editorial expresses the opinion that Mr. Rehnquist's horizons on civil rights may have broadened and may broaden even more. It is difficult for a black man to be optimistic on that point. It must be remembered that Judge Haynsworth also was said to have undergone constructive changes in his civil rights viewpoint. Yet, he wrote the opinion in *Tillman* v. *Wheaton-Haven Recreation Association*, decided on Oct. 27, 1971, which held that neither the Civil Rights Act of 1866 nor the Civil Rights Act of 1964 gave relief to Negroes who were denied use of a swimming pool. It is noteworthy that Judge Butzner in his dissent said that the Haynsworth decision was a "marked departure from authoritative precedent." Judge Carswell was also pictured as one who had changed his racial views for the better. Few can forget that, after his nomination was defeated in the Senate, the real Judge Carswell emerged as an anti-civil rights candidate in the 1970 Florida Senate race. It is unlikely that Mr. Rehnquist is any different from the other two nominees who were rejected. Sooner or later, the same old Rehnquist, who opposed public accommodations law, will rise and attempt to block progress in civil rights.

Unfortunately, there are some members of the Senate who find it hard to vote against a nominee solely because of his negative views on civil rights. For there, the issue of civil liberties may seem more respectable as ground for opposition to the nominee. However, let no one be deceived about the importance of civil rights in this matter. The Rehnquist position on civil rights, even standing alone, is sufficient to make him unworthy of being on the court.

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