

The CHAIRMAN. Thank you very much, Ms. Yard.

Mr. RAUH. I, too, have a written statement for the record.

The CHAIRMAN. The entire statement will be placed in the record.

Mr. RAUH. I have a deep respect for the Supreme Court, its role, its accomplishments.

I was the last law clerk to Justice Cardozo and the first law clerk to Justice Frankfurter.

I have enjoyed arguing for the Bill of Rights in front of the Supreme Court.

I have worked against putting someone on the Court who oughtn't to be there: Haynsworth, Carswell, Bork and Ginsburg.

Senator METZENBAUM. Would you pull the mike closer to you?

The CHAIRMAN. The microphone that works in this room is not the one with the wire on it; it's the other one.

Mr. RAUH. Thank you.

I think I have a somewhat deeper respect, most respectfully, than this committee has for the Supreme Court.

I think your performance has not been good. I think you have put these hearings on too soon, when people were not prepared, at a time when you cannot concentrate on it, when it is the end of the term.

I think you have not found out from the Justice Department what they know about this man.

I must say, and please don't—I have so many friends on the committee; please don't take this amiss—but I think you played patty cake with Judge Kennedy. I don't think you found out what he really thinks.

There is no reason you should not know what this professor of constitutional law, this judge, said at the time these great cases like *Roe v. Wade* came down.

We are not saying you should ask him what the results will be, what he will do in any case. But you have a right to know the views he expressed when those cases came down, and you never asked him. So he got away with generalizations.

Now, he talks a good game, but he does not play that game. His decisions, in *Aranda*, *TOPIC*, the *Pasadena* case, the one that Molly referred to, the *AFSCME* case, the *Gerdom* case, the *Beller* case, demonstrate that he will almost always take the side against rights.

It is nice to talk about how you are for rights. But it is nicer to rule for rights when the matter comes before you.

Now it is not clear what he is going to do. I am not here saying I know he is going to reverse *Roe v. Wade*. I do not know he is going to reverse school prayer. I do not know that. But you do not know that he is not going to reverse those and other cases.

On his record, he is more likely to be on the side of reversal, on the side of the four who presently would upset all these cases.

The tendencies we know, what we have seen, is that he is leaning the wrong way on the Bill of Rights.

I have devoted my life to the Bill of Rights and I can truthfully say that to me what you are doing is playing Russian roulette with it.

You are taking a frightening risk.

Now, if you want to say, well, the President has a right to take a risk with the Bill of Rights—in fact, he is on the other side on most of these issues—all right, say that.

But the Senate has a right, if it does not want those cases re-fought, if it does not want the Court to go against those cases, it has a right to say “no” to the President.

You have a right to say to the President of the United States, “no, we will not take somebody without a proven record in favor and in support of the Bill of Rights.”

I think that is what you should do. Our difference here is really a philosophical one. You know this man has no record in support of the Bill of Rights. Every one of you knows that.

The question is, are you prepared to say, we have the right to reject on that ground?

The Constitutional Convention almost gave the Senate the full power of judicial appointments. They didn't, so there wouldn't be log rolling and cronyism and all that.

But you have equal power. And it ought to be used.

Thirdly and finally, I thought the testimony of the bar association this morning was almost ludicrous. They have not gone into the Judge's philosophy. Just remember, too, the bar association found well qualified a fellow named Haynsworth; a fellow named Carswell; a fellow named Bork; and they probably would have found for Ginsburg.

The bar association has never found against a single Supreme Court nominee. It is an automatic OK.

They do not speak for the public interest lawyers. They do not speak for the Mexican lawyers. They do not speak for the black lawyers. They do not speak for the women lawyers.

They speak for the corporate lawyers. And that is all they speak for.

I must say, there was one wonderful thing the ABA gentleman said this morning. Mr. Tyler, is another friend of mine, but I cannot help pointing out that he says that Judge Kennedy acted in a reasonable fashion—that is a quote—when he resigned from the segregated clubs.

He stayed in until about a month ago and that is the real point here. Senator Hatch made a terrible misstatement. I wish he were here.

Senator Hatch said——

The CHAIRMAN. You may bring him back.

Mr. RAUH. I would love to. Let me tell you what he said. I wrote it down.

He said that Judge Kennedy's name had not surfaced for the Supreme Court nomination when he wrote his letter in August of this year.

Judge Kennedy's name was on the list that was brought up here before Judge Bork was nominated. In other words, when in August Judge Kennedy resigned from that club, he was already a candidate for the Supreme Court.

The then nominee, Judge Bork, was in real trouble by August. I think to try to make it look like there was nothing wrong with Judge Kennedy's action is outrageous.

Molly Yard is more eloquent than I am. She told you what it means to women to be excluded from these clubs.

Even worse than that, Judge Kennedy sat by and let Senator Hatch make that absolutely 180 degrees wrong statement about his action, and did not correct it. I have a lot of things additional I would like to say, but I understand the problems of time. I see my light is on, sir.

[The statement of Joseph L. Rauh, Jr. follows:]