

I hope you pardon me for lowering the tenor of this esteemed proceeding for a moment, but I would, however, like to conclude on a higher note.

The importance of this proceeding is illustrated by the observation of Alexis De Tocqueville that, quote, "scarcely any political question arises in the United States that is not resolved sooner or later into a judicial question."

I would only add that in this era when many Supreme Court announcements and pronouncements are debated in Congress that scarcely any legal question arises that is not soon a political question sometimes for us to resolve.

The legal history of this Nation, the daily lives of its citizens, the future agenda of both Congress and the Court may well be shaped by today's events.

The Supreme Court will inevitably be ensnarled in the great questions of our generation, and indeed, Justice Holmes, one of the all-time great justices, noted, and by the way a lone dissenter many, many times, noted that the only peace found at the Court is the uneasy stillness found at the eye of a hurricane.

I am grateful that President Reagan has chosen this individual, an individual of the quality of Mr. Justice Rehnquist, to guide the Court through the coming storms, and I think, Mr. Justice Rehnquist, you have the respect of most all of us, whether we agree or disagree with you. You have stood up and you have done what you believe is correct under the Constitution, and I believe that Senator Metzenbaum outlined those three points.

When it comes to competence, when it comes to integrity, when it comes to faithfulness to the law, I believe you have a plus in all three of those areas, and I believe the majority of the American people believe it, too.

I think it is time that we quit attacking everybody who comes before this committee and stop the character assassination that has been going on. It is fair to ask legitimate questions. It is fair to disagree on particular cases of law, but I think it's time to stop the politics and do what is right for the Supreme Court and this country. It is undignified to do otherwise.

Welcome to the committee. I hope it will be a better experience than it portends to be.

The CHAIRMAN. The able and distinguished Senator from Arizona, Mr. DeConcini.

Senator DeConcini. Mr. Chairman, I will just add my welcome to Justice Rehnquist here today and yield to the Senator from Vermont. I have already made a statement on behalf of the Justice.

The CHAIRMAN. The distinguished Senator from Vermont, Mr. Leahy.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Thank you, Mr. Chairman.

Mr. Chairman, I think it would probably be safe to say that were it not for these hearings, Justice Rehnquist and I would probably both be where in this time of the year we both would rather be and that is Vermont.

The Justice has a home there with all due respect to Dennis, used during the summer as compared to, I guess, Arizona in the wintertime.

The hearings we begin today, Mr. Chairman, are really among the most important that we as Senators are ever going to attend. At the close of these hearings, each Senator is going to have to decide whether or not he thinks it is in the best interest of this Nation to confirm Justice Rehnquist as the new Chief Justice.

I have respect for Justice Rehnquist and a personal liking for him. I will not make up my mind about whether to vote for his confirmation until the conclusion of these hearings. I think that is the reason for the hearings.

And it is also because I believe as Senators we have a solemn constitutional duty to give this nominee the very closest scrutiny on a wide range of qualifications and standards, and that duty arises directly from the Senate's unique responsibility to advise and consent in judicial nominations specified under article II in section 2 of the U.S. Constitution.

The intent of the Framers in adopting the appointments clause is clear from the records of the Constitutional Convention, and the Senate obligation is clear. We are not a rubber stamp for any President nor should we be nor does the Constitution ask us to be. In fact, it is quite the opposite.

We each have a duty to sift through the facts and decide whether a nominee is fit to sit on the bench. We should ask ourselves what some of the things are that we should look for in a nominee.

The Constitution places no restrictions on the factors that the Senate should take into accounting in confirming a judge, but I think our responsibility demands above all the standards we need to employ, the standard of excellence.

A nominee must be a person of high moral character, of integrity, who has demonstrated intellectual capacity and a fundamental understanding of the law. He or she must promise and convince all of us that he or she will uphold the Constitution of the United States.

A nominee has to be competent. He or she must bring to the Court experience, ability, keen awareness, judgment, sound legal skills, and ability to write legal judgments well. But perhaps most importantly a nominee must have the capacity to be fair and impartial.

There's been recent debate about whether or not a nominee's philosophy or ideology should be considered. Well, judicial candidates do not reside in a vacuum. They have judicial philosophies and policy views. A President does not nor should a President ignore these factors in the nomination process.

Our country has a long history of Presidents taking the views of nominee's into account, both liberal and conservative Presidents, both Democrats and Republicans. But the Senate also has an affirmative responsibility to consider a nominee's philosophy. Indeed, we'd be remiss if we did not scrutinize a nominee's views.

Our Constitution is a living document. That's part of its strength and its durability. In order for it to be responsive to new challenges of an ever-changing Nation, our Supreme Court justices must likewise be responsive.

If any Senator feels that a judicial nominee is so committed to a particular agenda that the nominee would not be fair and impartial, if he or she feels that the nominee would not protect fundamental rights of Americans, if he or she believes that the nominee would fail to respect the prevailing principles of constitutional law, that Senator not only has the right, that Senator really has a sworn duty to reject the nominee.

And during the consideration of Justice Rehnquist's nomination, each of us is going to have to evaluate the nominee. We will have special questions to answer pertinent to his nomination as Chief Justice. Can he carry out the administrative functions of that office? Can he exercise the requisite leadership?

We have, as Senators, a solemn responsibility that will affect this Nation, not only now, but way, way into the future, and will require our very best judgment, our most powerful scrutiny.

The Constitution demands no less nor would Justice Rehnquist expect any less from the U.S. Senate.

The CHAIRMAN. The able and distinguished assistant majority leader, Senator Alan Simpson of Wyoming.

STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Thank you, Mr. Chairman.

We're honored to welcome to the committee today, Bill Rehnquist and his fine wife and family. It is a pleasure to have you here.

It is a privilege for me to join with my colleagues in reviewing the career and the qualifications of the man nominated to be the 16th Chief Justice of the United States, a rather small number for a 210-year-old Nation. So we should be ever conscious of the importance of these proceedings and the long-term effect of this nomination upon the U.S. judicial system.

I think accordingly then that we must be very careful and alert to our duty to conduct these proceedings in a fair and balanced and civil fashion, seeking light and not heat, seeking information and not confrontation.

President Reagan was elected by a large majority. That has been discussed, he is one of our most popular Presidents. He has the right and the obligation to nominate qualified men and women who share the philosophy of this President.

There are also some troubling indications that I see publicly and privately—that events that occurred 20, 25, 35 years ago will be focused on here—possibly to the exclusion of this man's distinguished career on the bench since 1971.

I would hope we might receive the information which we are about to be presented as if it were fresh and timely and current and not yet displayed to the public. Then let us form our opinions about that information without the taint of what we called in the law business, "pretrial publicity." I have seen a lot of that manufactured around this burg these last few weeks.

Let us not neglect that extraordinary record which Justice Rehnquist has fashioned over his career, both before 1971 and after his appointment: The degrees at Harvard and Stanford where he grad-