

STATEMENT OF SENATOR HOWELL HEFLIN
 NOMINATION OF JUDGE SANDRA DAY O'CONNOR
 ASSOCIATE JUSTICE, UNITED STATES SUPREME COURT
 THE U.S. SENATE COMMITTEE ON THE JUDICIARY
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"The task which brings us here today is a most important one. It is the process by which a branch of government renews itself--of regeneration, of pumping new blood into the life of a great and vital institution.

In my opinion, and I say this, Mr. Chairman, only after careful reflection, there are only two institutions absolutely indispensable to the independence, health and maintenance of our republic--a free and vigorous press, and a strong and independent judiciary. While Presidents may come and go, their faithful execution of the laws is subject to an ultimate check. While great men and women may deliberate and legislate in these very halls, the laws they pass do not interpret themselves.

The federal judiciary--the high Court in particular--not only has the last word as to what our laws say, but also as to whether they may permissibly say it. The court to which this capable jurist has been nominated is the ultimate arbiter of our most sacred freedoms, guardian of our most cherished liberties.

In fulfilling our constitutional duty to advise and consent, the men and women of this body will cast no more important vote in this session of Congress. For we are voting not so much to confirm Sandra Day O'Connor, but to reaffirm our belief in the very concept of justice, and its preeminence among values in a free and thriving republic. As our first President told his Attorney General, Edmund Randolph, some two centuries ago, "The administration of justice is the firmest pillar of government."

If justice is both the ultimate goal, and indispensable for the survival, of a free republic, we best insure it by the people we select as its custodians. And that is what we are about today--selecting a custodian for our most precious commodity, a trustee for our most valuable resource.

And yet nowhere is there to be found a set of standards for selecting these custodians of justice. Since Chief Justice John Jay took the oath of office in 1789, 101 justices have sat on the Supreme Court. While this record should provide some guidance for us, it is of limited assistance, for they have differed as much in their judicial philosophies as in their passion for the law. Greatness on the Court is neither measurable nor clearly definable. It may derive from a coherent philosophy expressed with unequalled brilliance, as was the case with Justice Holmes, or from a vast currency of experience by the creative mind of a Justice Brandeis. It may stem from an unrelenting effort to restrain judicial activism by a Justice Rehnquist, an unquenchable thirst for liberty, as with Justice Douglas, or the passionate love of free expression of my fellow Alabamian, Hugo Black.

When asked to catalogue the criteria for judicial selection, we normally--and somewhat automatically--list legal ability, character, and judicial temperament. To these qualities, I would respectfully add three perhaps more fundamental: (1) an understanding of the proper role of the judiciary in our constitutional and federal scheme; (2) a deep belief in, and unfaltering support of, an independent judiciary; and (3) an abiding love of justice.

If I might elaborate ever so briefly:

(1) Regarding the proper role of the judiciary: It is the constant struggle of all federal judges, and the ultimate issue they must confront, to preserve the balance between the powers of the federal government and those of the states--while at the same time protecting the constitutional guarantees of all Americans. It is the supreme test of judicial acumen to preserve that balance, to which an understanding of the proper role of the federal judiciary is indispensable.

(2) The framers of the Constitution were painfully aware of encroachments on judicial independence. Indeed, denial to the colonies of the benefits of an independent judiciary was one of the grievances against King George III enumerated in the Declaration of Independence. If the judgment of our highest custodians of justice is at all compromised, if it is based on timidity or hesitation arising from public or political pressure, our legacy of judicial independence will be undermined. Justice compromised is justice aborted.

(3) There must be a passionate love of justice, the great cement of a civilized society, the guardian of all life and liberty. If injustice can divide us--pitting black against white, old against young, have-nots against haves--justice can bring us together as a people, and as a Nation.

Mr. Chairman, against these highest and noblest of standards, I have examined this nominee, and find that she meets them, every one. Judge O'Connor's record of accomplishment, both in public and private life, is exemplary--a seasoned private practitioner; a vigorous prosecutor; skillful legislator; respected jurist; legal scholar; bar, civic and political leader; faithful wife; and devoted mother. The breadth of her service is surpassed only by the excellence with which it was rendered. More importantly, it enables Judge O'Connor to bring unique qualities to the Court: an abiding respect for the law; a deep understanding of our economic and political institutions; a clear view of the proper role of the judiciary; and a rare appreciation of the values of Americans as a people. I dare say these qualities, and her record to date, are a harbinger of judicial greatness.

So I join my colleagues in welcoming Judge O'Connor. Having participated with her, under the leadership of the Chief Justice, in the recent Anglo-American legal exchange on criminal justice, I learned first hand of her exceptional intelligence, her hard working preparation of the issues at hand and her unswerving adherence to integrity. Further, knowing of her deep devotion to the American judicial system, I can safely venture that President Reagan's appointment to the Supreme Court will reflect great credit on his Administration, the Court itself, and, indeed, the Nation at large.

Judge O'Connor, as of this moment, I expect you to be confirmed. But in a way I do not envy you--your job, should you be confirmed, and that of your colleagues on the Court, will be the most difficult in the free world. As you know--or will undoubtedly soon learn, cases reaching the Supreme Court are not the "who ran the red light" variety. The most fundamental questions of liberty, and life itself, will reach you; the most intractable and emotional problems of a complex and diverse society.

I began by saying we are involved in the process of institutional renewal. As Justice Cardoza put it, "The process of justice is never finished, (it) reproduces itself, generation after generation, in ever-changing forms. Today, as in the past, it calls for the bravest and the best."

Mr. Chairman, I believe his words ring just as true today, and in Sandra Day O'Connor I believe we have "the bravest and the best." Judge O'Connor, I wish you well. If I could leave you with but one guiding thought, it would be to carry indelibly etched in your conscience, and follow as religiously as is humanly possible, the admonition of one of our greatest jurists, Learned Hand, who wrote, "If we are to keep our democracy there must be one commandment: Thou shalt not ration justice."

Thank you.