

And Judge, just like none of us would like to be where you are right now, we probably would find a majority up here would like to be on the Court.

And just as you would probably not like to stand for election, you probably would not be offended to be appointed to the United States Senate.

So we all go through similar proceedings, we in a general election, and you before us.

And lastly, it is true, you are only one of nine. But I think a case that's just been handed down a few minutes ago by the Supreme Court on one of the most controversial issue in America today that tied four to four indicates why your nomination is so critical.

I yield to my colleague from Arizona.

Senator DeCONCINI. Mr. Chairman, thank you. I want to add my congratulations for the way you have handled the Judiciary Committee in general, and in specific, as to the Supreme Court nominees.

Judge Kennedy, we welcome you and your family here today. You are sitting with some of the most respected Members of Congress, Senator Wilson profound in his statement in support of you, and Representatives Fazio and Matsui. No one is more respected by this Senator, and I think by this committee, than the friends that you have by your side.

I want to first address the subject of advice. I'm not going to give you any advice, Judge Kennedy. I am going to say that I hope you do respond to questions as to your own feelings. In my judgment, that's the only way we know what you think about the law and the Constitution.

And contrary to my colleagues on the other side of the aisle, I think it would be a mistake to not do that. No one is going to ask you how you would have voted on the four-to-four decision that the Senator from Delaware just mentioned, dealing with abortion.

No one is going to be so presumptuous as to expect you to come forward and give opinions on matters that will be pending before the Court, or may be before the Court at the time.

But it is important for us to find out how you view the Constitution, and to question some of the decisions that you have made concerning stare decisis and other areas.

So Mr. Chairman, we are gathered together, once again, in this historic room, to begin what I think is perhaps our most important responsibility as a body.

I have said many times, confirmation of members to the Supreme Court, and perhaps, God forbid, having to declare war, are the two most important decisions a Senator is called upon to make.

The nomination of Judge Robert Bork divided this committee, as well as the Senate and the nation as a whole. I am hopeful that the nomination of Judge Anthony Kennedy will bring us back together, with the common purpose of determining objectively whether Judge Kennedy should be confirmed as an associate justice to the Supreme Court.

During the committee's and the Senate's consideration of Judge Bork, I found myself at the center of a bitter debate over the role of the Senate, and about the acceptability of Judge Bork as a justice.

Many on both sides of the Bork debate saw that nomination as an opportunity to advance their political goals. Judge Bork's supporters saw the nomination as a chance to create social and legal changes that they had been unable to create through other means.

Judge Bork's opponents saw the nomination as an opportunity to reverse the decline of their influence that had occurred under President Reagan's term.

Both sides used the nomination for fund raising, membership expansion, and personal attack on Members who happened to disagree with their side of the issue.

I found the rhetoric on both sides of this unfortunate circumstance not only inappropriate but very dissatisfying, distracting, and distasteful.

I accept it as part of the system. I make no criticism of anybody who engaged in such activity. I just expressed my view that I thought it was inappropriate.

I attempted to divorce political considerations from my decision-making. I urged my colleagues to wait until the record was complete before making up their minds.

I attempted to use the hearing to learn, and to gather information, rather than to bolster a preconceived notion about that nominee.

I have been pleased to receive a good deal of mail and in-person support for the deliberate approach I took to the Bork nomination. And while there are those, of course, who are still trying to make political hay out of the defeat of Judge Bork, I am glad that most have moved on, and approached the Kennedy nomination in what I consider to be a very appropriate manner.

We do not have everyone jumping out on this issue, and on this nomination, as we did before, for or against. We are more deliberate as a body and as Members. So I think the bad has turned into good; we all learned something, certainly this Senator did.

The nomination of any individual to the Supreme Court is of the highest importance. Even though we begin these hearings at the end of the congressional session, and during the holiday season, we must be careful, and be as thorough as possible in our consideration of the nominee.

I have had an opportunity to visit with you, Judge Kennedy. I appreciate the short time we had to discuss constitutional issues, and how you feel about them.

I have read over dozens of your opinions. I have read several transcripts of speeches that you have given. And I have talked to many attorneys and judges in the ninth circuit about your qualifications.

And I have had the personal pleasure of being in your company at ninth circuit judicial conferences, on occasion.

I do, however, have unanswered questions that I intend to ask you, Judge Kennedy, as a witness. I want to assure myself that you will apply the law of this nation, and our Constitution, in a consistent way.

I want to be sure that Judge Kennedy will be able to separate his personal views and philosophies from his judicial decisionmaking.

I want to know what those personal views may be, and I want to know how they may be applied. I want to satisfy myself that your

record as an appellate court judge does indeed display a separation of your personal and legal views when issuing opinions.

I am interested in learning how you intend to approach the different responsibilities of the Supreme Court, vis-a-vis the court of appeals.

I will be particularly interested, Judge Kennedy, in discussing with you your views on discrimination, equal protection, privacy, criminal procedures, and access to the court.

I want to hear your opinions on the roles that precedent and stare decisis play on the Supreme Court. And I am hopeful, Judge Kennedy, that you will answer these questions as forthrightly as you can, without intimidation, without feeling put on the spot, or that there is somebody out to get you, because there is no one here that I know of who is approaching this hearing in that way.

We are out to do our responsible duty, and I am very pleased that you have been chosen for the position. I am also very pleased that your attitude is one of a willingness to work with us, so we may come to a conclusion that will fill the vacant seat on the Supreme Court, and enable the country to move ahead.

Thank you, Judge Kennedy. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Our colleague from Iowa, Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman.

Judge Kennedy, let me add my welcome to you and your family. I particularly want to congratulate you on being chosen by President Reagan to serve on the Supreme Court.

Three months ago this committee convened for the purpose of assisting the Senate's advice and consent responsibility. Badly, in my judgment, the committee and the Senate managed to transform a narrow constitutional function into a full blown fear and smear campaign.

The advice and consent function, located as it is in the Executive Branch Article of the Constitution, simply cannot mean that the Senate's last word is to be the only word.

I begin these hearings full of hope that this nomination will return the Senate to its more traditional and appropriate role.

In the past, I have set out what I believe is a principled, three-part standard for evaluating a nominee. First, does a nominee possess knowledge of and respect for the Constitution as the precious inheritance that it is for all Americans, and as the sole rule of decision in constitutional cases?

Second, does the nominee have full appreciation of the separate functions between the unelected judiciary and the political branches?

Thirdly, will the nominee exercise self restraint? Self restraint, which makes a judge resist the temptation to revise or amend the Constitution according to that individual's view of what is good policy.

Mr. Chairman, I believe that this is a good occasion to repeat some often cited history about the third branch.

First, according to the framers, the judiciary was to be the "least dangerous" branch to the political rights guaranteed in the Constitution.