

# Rehnquist's Statements Indicate

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WASHINGTON, Nov. 2—The writings of William H. Rehnquist, encased in two thick binders and lodged by him last weekend with the Senate Judiciary Committee, show that President Nixon's nominee to the Supreme Court is an unvarying conservative who believes that Justices invariably write their own views into the Constitution.

To those who have pored over Mr. Rehnquist's speeches, articles and statements, it has become apparent that if Mr. Rehnquist is seated and if he follows his present philosophy, he will be an extremely conservative Justice — but in a markedly different way from the conservatives of the Court's recent past.

Hearings on Mr. Rehnquist, a 47-year-old Assistant Attorney General, and President Nixon's other nominee, Lewis F. Powell Jr., a 64-year-old Richmond lawyer, will begin tomorrow morning, with the interrogation of Mr. Rehnquist first. His nomination has drawn more criticism because of his strong conservative positions than has the nomination of Mr. Powell. But neither nomination appears to be in serious trouble.

Believing as he does that the personal philosophies of Justices will be reflected in their decisions, Mr. Rehnquist has written that the Senate should "thoroughly inform itself of the judicial philosophy of a Supreme Court nominee before voting to confirm him." Liberal Senators have already said that they agree with this view and will question him closely.

## Differs From Frankfurter

In recent years, the leading lights of the Supreme Court conservatism were Felix Frankfurter and John M. Harlan.

They frequently complained that the Court headed by former Chief Justice Earl Warren was too quick to write the liberal ideas of the Justices into the Constitution. They called for stricter adherence to *stare decisis*, the doctrine that prior decisions should be followed.

When Mr. Nixon has praised strict constructionist judges he has often cited Justice Frankfurter as the example to be followed.

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## He Would Be an Activist

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## Pressing Conservative Views

By these lights, Mr. Rehnquist, according to his own statements, is far from a strict constructionist. Instead, he is the type of judicial activist that Justice Warren was—except that Mr. Rehnquist believes that it is time to read conservative rather than liberal meanings into the Constitution.

"Nor is the law of the Constitution just 'there,' waiting to be applied in the same sense that an inferior court may make precedents," Mr. Rehnquist wrote in the *Harvard Law Record* in 1969. He continued:

"There are those who bemoan the absence of *stare decisis* in constitutional law, but of its absence there can be no doubt. And it is no accident that the provisions of the Constitution which have been most productive of judicial lawmaking—the 'due process of law' and 'equal protection of the laws' clauses—are about the vaguest and most general of any in the instrument."

"It is high time that those critical of the present Court recognize with the late Charles Evans Hughes that for 175 years the Constitution has been what the judges say it is. If greater judicial self-restraint is desired, or a different interpretation of the phrases 'due process of law' or 'equal protection of the laws,' then men sympathetic to such desires must sit upon the high court."

## Critical of Newspaper

In 1959, Mr. Rehnquist wrote a letter that revealed what "different interpretation" he had in mind—"a judicial philosophy which consistently applied would reach a conservative result."

And after the Senate rejected the nomination of G. Harrold Carswell, Mr. Rehnquist wrote *The Washington Post*, taking issue with its editorial opinion that Mr. Carswell's conservative views on civil rights had made him unsuitable for the Supreme Court.

Mr. Rehnquist wrote: "Your editorial clearly implies that to the extent the judge [Carswell] falls short of your civil rights standards, he does so because of anti-Negro, anti-civil rights animus, rather than because of a judicial philosophy which consistently applied would reach a conservative result both in civil rights cases and other areas of the law."

What *The Washington Post* really wanted, Mr. Rehnquist added, was a "restoration of the Warren Court's liberal majority," which he said would have the result of "not merely further expansion of constitutional recognition of civil rights, but further expansion of the constitutional rights of criminal defendants, or pornographers and of demonstrators."

It is this threat, which runs through all of Mr. Rehnquist's writings, that has stirred the opposition of Americans for Democratic Action and various civil rights groups.

When the Phoenix City Council was considering an ordinance in 1964 to make all establishments serve everyone regardless of race or national origin, Mr. Rehnquist opposed it in the name of individual liberty. Mr. Rehnquist, then a lawyer in Phoenix, wrote in a published letter: "To the extent that we substitute, for the decision of each businessman as to how he shall select his customers, the command of the government telling him, how

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| <p>he must select them, we give up a measure of our traditional freedom."</p>   | <p>criticizing United States policies in Vietnam, Mr. Rehnquist told the Federal Bar Association that the employees could lose their jobs. "The Government as an employer has a legitimate and constitutionally recognized interest in limiting public criticism on the part of its employees even though that same Government as a sovereign has no similar constitutionally valid claim to limit dissent on the part of its citizens," he said in a speech.</p> | <p>Mr. Rehnquist told the Newark Kiwanis Club, "In the area of public law that disobedience cannot be tolerated, whether it be violent or nonviolent disobedience. If force or the threat of force is required to enforce the law, we must not shirk from its employment."</p>                         | <p>ous surveillance, and that allowing aggrieved subjects of surveillance to go to court "would balance the scale too far against the interests of proper law enforcement." He argued that organized criminals and subversives would abuse such court procedures to expose the Government's surveillance efforts.</p> |
| <p>¶When there was a move to eradicate "de facto" segregation in the Phoenix schools, he opposed it on the following grounds: "We are no more dedicated to an 'integrated' society than we are to a desegregated society. We are instead dedicated to a free society, in which each man is equal before the law, but in which each man is accorded a maximum amount of freedom of choice in his individual activities."</p> | <p>¶In a speech on young protesters' resort to civil disobedience to dramatize their opposition to Government policy,</p>   | <p>¶In speeches and Congressional testimony, Mr. Rehnquist argued that the courts should play no role in shielding individuals from surveillance from Government agents. He said that citizens would be protected by top officials in the executive branch or by Congress from errant or overzeal-</p> | <p>¶Reacting to the criticisms that during the Mayday protests in the District of Columbia many individuals had been swept into the police mass-arrest net and held without opportunity to make bail, Mr.</p>   |

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| <p>Rehnquist replied that an undeclared "qualified martial law" had existed. Police officials, he said, "have the authority to detain individuals during the period of an emergency without being required to bring them before a committing magistrate and filing charges against them."</p> | <p>this as question of Presidential power—which he thought Mr. Nixon could properly exercise—and not in terms of a threat to freedom of association or expression.</p>  | <p>furnished material to the committee after liberal members asked them to submit their public statements. There have been no indications of opposition to Mr. Powell by any organizations.</p> |
| <p>¶In Congressional testimony he found no constitutional barrier to Mr. Nixon's use of an executive order to give the Subversive Activities Control Board authority to brand organizations as being subversive, and thus off-limits to Government employees. Mr. Rehnquist saw</p>           | <p>Throughout the writings there are only a few references to the Bill of Rights, and some liberals on the Judiciary Committee have served notice that they will question Mr. Rehnquist closely tomorrow as to his apparent tendency to see governmental needs in sharper focus than personal rights.</p> | <p>Today the Leadership Conference on Civil Rights, a coalition of civil rights, liberal and labor groups, announced that it would oppose Mr. Rehnquist, but not Mr. Powell.</p>                |
|   | <p>Mr. Rehnquist and Mr. Powell</p>   | <p>However, most of the mail that has been received by the Judiciary Committee has been favorable to both nominees.</p>   |