

Evidence Grows That Byrd Will Get High Court Seat

Senator Said to Be Nixon's First Choice, and Easy Confirmation Is Predicted

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WASHINGTON, Oct. 10—Evidence mounted today that President Nixon's first choice for nomination to the Supreme Court is Senator Robert C. Byrd of West Virginia, and that if his name is submitted to the Senate for confirmation it will sail through with ease.

The good confirmation prospects of the conservative West Virginia Democrat were indicated by the implied endorsement of Mr. Byrd by George McGovern of South Dakota, a leading Senate liberal, and by predictions of other Senators.

Sources in West Virginia familiar with some of the details of the President's conversation with Senator Byrd last Friday described the prospect that Mr. Nixon will pick Mr. Byrd, an outspoken conservative Democrat, as "excellent."

Representative Harley O. Staggers, a West Virginia Democrat at whose invitation the President flew on Friday to the Mountain State Forest Festival at Elkins, W.Va. — with Senator Byrd as a passenger in the White House plane—was quoted today as saying that

the Byrd nomination "looks very good."

Mr. Byrd's senior colleague in the Senate, Jennings Randolph, a Democrat, was also said to be optimistic about Mr. Byrd's nomination.

Senator Byrd was making no comment on the increased pace of speculation on his nomination, and White House officials added nothing to yesterday's confirmation that Mr. Byrd's name was one of several before the President.

A Republican Gain

One factor said to figure in Republican political calculations about a Byrd nomination was the fallout of partisan serendipity in West Virginia. If Senator Byrd resigns his seat, it will be filled until the election for 1972 by an appointee of Gov. Arch A. Moore Jr., a Republican. This would reduce the 55-to-45 Democratic majority in the Senate to 54 to 46.

Furthermore, Governor Moore is known to be eager to run for a Senate seat next year, a course that West Virginia Republicans doubt would be successful unless Senator Byrd or Senator Randolph, both well entrenched, retired.

Mr. Nixon was reported to have rejected brusquely a suggestion by at least one of his advisers that the choice of Senator Byrd, a former member of the Ku Klux Klan with a long record of opposition to civil rights measures, would stir a major Senate fight

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against his confirmation.

Senator Byrd, like the late Justice Hugo L. Black, whose seat he may fill, has repudiated his youthful membership in the Klan.

According to reports circulating here today, which could not be confirmed, Mr. Nixon also brushed aside, with a display of anger, another White House staff warning. This warning was that Mr. Boyd, a lawyer only since 1963, and with no record of legal or judicial practice, would be unlikely to win a high rating from the American Bar Association, which screens and grades judicial nominees.

The President's reported expression of disdain for the bar association's rating of Senator Byrd was said to have come Friday morning at a staff conference on a list of potential Supreme Court nominees.

The list was reported to include the names of Senators Howard H. Baker Jr. of Tennessee and Robert P. Griffin of Michigan, both Republicans. There are two vacancies on the Court.

Reports Encouraged

The A.B.A. has received no communication from the White House on a Presidential choice, but Administration spokesmen have lent encouragement to reports that Mr. Nixon is considering Mr. Byrd's nomination above others.

If one purpose of the official news leaks that Mr. Byrd's name ranked at the top of the President's list of Court candidates was to elicit pre-nomination public reaction, it had this effect strikingly today.

The most unexpected and significant result was Mr. McGovern's praise of his Senate colleague, who has been the Democratic whip, or assistant majority leader, for the last nine months.

Senator Fred R. Harris of Oklahoma, like Mr. McGovern an announced candidate for the Democratic Presidential nomination next year, said that he would vote to deny Mr. Byrd confirmation because he lacked both "the depth of judgment and legal experience that you would associate with a Justice of the nation's highest court" and "the exemplary record in civil rights and civil liberties that I would like to see."

But Senator McGovern's assessment of Mr. Byrd as "a man of enormous industry and personal pride" who would "bend every effort to become a great Justice" overshadowed Senator Harris's criticism.

Clubiness of Senate

It may also have demonstrated one of Mr. Byrd's great advantages if he is nominated—the "clubbiness" of the Senate and the power wielded by the Senate whip. Mr. Harris has said that he is retiring from the Senate next year, and he is thus unlikely to be concerned about reprisals for his opposition.

The Senators' comments came during separate television interviews today. Mr. McGovern was on the American Broadcasting Company's "Issues and Answers" program and Mr. Harris on the "Meet the Press" program of the National Broadcasting Company.

On a third program, "Face the Nation," on the Columbia Broadcasting System, Secretary of State William P. Rogers, who has been mentioned in some speculation about the nominations, said that he had "no interest" in a Court seat.

Mr. McGovern declined to say today how he would vote if Mr. Byrd's nomination was submitted to the Senate, but he predicted that he would win confirmation.

This was also the opinion of all other Senators who have spoken on Mr. Byrd's chances. No one here has suggested that he would not be confirmed with ease. As Mr. McGovern put it today, "the club spirit" of the Senate is "a political fact of life."

An Open Mind

Although Mr. McGovern was among the Senate liberals who had announced their opposition to the nomination of Representative Richard H. Poff, a conservative Virginia Republican who withdrew from consideration under a barrage of criticism, he said today that he would "certainly keep an open mind" on Mr. Byrd.

"I think no one ought to make a final decision as to how they're going to vote on a Supreme Court nominee until the [Senate Judiciary] Committee has looked into his background and into his qualifications," Mr. McGovern said. Senator Byrd is a member of the committee.

"Senator Byrd is a man of enormous industry and personal pride," Mr. McGovern said. "I think if he were given the nomination he would bend every effort to become a great Justice. The Senate has already named him to the second most powerful post in the United States Senate. I think the probability is that if the President sends his name up, the Senate will confirm him."

Mr. McGovern explained his different stand on Mr. Poff by saying, "The difference is that I know Senator Byrd much better. I know some of the industry that he applies to anything that he undertakes."

He called Mr. Byrd's civil rights record "somewhat better" than Mr. Poff's. "I think in recent months, particularly, Senator Byrd has been moving to a more moderate position," he said.