

Ten, will nominee acknowledge political brutalities of appellate power for labor unions, resulting in crime and violence, denial of human right to work, free enterprise, and consequences of critical inflation? Will she enforce strong warnings of former Attorney General Bell against appellate power for school prayers, threatening all liberties? State courts have proven not only incapable but unworthy, to wit, Kentucky Supreme Court, 10 Commandments case, Justices Lukowsky, Palmore, Sternberg, denouncing Biblical ethics and advocating atheism as guides to public administration. In such cases, will the nominee admonish such impeachable offenses, deny Court status for ACLU for its national policy to harass all our institutions out of Christian law priority, by its national policy for Soviet constitutional separation of church and state?

Will over 90 percent of the Christians in this Christian Nation be assured of loyalties to President Reagan's intent to restore and defend Christian law priority?

The CHAIRMAN. We wish to thank you, Ms. Neamon—

Ms. NEAMON. Senator, since these matters were never brought out by any member of the committee, in justice to the national outcries, the moral crisis, and the President's anxiety to restore U.S. Constitution and our ethics, could you find opportunity to address these questions to the nominee?

The CHAIRMAN. Well, you have made your statement. That will be available to all the Senators.

Ms. NEAMON. I wonder if they will find the time to really, collectively address it, and will the nominee have the opportunity to respond to their addressing of this matter?

The CHAIRMAN. Well, you see, the nominee now is through with her testimony, and it is too late to address questions in these proceedings.

Ms. NEAMON. Can she be recalled?

The CHAIRMAN. No; we cannot recall her. We are giving everybody an opportunity. We have had 3 days of hearings.

Ms. NEAMON. Thank you very much. I would appreciate it if there was anything you could do to extend your concerns, at least.

The CHAIRMAN. Thank you very much.

Our next witness is Stephen Gillers, representing the Committee for Public Justice, who is coming at the request of Senator Kennedy.

You will hold up your hand and be sworn.

Do you swear that the evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF STEPHEN GILLERS, COCHAIRMAN, COMMITTEE FOR PUBLIC JUSTICE

Mr. GILLERS. I do.

Mr. Chairman, I have also prepared a statement which I have given to the staff and which I ask be made part of the record. I will make some nonduplicative comments in addition to that, if I may.

The CHAIRMAN. You want this statement entered in the record in full?

Mr. GILLERS. Yes, sir.

The CHAIRMAN. Without objection, that will be done. Now anything you say now, say it in addition to what is there because we do not want to duplicate.

Mr. GILLERS. I will not duplicate it, sir.

Sitting through the testimony today, it is obvious that the witnesses, aside from disagreeing on whether or not Judge O'Connor should be confirmed, also disagree on the questions that the Senate should properly consider in deciding whether or not to confirm a nominee. That is, the scope of the Senate's responsibility seems to be, in exercising its confirmation power, a matter of some dispute.

It would be good, I suppose, if the scope of that power could be clarified, not during the rush of confirmation, and perhaps that possibility will be considered. But here we are and we have a nomination to confirm or not to confirm.

It is particularly important, Senator Thurmond, that the scope of the responsibility in deciding whether or not to confirm be assessed, because we stand at the beginning of a decade when we are likely to see five or six additional Supreme Court nominations made. That is a fact of timing; it is very likely to happen that we will be here again in the next 10 years another five or six times.

I would like to emphasize one aspect of my written testimony which deals with the Senate's responsibility at confirmation hearings. I do not believe the Senate sits as a body whose function is to enforce IOU's that one-issue constituencies feel the President gave them when he was elected but has now failed to honor. They may have real gripes—I understand that—but it does not seem to me that they should be able to use the confirmation process as the means by which his promise or his failure to keep his promise is enforced.

I believe the Senate is institutionally incapable of pinning down a nominee on each of the many areas of emerging constitutional law that its shifting majorities, its various Senators, may consider important. I realize that the people speaking against abortion today feel very strongly about that issue, and I was personally moved as a human being by the content of their testimony.

However, we are talking about a confirmation process, a constitutional process. As a law professor at New York University Law School, who has taught courses on Federal courts and in constitutional law, I believe it would be dangerous to our constitutional government and would ultimately seriously weaken the Court if a nominee's willingness to be pinned down on future votes on matters that are likely to come before the Court could be used as a condition for approval or disapproval of a nomination. Certainly it could raise questions of ethics should that nominee then proceed, if confirmed, to sit on a case in which he or she has already made a commitment.

In addition, whatever is the pressing issue of the day may be long gone as an issue by the time a nominee is half into his or her career on the Court. People sit on the Court for 10, 20, some in excess of 30 years. A nominee who is pressed with regard to an issue that may be emerging today, may be sitting on the Court long, long after that issue is forgotten. It seems to me that it is shortsighted in the extreme to emphasize a particular current issue

over a nominee's character, history, intellect, judgment, and other qualities discussed in my written statement.

In sum, Senator Thurmond, it seems to me that the use of the confirmation process as a means to change emerging Supreme Court rulings is really a substitute for the amendment process which the Constitution itself prescribes for its change.

Thank you very much.

The CHAIRMAN. I would like to ask you, I do not believe you have said yet whether you favor or oppose the nominee. How do you stand, or do you stand?

Mr. GILLERS. I, and the Committee for Public Justice for which I speak, favor confirmation of Judge O'Connor.

The CHAIRMAN. Thank you.

[Material follows:]