

I am optimistic that the judgment of history will be a favorable one for you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

Senator Cohen, a new member of the committee and a very welcome member of the committee, although he has had experience in the past in the other body on the Judiciary Committee. It is nice to have you here, Senator, on this nomination.

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. Thank you very much, Mr. Chairman. Judge Ginsburg, welcome to this hearing.

Senator Brown suggested I might try to approach a discussion with you in a manner different than that pursued by all who have preceded me, and that is quite a challenge in itself. In preparing for the hearing, I was rummaging through the writings of Ambrose Bierce, an American writer and journalist, and I would note parenthetically the author of "The Devil's Dictionary," a book that many people in this country may feel we refer to in order to color and shade our words from time to time.

Bierce related the story of an Associate Justice of the Supreme Court who was sitting by the river when a traveler approached and said, "I'd like to cross. Would it be lawful to use this boat?" "It will," came the reply. "After all, it's my boat." The traveler thanked him, jumped in the boat, pushed it into the water, embarked and rowed away. The boat sank and the man was drowned.

"Heartless man," cried an indignant spectator. "Why didn't you tell the man that the boat had a hole in it?" "The matter of the boat's condition," said the great jurist, "was not brought before me."

Now, during the next several days, the committee hopes to bring before the American people the matter of your condition and that of your intelligence and competence and philosophy on the role and responsibility of the Court in our lives.

It is interesting that out of all the institutions in our three branches of government, the Supreme Court remains to most Americans the least well known, the least understood, and, perhaps not so paradoxically, the most revered. With the national press corps recording virtually every step or misstep that a President makes, the American people are fully aware that the Nation's Chief Executive is bound to be a colossus with imperfect feet, and it is no state secret that the American people hold the legislative branch in what we can only charitably call a minimum of high regard.

It is only the judicial branch, and particularly the Supreme Court, that has significantly grown in stature since its creation some 200 years ago. For the vast majority of people, the Justices, their deliberations, their decisionmaking processes, all remain shrouded in secrecy. There is almost an ecclesiastical aura and mystery that surrounds that temple where final and unreviewable power is exercised.

Prof. Laurence Tribe, who is no stranger to this committee, has described the profound nature of the Court's influence on our lives. He has written that:

A President resigns, a gargantuan corporation disintegrates, a frightened but hopeful child marches to school with her military escort past a hostile crowd, all because nine black-robed figures in Washington have gleaned new wisdom from an old and hallowed document. The sweep of the Supreme Court's influence is so vast that it cannot be grasped by the eye.

The Washington Post has published a thorough three-part series on your life and career, and there were many things that caught my eye in those articles. One involved your comments in which you express some concerns about the *Kahn* case. According to the article, you wrote a letter back in 1975 to one of your former law school students, expressing some apprehension that Justice William O. Douglas, whose widowed mother had had a very rough time financially, might not like a case challenging widows' benefits.

Now, most people cling to the illusion that Supreme Court Justices are simply black-robed oracles who peer through lenses that are unclouded by the personal experiences and biases that afflict ordinary mortals. But I think you, in writing that letter, understood what Justice Cardozo revealed some years before. He said, "We may try to see things as objectively as we please. Nonetheless, we can never see them with any eyes except our own. To that test, they are all brought, a former pleading or an act of parliament, the wrongs of paupers, the rights of princes, a village ordinance or a nation's charter."

What I hope is that in the next several days we can get a better sense of the experiential and intellectual forces within you that will provide some indication of the direction that you are likely to pursue in the days in which you are going to remain beyond the reach of public opinion and beyond that of congressional recall.

One of my colleagues earlier indicated he has expressed opposition to nominees who were advocates as private citizens and whom he feared would remain so while on the Court. Today he offered, I think, some expressions of mild disappointment. While once you were an advocate, his fear is that you have become a jurist while serving as a judge and might continue to do so. Let me express my hope that you will maintain a jurist's approach to the law rather than that of an advocate.

Justice Cardozo, I think, in his most concise and penetrating comment reminded us that in the final analysis there is no guarantee of justice except the personality of the judge. I am hopeful that at the conclusion of these proceedings the American people will be satisfied, as we will, that we will have a guarantee of justice and that justice will be done.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

Judge, this is a historic occasion, but it is particularly historic because the next person to make a statement will be the first woman ever to preside over a Judiciary Committee proceeding for the Court, and it is appropriate that the first person over whom she presides is likewise a woman—oh, I beg your pardon. [Laughter.]

With that, I will introduce Senator Kohl from Wisconsin, who, I assure you, is not a woman and has done this before and done it well and is the most distinguished member of this committee. [Laughter.]

Senator Kohl, I apologize.