

[Some lines apparently dropped
between page 1 and page 26.]

SENATE CONFIRMS BURGER BY 74 TO 3

Vietnam War Critics Delay
Vote on Chief Justice

Special to The New York Times

WASHINGTON, June 9 — The Senate confirmed today the nomination of Warren E. Burger to be Chief Justice of the United States. The vote was 74 to 3.

During the three-hour debate, Mr. Burger's nomination encountered no opposition. As liberals sat in silence, Republican and Democratic conservatives praised Mr. Burger as a "strict constructionist" who would restore "balance" and "stability to the Supreme Court."

What had been expected to be a routine debate and vote, however, were unexpectedly delayed by a small group of Senators who have often worked together on the wholly unrelated issue of Vietnam.

Protesting what they regarded as the haste with which the nomination had been rushed to the floor by the Judiciary Committee, they succeeded in delaying the vote for more than two hours.

The three who voted against the nomination were Senators Gaylord Nelson, Democrat of Wisconsin; Stephen M. Young, Democrat of Ohio, and Eugene J. McCarthy, Democrat of Min-

Continued on Page 26, Column 4

THE NEW YORK TIMES, TUESDAY, JUNE 10, 1969

Senate Confirms Burger by 74-3 Vote

Continued From Page 1, Col. 5
present.

Senator McCarthy said he was voting against the nomination because of political ill will dating to 1952, when he was running for the House of Representatives in Minnesota. In a brief, almost inaudible floor statement, Senator McCarthy said Mr. Burger, a native of Minnesota, had been an "active participant" in his opposition, which "misrepresented my position."

The two others voting in the negative made it clear that they did so not in opposition to Mr. Burger but in protest against the procedures followed by the Judiciary Committee in sending the nomination to the floor without a formal report and without giving the Senators adequate time to read the record of the committee's hearings. For similar reasons, Senator Fulbright abstained from voting.

June Swearing-In Expected

Mr. Burger, a member of the United States Court of Appeals for the District of Columbia, will be sworn in as Chief Justice later this month, when the Supreme Court completes its spring session. The expectation is that the Court will complete its session June 23 and that Chief Justice Earl Warren will resign at that time to be succeeded by the 61-year-old Mr. Burger.

With the Burger nomination approved, the way was open for Mr. Nixon to appoint a successor to former Associate Justice Abe Fortas, who resigned after disclosures that he had agreed to take a \$20,000 annual fee from the family foundation of a convicted stock

manipulator, Louis E. Wolfson.

In a maneuver that kept Senate liberals off balance, Mr. Nixon had made it clear that he would fill the Fortas vacancy only after the Burger nomination had been approved by the Senate.

Mr. Burger is the 14th man to be confirmed as Chief Justice. John Rutledge of South Carolina, who would have been the second Chief Justice, was rejected by the Senate on Dec. 15, 1795.

With the Burger nomination, the 15-year era of the controversial Warren Court was coming to a close, Republican and Southern conservatives almost gleefully noted in praising the new Chief Justice.

Striking the theme of many of the conservatives, the Senate Republican leader, Everett McKinley Dirksen of Illinois, praised Mr. Burger as a judge who "knows full well that the judicial power, when lodged in the hands of an arrogant judiciary, can be a strong force for evil."

Noting that it "has been a long time since I have been able to say anything nice about a member of the Supreme Court," Senator Strom Thurmond, Republican of South Carolina, prophesied that the Burger nomination "ushers in a new era in constitutional history."

To the mounting concern of the conservatives, however, the nomination did not go sailing through the Senate as they had confidently expected. Instead it ran into repercussions from the Fortas affair, combined with Vietnam politicking.

A small group of Senators, most of them Vietnam critics, succeeded in stalling the vote to the point that Senator James O. Eastland of Mississippi, chairman of the Judiciary Com-

mittee, asked for Republican help in pushing through the nomination.

The complaints of the opposition were directed at the Judiciary Committee. With frequent references to the "embarrassment" suffered by the Senate by belated disclosures in the Fortas case, the opposition complained that the Judiciary Committee had held only brief hearings on the nomination with no opposition witnesses, had failed to file a formal report on the nomination and had not made available a printed record of the hearings in time for it to be read by individual Senators.

The opposition was stirred up by Randolph Phillips, a New York financial consultant, working through former Senator Ernest Gruening of Alaska, who in his days in the Senate was one of the leading Vietnam critics. The two have been associated in an anti-Vietnam war group known as the Lawyers Committee on American Policy Toward Vietnam.

Mr. Phillips, who is chairman of a committee opposing the confirmation of Mr. Burger, had not been allowed to testify before the Judiciary Committee. Exercising his floor privileges as an ex-Senator, Mr. Phillips proceeded to take Mr. Phillips's case to individual Senators, most of whom were his former allies as critics of the war.

Senator Young led off the opposition by protesting that the committee had failed to hear any opposition witnesses, such as Mr. Phillips. Senator Eastland, waving an unlighted cigar, replied that his Judiciary Committee had followed "normal procedure" and had never received a formal request from Mr. Phillips to testify.