

a host of controversial questions you may face on the bench. However, it is useful I think to call to mind the words and the example of Oliver Wendell Holmes.

Mr. Justice Holmes was a legal interpreter, not an independent policymaker. When a young friend seized the opportunity to urge him to, as he put it, "Do justice," Holmes replied: "That is not my job. My job is to play the game according to the rules."

The Judiciary Committee is faced with the job of examining your prior record and assessing your present qualifications to perform a role with profound impact on American society. Most of all, however, we are here to learn if you, like Mr. Justice Holmes, intend to play the game according to the rules.

In this regard, I find it encouraging that you bring to these hearings a rich and varied background. Some Justices come to Washington known chiefly as legal educators. Others are Washington lawyers, leaders of the bar, or prominent figures from State and national politics.

Justices may pursue many paths to the Court but few have won separate reputations, as you have, on the campus, in the legislature, in the practice of law, and on the State bench. Few have arrived in this city with a better insight into the legislative and judicial dichotomy.

Having helped to write laws, I expect you have come to appreciate the limitations of statutes alone. Having interpreted laws, I expect you have come to value the continuity of precedent and the wisdom of plain commonsense. Of course, as your presence here demonstrates, it is sometimes plain commonsense to break with precedent. I might add, better 190 years late than never.

No single act by a President reverberates with greater historical force than his nominations to the Supreme Court. No senatorial function ranks higher in importance than deciding the qualifications of would-be Justices. In that spirit, and cognizant of the special interest that surrounds this nomination, I look forward to exploring in detail your judicial philosophy.

I would add, Judge O'Connor—and I think I can summon the ghosts of Roger Taney and Louis Brandeis to my side in saying this—you are among friends.

The CHAIRMAN. Senator DeConcini is next but he will be heard from later.

Senator Simpson of Wyoming.

OPENING STATEMENT OF SENATOR ALAN K. SIMPSON

Senator SIMPSON. Thank you, Mr. Chairman.

"Historic" is overused here this morning but very appropriate. I have a special feeling about the situation since I happen to represent the State of high altitude and low multitude, where we had the first woman justice of the peace, we had the first woman Governor, and we also were the first State in the Union to give women the right to vote, an interesting thing at that time of our rather robust history.

Therefore, it is a historic occasion, the confirmation of a Supreme Court Justice. I think it achieves our very fullest and most solemn task in the constitutional advise and consent function of the Senate.

I have a fascinating footnote. Less than half of the Members of the Senate were serving in this body when we confirmed the last Justice of the Supreme Court, as recently as December of 1975. Now that either says a lot about the tenure stability of judges, or I have a hunch it actually says a great deal more about the realities of the job security enjoyed by your inquisitors who are here arrayed today. [Laughter.]

Therefore, it is an extraordinary position, life tenure. The purpose of it, of course, was to allow the judiciary to operate freely without political tampering that so weighted down previous judicial systems. The judiciary then was to transcend the politics so properly part and parcel of the other two branches.

That marvelous check and balance that has proven so very workable and so very flexible in over 200 years also requires that members of the Federal judiciary submit themselves to the scrutiny and the searching inquiry of the executive and the legislative branches, and the latter is what we are up to today.

Really, seldom does the constitutional process offer such a very direct participation and observation. This proceeding I think would be perceived with great favor by the Founding Fathers. I think it is just exactly what they had in mind.

Just a final personal note, Mr. Chairman. I am very impressed by this lady. I greatly enjoyed my first visit with her. She is an observant, bright, lucid, articulate, thoughtful, sharp, curious person. She has a nice touch of wit and a warm sense of humor which one sorely needs when the brittle, cold winds of ridicule and harsh judgment whistle around this place, I can tell you, and the place east of us across the pasture there.

Therefore, I think we need more legislators as judges, just as we have come to enjoy on this panel that remarkable judge from Alabama, Senator Heflin, who adds so much to our deliberations here. I do feel an extra special form of kinship with Judge O'Connor. My path that led me here is very similar to the one that she took, both serving as attorneys and assistant attorney general, and in the general practice of law and civic work, and legislators in the State legislature where you never become known as a statesman. You are just the guy or the gal that voted against the "red fox bill," and I know how tough that gets. The judge was also majority floor leader, and that is something I enjoyed so much, much better than being minority floor leader.

Therefore, you have a diverse and lively background and you are an involved and committed woman in both your public and your personal life. I commend you, who have served as attorney and judge and legislator, involved citizen, wife, mother.

Then to find one final tidbit of accord, your son Brian O'Connor and my son Colin MacKenzie Simpson are classmates and seniors together at Colorado College and enjoy each other's company very much, out in the West we both enjoy. That must be an Irish and Scots situation beyond belief.

Enough: My time runs. However, I do feel that here is a person who brings a real touch of class to this office, this Government, this city, and this place. I think that we will all perceive that at the conclusion of the hearings. I shall be listening with great interest, and I welcome you, Judge.