

The CHAIRMAN. Thank you very much, Senator. Senator Simpson from Wyoming.

Senator SIMPSON. Thank you, Mr. Chairman. I appreciate your very steady and sure handling of this nomination, for indeed, we must be about our business.

It is a rich pleasure to have you here today, Judge Kennedy. I trust you are looking forward to these hearings. I mean that. I think the Chairman is correct.

Here is where we have the opportunity to publicly interrogate you with respect to issues of great importance. While that word, interrogation, sometimes, perhaps often, has some rather negative connotations, I am very certain that our Chairman will maintain proper order and decorum in this process, and assure that you are treated with all of the respect due to your high office and to your nomination.

But before I go further, I need to clarify something which I said during the Bork nomination, which has proven to be in total error. A little bit, really, off the rail.

And so I will eat crow—legs, beak and all here—because on occasion, I expressed my opinion during some of the wretched excesses of the Bork hearing—and there were some—that if Judge Bork were not to be confirmed, then the next nominee would be some nameless, faceless, witless, and terminally bland soul who I referred to as Jerome P. Sturdley.

Now, I said that, and suffered a foot-in-the-mouth disease, because I was wrong, so very wrong. You are living proof of my error, because, indeed, you are a splendid and remarkable new nominee, and your record of public service and professional life is absolutely outstanding.

I will not go into your background. Senator Biden has covered that, and Senator Thurmond. But it is extraordinary, beginning at the age of 38 on the bench, Stanford, graduation cum laude, Phi Beta Kappa, London School of Economics, election to the Harvard Law School board of student supervisors, your private practice, your pro bono efforts.

That distances you about as far away from my mythical character as one could possible get. So we are going to review your record, and we have reviewed this for some time now. The committee has reviewed it. Others are very interested.

Specifically, now, we know of the unanimous recommendation of the American bar in providing you with the highest possible rating, that of well-qualified.

I will leave for another time a discussion of how the ABA came to its decision, but they eventually got it right. It is important to note that. They were certainly disappointing doing the last nomination. Four of their remarkable crew are still cloaked somewhere in anonymity. We do our business in the light here.

It is important to note, from the outset, that you received the nomination you so clearly deserve. Well, Senators give you advice on how to answer questions. I heard that. But if you want to choose a course, why, try the one that the last three successful nominees picked. Those questions of the committee were answered like:

How I am to resolve a particular issue, or what I might do might make it necessary for me to disqualify myself, and that would result in my inability to do my

sworn duty. I do not think I should, Senator, respond to the question, because that may well be an issue argued before the Court, and I do not want to be in a position of having a connection, as a condition of my confirmation.

As any nominee will in the future, and have always in the past, say, "I just cannot do it." Now those were the remarks of Justices O'Connor, Rehnquist and Scalia. You would want to follow that good counsel there, I think somewhat, anyway.

It is well worth pursuing. I think it is very important to remember that that worked, and Judge Bork of course got into the full panoply of effort because he had no choice. He had no choice. You do. You have not been hammered flat before you got here.

So, as we proceed here, we will want to know about your judicial philosophy. I am certain there are those who would believe it to be too conservative to the extent that that label, conservative or liberal, really means much. It never has in my life, to add a bit of dimension or light to a situation—but that is not the inquiry.

The inquiry is whether you possess the integrity, temperament, and ability to be on the Supreme Court. The inquiry is also whether your judicial philosophy, without consideration of your political philosophy, is worthy of representative on the Supreme Court, and I very much believe it is.

I hope that we will do that fairly. I have disagreed with the specific judicial philosophy which nominees possess—and I have done this before, so this is not a case, you know, of sudden enlightenment. And again, I bring to the floor the case of Judge Pat Wald, who serves absolutely superbly, and was being criticized for the most superb and banal activities I have ever heard of. And she's there on the bench. She's doing a marvelous job, and I supported her.

And I've supported other nominees of Jimmy Carter, so that's the way that is. I just hope that when I'm in the minority, and a president is presenting a nominee, that I will be as fair as I hope others would be.

It's called fairness. I know that is naive, but I still like to try that. And it would be eminently defeating to our national goals if we ever have another situation—it doesn't matter who it is—similar to Robert Bork's process.

Additionally, even though you hold these particular philosophies, we also know there is no predictability as to how you'll act when you get on the high court bench.

That has proved to be troublesome to some in the past. And it is so important for all of us to remember that you will be only one of nine. To form a majority, you would have to be joined by at least four of your colleagues, just as you were joined when you wrote your majority opinions on the ninth circuit.

It seems to me around here we focus on the nominees as single entities, as though they're the sole arbiters of justice, discounting the importance and impact of the other eight justices on the Court.

That dazzled me in the last exercise. Because Bork, to carry out his "heinous" agenda, was evidently this Pied Piper who would lead four dull witted colleagues off the edge of the pier. That's what he would have had to have done. How deceptive that was.

So I look forward to the hearings, working with you. I enjoyed our visit. I found your treatment of the Bork nomination, Mr.

Chairman, to be under all the circumstances equitable. I say that to you, Mr. Chairman. You always command my utmost personal regard and appreciation, just as under the chairmanship of Ted Kennedy and Strom Thurmond in this committee, we brought forth an appreciation for your efforts, your honest attempts.

And I commend you, Mr. Chairman, as to how you personally handled that at a time of great personal distress to you. So I know it will be fairly done.

And I said under the first procedures at the inception of the Bork nomination that his confirmation or rejection would be brought about by use of a deft blend of emotion, fear, guilt and racism.

Yes, I overuse that phrase, I do. But it proved to be so. My prediction was borne out.

I know that we will be avoiding all that kind of stuff in this nomination. And we seem to be off to a much better start.

Of course, let me conclude, we remember again that you were unanimously confirmed by this Senate previously. And since that time you have served with great honor and distinction.

I'm sure that your current and former students at McGeorge Law School will be watching intently to see just how you answer these questions on constitutional law.

They will think, "I remember he fired those questions at me. How will he do?" It will be the law students' primal joy to watch you in these proceedings. No doubt you will handle yourself with great aptitude and dignity.

I look forward to hearing your views, indeed I do. And I say, as I have said always, that there are not many of us here, at this table, who would like to be at that table where you sit in your position. We could not pass the test that we now give to you and to others. In no way, none of us.

And as I have said before, I would hate to have someone rifling through the collected utterances, mumblings and scratchings of Al Simpson. It would be a bizarre array of stuff.

But once again, America will be watching to see how we do our business of advice and consent. The Senate obviously has no objective criteria.

I think we learned much from the past one. We have no standards, no criteria by which to honestly measure the qualifications of Supreme Court nominees.

Each Senator simply makes up his or her mind. And they make up their own criteria, which is even more fascinating. And often, sometimes, even before the hearings, which is ever sublimely fascinating.

And then they come to their conclusions.

I know you're going to handle things beautifully. You will be a splendid addition to the Supreme Court.

I intend to participate fully, Mr. Chairman, and I await your presentation with great interest and anticipation.

Welcome to you, sir, and to your fine family. And I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. I say to my colleague, I thank him for his kind remarks about me.

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.