

'No' to Rehnquist

By WILLIAM V. SHANNON

In 1964, Senator Barry Goldwater won the Republican Presidential nomination. Governor George Wallace abandoned his putative candidacy. The stage was thus cleared for a united bid for power by the most regressive factions in national politics—the Southern racists and the right wing of the Republican party.

The issues were clearly drawn. Senator Goldwater had voted against the 1964 Civil Rights Act and opposed the whole thrust of the Negro drive for equality. Ten years earlier he had voted against censure for Joe McCarthy and fully endorsed the McCarthyite assault on the civil liberties of Government employes and private persons. Senator Goldwater stood squarely for a "war on crime" and against procedural safeguards that hobbled the police.

"I would remind you that extremism in the defense of liberty is no vice. And let me remind you that moderation in the pursuit of justice is no virtue," said Mr. Goldwater, accepting his nomination.

The nation overwhelmingly rejected this reactionary fanaticism. People in 44 of the fifty states voted "no" to Mr. Goldwater. He was, in Nelson Rockefeller's famous phrase, outside "the mainstream" of modern America.

Four years later, as a consequence of the Nixon victory, the Justice Department was delivered into the hands of the two Goldwaterites. Two of his Arizona protégés—Richard Kleindienst and William Rehnquist—became Deputy Attorney General and Assistant Attorney General, respectively.

As a further consequence, Mr. Rehnquist has now been proposed for one of the two vacancies on the Supreme Court. His bleak record on racial

equality, civil liberties and the overweening power of government to coerce private individuals in the name of order and security is wholly consistent with that of his political sponsor.

Mr. Rehnquist publicly opposed the passage of the Phoenix municipal ordinance and the Arizona state law requiring nondiscriminatory racial policies on the part of bus stations, restaurants and other places of public accommodation. That was in 1964-65, extraordinarily late for anyone to refuse to recognize the legitimate claims of Negroes to equal treatment.

Wherever the convenience of the police and the rights of the citizen conflict, Mr. Rehnquist wants to enlarge the power of the police and circumscribe the citizen. He would alter the "exclusionary rule" that prevents prosecutors from making use of illegally obtained evidence. He has argued for the Government's right to tap the phones and electronically "bug" the homes of individuals whom it suspects of "national security" offenses and to do so without a court order. Rather than restrict such dangerous power to cases involving spies for foreign countries, he would apply it to any American citizen without restraint.

Warning against his confirmation as "a dangerous mistake," the Ripon Society, made up of progressive young Republicans, declared in the latest issue of its magazine: "Approval of William Rehnquist's nomination will for the first time give credence to what has until recently seemed an alarmist fear: that we are moving into an era of repression. The entire scenario of repression consists of measures that Rehnquist, on the record, has strongly and explicitly invited."

A man's opinions can change but a mature man's habits of mind rarely change. Ominously, Mr. Rehnquist has a zealot style that borders upon intellectual McCarthyism. After serving as a law clerk to the late Justice Robert Jackson, he gave an unusual interview in which he attacked other Supreme Court law clerks as "left wing" and said that "unconscious slanting of material" influenced the cases on which the Court granted *certiorari*.

Mr. Rehnquist's first political speech in Arizona in 1957 was a scathing attack on the Supreme Court, which included derogatory personal remarks about Chief Justice Earl Warren's professional competence.

The following year he began a bar association journal article with this sentence: "Communists, former Communists, and others of like political philosophy scored significant victories during the October, 1956, term of the Supreme Court, culminating in the historic decisions of June 17, 1957."

Those were landmark civil liberties decisions involving a loyalty-security firing in the State Department, the rights of witnesses before Congressional and state legislative committees and a free-speech case. Two of them were written by Justice Harlan, a distinguished conservative. Was Mr. Harlan "soft on Communism?"

The Rehnquist record is not that of a true conservative. It is the record of an aggressive ideologue with combative impulses and strong commitment to a harsh, narrow doctrine concerning government and individual. It would be an ironic turn of events if this Goldwaterite doctrine so overwhelmingly rejected by the voters should be legitimized on the Supreme Court.

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