

You have shown judicial temperament, here, on this occasion during the hearing. You have exemplified a high sense of judicial temperament, which is so essential, I think, to a judge.

Then, too, you are an ardent supporter of our constitutional form of government, and you believe the Constitution says what it means and it means what it says. I feel the same way.

You believe in the separation of powers; you believe in the proper division of powers. Certain powers are delegated to the Union; others are reserved to the States. It is important that we remember that reservation to the States, that power is not delegated as part of the Constitution. You have shown that in your decisions, in your public life.

You were well qualified to start with. You served as a law clerk for 1 year; you were in private practice for over 16 years; Assistant Attorney General for 1 year. Then you were nominated to be Associate Justice by President Nixon and you served there 15 years.

I don't know of anyone anywhere that could be better qualified to be Chief Justice of the United States than you. We're proud of you and we're proud of your record. We're proud of what you stand for. I just want to tell you that, in my judgment, you will be confirmed. This committee will vote for you and the Senate will vote for you. You deserve that recognition and you'll get it.

Justice REHNQUIST. Thank you, Mr. Chairman.

Senator HEFLIN. Mr. Chairman, on behalf of the Democratic side here, there could be witnesses that would appear after which Justice Rehnquist himself might like to appear again. I think the reservation should be that, if something arises, Justice Rehnquist himself or the Democrats—or anyone on the other side—could reserve the right for recall.

The CHAIRMAN. Mr. Justice, tomorrow we are hearing some more witnesses. If you want to return after they have testified, we will give you that opportunity. It will be an option that you can exercise yourself.

Justice REHNQUIST. Thank you, Mr. Chairman.

Senator HATCH. Mr. Chairman, if the Justice needs to come back, it should only be on anything that might arise in the future. It should not be on any of the past items we have been over and over again. Let us at least have that understanding.

The CHAIRMAN. You are now excused and we thank you for your presence. We thank you for your testimony, and we wish you well.

Justice REHNQUIST. Thank you, Mr. Chairman.

The CHAIRMAN. We will be in recess for 10 minutes to get the other witnesses.

[The committee was in recess.]

The CHAIRMAN. Mr. Bolton, do you want to make a statement at this time?

STATEMENT OF JOHN R. BOLTON, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS, U.S. DEPARTMENT OF JUSTICE

Mr. BOLTON. Yes. Thank you, Mr. Chairman.

I regret that, due to the shortness of time, I do not have prepared remarks, but I do have a few things I would like to say.

Earlier today, reference was made to a memorandum from the President to the heads of executive departments and agencies, dated November 4, 1982. I would just like to begin by reading one sentence from that memorandum. I quote from the President:

The Supreme Court has held that the executive branch may occasionally find it necessary and proper to preserve the confidentiality of national security secrets, deliberative communications that form a part of the decisionmaking process, for other information important to the discharge of the executive branch's constitutional responsibilities.

Mr. Chairman, there has been a long history in this country, dating back to President Washington, of the importance of preserving the confidentiality of executive branch deliberations. By analogy, the judicial branch of Government preserves the confidentiality of the internal deliberations of our courts; Members of Congress preserve the confidentiality of their communications with their staffs. And, for the same reason, going to the fundamental basis of our Government, the executive branch must also have confidentiality in communication among top advisors to Cabinet heads and to the President.

There is no doubt, Mr. Chairman, of the importance of securing candid advice to ensure the proper functioning of the executive branch. If I could, to demonstrate the importance of this, I would like to read brief excerpts from two Supreme Court opinions. The first is the opinion of the Court in *Nixon v. Administrator of General Services*. I might say that the language I am quoting from is from Justice Brennan. I quote Justice Brennan who, in turn, quotes from the Solicitor General.

Justice Brennan said, "Nevertheless, we think that the Solicitor General states the sounder view and we adopt it." Justice Brennan quoting now from the Solicitor General: "This Court held in *United States v. Nixon* that the privilege is necessary to provide the confidentiality required for the President's conduct of office. Unless he can give his advisors some assurance of confidentiality, a President could not expect to receive the full and frank submissions of fact and opinions upon which effective discharge of his duties depends. The confidentiality necessary to this exchange cannot be measured by the few months or years between the submission of the information and the end of the President's tenure. The privilege is not for the benefit of the President as an individual, but for the benefit of the Republic. Therefore, the privilege survives the individual President's tenure.

Now, the reasons for the privilege, the Court said in *United States against Nixon*, are plain—and I quote now from the opinion in that case.

"Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interest, to the detriment of the decisionmaking process."

Let me quote further from that opinion, if I may, Mr. Chairman. "A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions, and to do so in a way many would be unwilling to express except privately."

Mr. Chairman, executive privilege is claimed only after the most searching scrutiny. Not all documents qualify and, indeed, as I mentioned earlier today in response to the request from three Democratic Senators, certain documents were produced to the committee from the Office of Legal Counsel, that in our legal judgment would not qualify.

However, following the procedures laid out in the President's memorandum, from which I have quoted previously, I have been advised by the counsel to the President, Peter Wallison, on the advice of the Attorney General, the Assistant Attorney General for the Office of Legal counsel, and the Counsel to the President, that the President has authorized me to assert executive privilege with respect to the confidential memoranda, opinions, and other deliberative materials from the files of the Office of Legal Counsel from 1969 to 1971.

That concludes my remarks, Mr. Chairman.

The CHAIRMAN. That's it. Thank you very much.

Senator HEFLIN. Mr. Chairman.

The CHAIRMAN. Any questions?

Senator HEFLIN. Yes, Mr. Chairman. I think this witness is subject to being examined. In the normal course of events, I'm not sure how an executive privilege is entered, as to whether or not it is entered by an emissary like Mr. Bolton or, on the other hand, whether it comes through a written document or how.

I am not conversant with all of this information, as are several others, such as Senator Biden, the minority leader. Rather than delay it right now, I would suggest that we go to other witnesses and that Mr. Bolton be reserved. I understand that Senator Biden is on his way here, and when he arrives, if he has questions that he wishes to direct to Mr. Bolton, he would have that right. I think the courtesy is his and it is his right.

I would think, therefore, rather than delay, that we could go to some of the other witnesses and reserve Mr. Bolton's cross-examination until Senator Biden arrives. As I understand it, he is on his way.

Senator SIMON. Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Illinois.

Senator SIMON. I am obtaining materials, from the House Judiciary Committee, which contain many internal documents of the kind we're talking about, and not from an administration of some years ago but from the current administration. I had just a few of those reproduced here.

Here is a memo from Laurel Pike Melson, attorney-advisor; she is with the Office of Legal Counsel, and it's to Theodore P. Olson, Assistant Attorney General in the Office of Legal Counsel. It's dated December 6, 1982.

Here is another memorandum to Theodore Olson, within the Department. Here is a memorandum for the Attorney General from the Legal Counsel, dated May 30, 1984. Here is a memorandum from Legal Counsel to the Assistant Attorney General for Legislative Affairs.

There are half-a-dozen more here that I have had my staff xerox. It is fairly clear that executive privilege and a willingness to turn over documents has been part of the history of this administration