

gratulations, sir, on your nomination to serve as the 16th Chief Justice of the United States.

It is most appropriate at this time that we also take a moment to pay tribute to the retiring Chief Justice, Warren Burger. He has devoted 17 tireless years to the Supreme Court.

Throughout that time, he strived to make an overburdened judicial system more efficient and innovative and has unflinchingly spoken out against the misuse of the law to delay or deny justice.

In a recent television interview he eloquently spoke of the importance of the upcoming 200th anniversary celebration of the U.S. Constitution. Indeed, it will be a time to honor a document which has guided us so well and a time for Americans to pause and ponder the freedoms and liberties which we hold so dear.

Chief Justice Burger will make yet another indelible mark on America's history as he presides over that great celebration and we wish him the very best as he devotes his full time and energy to the bicentennial of America's Constitution.

Mr. Chairman, in my belief we have before us today a man whose distinction in jurisprudence has quickly established him as one of the great jurists of our time. He is recognized as a keen intellect on the Court and one who discharges his duties with alacrity and skill.

It is a tribute to our President to have chosen such a highly qualified man to serve as the first among equals for the U.S. Supreme Court.

I feel sure that his vitae have been reviewed. I will ask that my complete statement be included in the record, Mr. Chairman.

The CHAIRMAN. Without objection, so ordered.

[The prepared statement follows:]

PREPARED STATEMENT OF HON. JEREMIAH DENTON

Mr. Chairman: It is indeed a great honor and a pleasure to welcome Mr. Justice Rehnquist before this committee. I offer my personal congratulations to you, Justice Rehnquist, on your nomination to serve as the sixteenth Chief Justice of the United States.

It is most appropriate at this time that we also take a moment to pay tribute to retiring chief Justice Warren Burger. He has devoted seventeen tireless years to the Supreme Court. Throughout that time he has strived to make an overburdened judicial system more efficient and innovative, and has unflinchingly spoken out against the misuse of the law to delay or deny justice.

In a recent television interview, Chief Justice Burger eloquently spoke of the importance of the upcoming 200th anniversary celebration of the United States Constitution. Indeed it will be a time to honor a document which has guided us so well, and a time for Americans to pause and ponder the freedoms and liberties which we hold so dear. Chief Justice Burger will make yet another indelible mark on America's history as he presides over this great celebration, and we wish him the very best as he devotes his full time and energy to the bicentennial of America's Constitution.

Mr. Chairman, we have before us today a man whose distinction in jurisprudence has quickly established him as one of the great jurists of our time. Justice Rehnquist is recognized as a keen intellect on the Court, and one who discharges his duties with alacrity and skill. It is a tribute to our great President to have chosen such a highly qualified man to serve as the "first among equals" for the United States Supreme Court.

William Rehnquist was graduated first in his class from Stanford Law School in 1952, where he also served as Editor of the Law Review. One of his law school professors called William Rehnquist "the outstanding student of his law school generation."

In 1952 and 1953, William Rehnquist served as a law clerk to Associate Justice Robert H. Jackson. He then moved to Phoenix to pursue private law practice, only to return to Washington in 1969 to serve in the Justice Department's Office of Legal Counsel as Assistant Attorney General. He was nominated to his present position as Associate Justice on the United States Supreme Court by President Nixon in 1971.

Mr. Chairman, when William Rehnquist and Lewis Powell were before this Committee in 1971 as Supreme Court nominees, Senator John L. McClellan (D-Ark.) exhorted his colleagues to pursue the following line of thinking when considering the nominations.

"In considering these pending nominations," said Senator McClellan, "three issues face this committee, and will later face the Senate:

"Do these nominees have personal integrity?"

"Do they possess professional competency?"

"Do they have an abiding fidelity to the Constitution?"

"After personal integrity and professional competency," continued Senator McClellan, "is the nominee's fidelity to the Constitution—its text, its intention and understanding by its framers, and its development through precedent over the history of our Nation."

In the last fifteen years as an Associate Justice on the Supreme Court, Justice Rehnquist has more than adhered to those criteria articulated by Senator McClellan. With regard to his personal integrity, Justice Rehnquist has lived up to his word delivered to this committee in 1971 during his nomination hearing. There he spoke of Justice Frankfurter's famous adage that, "if putting on the robe does not change a man, there is something wrong with the man." Justice Rehnquist went on to say: "When you put on the robe, you are not there to enforce your own notions as to what is desirable public policy. You are there to construe as objectively as you possibly can the Constitution of the United States, the statutes of Congress, and whatever relevant legal materials there may be in the case before you." Mr. Chairman, I would assert that Justice Rehnquist has demonstrated his personal integrity by avoiding the temptation of unnecessarily expanding the law beyond precedent, adhering to a strict reading of the Constitution. In his fifteen years on the bench, Justice Rehnquist has remained faithful to his word.

In terms of professional competence, Justice Rehnquist has demonstrated that he is second to none. One need look no further than a Rehnquist opinion to find a profound, clear and tightly worded text. The Wall Street Journal recently said that: "His opinions are famous for going to the heart of issues. There is rarely any doubt among lower courts about what a Rehnquist opinion means."

Finally, Mr. Chairman, Justice Rehnquist has clearly shown that he has lived up to Senator McClellan's third and final criterion: fidelity to the Constitution and to precedent which has developed through the history of our nation. His fifteen year term on the Court, combined with recent constitutional history, provide a clear example of that fidelity to the Constitution and to precedent.

In the 1976 case of *National League of Cities vs. Usery*, the Court found that the 1974 amendments extending the Fair Labor Standards Act to state and local governments unconstitutionally infringed on state sovereignty protected by the tenth amendment. Justice Rehnquist clearly stated the Court's majority position, firmly adhering to the dictates of the tenth amendment. The opinion stated that, "there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, but not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner." Nine years later, the Court reversed itself on this particular issue in *Garcia vs. San Antonio Metropolitan Transit Authority* by overturning a lower court ruling precluding the Transit Authority from adhering to the overtime pay requirements of the Fair Labor Standards Act. Significantly, the majority placed little emphasis on the tenth amendment protection of state and local sovereignty on which Justice Rehnquist had based his earlier opinion in *National League of Cities*. Justice Rehnquist joined Justice O'Connor in a dissenting opinion which reflected the total consistency of his constitutional interpretation. The dissent stated that, "the States . . . have legitimate interests which the National Government is bound to respect even though its laws are supreme." In his own dissenting opinion, Justice Rehnquist spoke of the principle from the *National League of Cities* case which would, "in time again command the support of a majority of this Court."

Mr. Chairman, it is a special privilege and a keen honor to have before us today a man who wholly adheres to those qualities of personal integrity, professional competence, and fidelity to the Constitution. I urge my colleagues to give him their strong-

est support and approve his nomination as the sixteenth Chief Justice of the United States.

Thank you, Mr. Chairman.

Senator DENTON. Mr. Chairman, when William Rehnquist and Lewis Powell were before this committee in 1971 as Supreme Court nominees, Senator John L. McClellan, a Democrat from Arkansas as we know exhorted his colleagues to pursue the following line of thinking when considering the nominations:

"In considering these pending nominations," said Senator McClellan, "three issues face this committee and will later face the Senate. First, do these nominees have personal integrity? Second, do they possess professional competency? Third, do they have an abiding fidelity to the Constitution?"

Continuing the quotation, he said, "After personal integrity and professional competency, is the nominee's fidelity to the Constitution, its text, its intention and understanding by its Framers and its development through precedent over the history of our Nation."

In the last 15 years as an Associate Justice on the Supreme Court, Justice Rehnquist has more than adhered to those criteria articulated by Senator McClellan. With regard to his integrity, he has lived up to his word, delivered to committee in 1971 during his nomination hearing. There he spoke of Justice Frankfurter's famous adage that, "If putting on the robe does not change a man, there is something wrong with the man."

Justice Rehnquist went on to say, "When you put on the robe, you are not there to enforce your own notions as to what is desirable public policy. You are there to construe as objectively as you possibly can the Constitution of the United States, the statutes of Congress and whatever relevant legal materials there may be in the case before you."

Mr. Chairman, I would assert that Justice Rehnquist has demonstrated his personal integrity by avoiding the temptation of unnecessarily expanding the law beyond precedent, adhering to a strict reading of the Constitution.

In his 15 years on the bench, Justice Rehnquist has remained faithful to his word. My personal respect for Justices was contained in a review of some quotations I had gathered over the years at the Naval Academy and in my youth in a book written by a man named Ed Brandt, and it had a quotation that said something like a naval officer should wear his blue as a justice's robes without a stain. I think Justice Rehnquist has demonstrated that kind of wearing.

In terms of professional competence, Justice Rehnquist has demonstrated that he is second to none. One need look no further than a Rehnquist opinion to find a profound, clear and tightly worded text.

The Wall Street Journal recently said that, "His opinions are famous for going to the heart of issues. There is rarely any doubt among lower courts about what a Rehnquist opinion means."

Finally, Mr. Chairman, Justice Rehnquist has clearly shown that he has lived up to Senator McClellan's third and final criterion, fidelity to the Constitution and to precedent which has developed through the history of our Nation.

His 15-year term on the Court combined with recent constitutional history provide a clear example of that fidelity to the Constitution and to precedent. In the 1976 case of *National League of Cities v. Usery*, the Court found that the 1974 amendments extending the Fair Labor Standards Act to State and local governments unconstitutionally infringed on State sovereignty protected by the 10th amendment.

Justice Rehnquist clearly stated the Court's majority position, firmly adhering to the dictates of the 10th amendment. The opinion stated that, "There are attributes of sovereignty attached to every State government which may not be impaired by Congress, but not because Congress may lack an affirmative grant of legislative authority to reach the matter but because the Constitution prohibits it from exercising the authority in that manner." Nine years later, the Court reversed itself on this principle in *Garcia v. San Antonio Metropolitan Transit Authority*, by overturning a lower court ruling precluding the transit authority from adhering to the overtime pay requirements of the Fair Labor Standards Act.

Significantly, the majority placed little emphasis on the 10th amendment protection of State and local sovereignty on which Justice Rehnquist had based his early opinion in *National League of Cities*. Justice Rehnquist joined Justice O'Connor, and that reminds me: I should have said the way a Justice wears his, or her robe without a stain—Justice Rehnquist joined Justice O'Connor in a dissenting opinion which reflected the total consistency of his constitutional interpretation.

The dissent stated that, "The States have legitimate interests which the national government is bound to respect, even though its laws are supreme."

In his own dissenting opinion, Justice Rehnquist spoke of the principle from the *National League of Cities* case, which would, "in time again command the support of a majority of this Court."

As I said, Mr. Chairman, it is a special privilege and a keen honor to have before us a man who wholly adheres to those qualities identified by Senator McClellan. I urge my colleagues to give him their strongest support and to approve his nomination as the 16th Chief Justice of the United States. I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. The able and distinguished Senator from Pennsylvania, Mr. Specter.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman. Justice Rehnquist, I join in welcoming you and your family to these proceedings.

I have observed your career since 1969, when our first contact occurred, when you were an Assistant Attorney General and I was a district attorney. You have had a very distinguished career.

The Constitution gives this committee, and the Senate, a heavy responsibility in the advice and consent function, and that responsibility is heavier when it is a Supreme Court Justice, and especially the Chief Justice, because the Supreme Court must be the final arbiter of the Constitution.