

SFChronicle  
**Question of Candor**      DEC 10 1971

## Bayh's Doubts on Rehnquist Memo

### Washington

Senator Birch Bayh (Dem-Ond.) said yesterday he has "grave doubt" about Supreme Court nominee William H. Rehnquist's explanation of a memorandum he wrote in 1952 for the late Justice Robert H. Jackson.

Bayh, leading the fight against Rehnquist's confirmation, also told newsmen he thinks "the environment would be better" in the Senate for acting on the nomination shortly after Congress returns in January for a new session.

Meanwhile, confusion arose over the authorship of the 1952 memorandum advocating continuation of the separate-but-equal doctrine in school segregation. Rehnquist told the Senate Wednesday he had written the memorandum for Justice Jackson, whom Rehnquist had served as a law clerk.

### CABLE

But Senate Republican Leader Hugh Scott made public yesterday a cable from Donald Dresden, identified as another former clerk for Jackson, saying the memorandum was probably more his than Rehnquist's.

Rehnquist said Wednesday the memorandum was not an accurate statement of his views in 1952 but "was prepared by me as a statement of Justice Jackson's tentative views . . .

The Senate is to vote at noon today on shutting off the debate in an effort to bring Rehnquist's nomination to a vote. A two-thirds majority is required to put the anti-filibuster rule into effect.

Republican leaders said there is a good chance the move will succeed, but Bayh said he wouldn't be at all surprised if it fails.

If the required two-thirds majority is obtained, it could

lead to a vote later in the day on President Nixon's nomination of Rehnquist, an assistant attorney general, to succeed retired Justice John M. Harlan.

Rehnquist's 1952 memorandum, and his explanation of it, has become the focal point of Bayh's fight against the nomination of the 47-year-old former Phoenix, Ariz., attorney.

### CANDOR

Bayh told the Senate that "the nominee's attempt to explain away the memo only succeeds in raising a most serious question as to Mr. Rehnquist's candor." Earlier he had said he was "dubious about its veracity."

He said "the circumstantial evidence" suggesting that the views expressed in the memorandum were Rehnquist's is a lot stronger than the circumstantial evidence suggesting they were Jackson's views.

Bayh said he had talked with University of Chicago Law School professor Philip B. Kurland, who is writing a biography of Jackson, and Kurland had told him that Jackson's papers do not reflect the views expressed in the memorandum.

In the Senate, Bayh said that "the thoughts in this memorandum are consistently at odds with the most fundamental principles of Mr. Justice Jackson, principles enunciated year after year in his writings, in his decisions, and in his opinions on the high court."

During the day Senators J. W. Fulbright (Dem-Ark.), Jacob K. Javits (Rep-N.Y.) and Alan Cranston (Dem-Calif.) announced their opposition to the nomination, increasing to about a dozen the number of senators who have spoken out against Rehnquist's confirmation.

Associated Press