

Senator BIDEN. Did the Chairman swear all of you?

Mr. ASKIN. Yes.

Senator KENNEDY. Just one question.

It has been reported that Senator Ervin after that circumstance regretted his vote in favor of Justice Rehnquist.

Did you ever hear him make that comment?

Mr. ASKIN. That he did not specifically state to me. I know he was quite shocked, disappointed about Justice Rehnquist's participation. That certainly astounded and shocked him.

Senator BIDEN. Without objection.

Ms. Verveer.

Ms. VERVEER. Thank you, Senator.

#### STATEMENT OF MELANNE VERVEER

My name is Melanne Verveer, and I am testifying on behalf of the 250,000 members of People for the American Way, a nonpartisan citizens' organization dedicated to protecting constitutional liberties.

I ask that my complete statement be included in the record.

Senator BIDEN. Without objection.

Ms. VERVEER. I appreciate this opportunity to express our concern to the committee that the Senate exercise fully its constitutional duty to advise and consent on the nomination of Mr. Justice Rehnquist to our Nation's highest judicial post.

The fact that this nominee is a sitting Justice of the Supreme Court does not diminish the Senate's duty in any sense. The role of the Chief Justice is significant, not only in terms of the responsibilities it carries to administer the Court, but also, and perhaps most importantly, in terms of the highest moral and legal leadership that office embodies for the Nation.

A thorough examination of the nominee and a thorough debate of the issues raised by the nomination are required by the Constitution and demanded by the American public.

We strongly believe that the Senate has a role equal to that of the President in determining who shall sit and preside over the Supreme Court.

People for the American Way commissioned Peter Hart Research Associates to conduct a public opinion survey to determine public attitudes toward the American judicial system and the role the Senate ought to play in the confirmation process. That survey was conducted earlier this month.

While the poll results revealed overwhelming approval of President Reagan, a 73 percent favorable rating, 86 percent of respondents said, it is important for the Senate to play an active role in reviewing nominees for Federal judgeships. And only 18 percent believe that the Senate should go along with the President's choice if the nominee is honest and competent.

By a margin of 78 percent to 16 percent, they endorsed the position that it is important for the Senate to make sure that judges on the Supreme Court represent a balanced point of view, rejecting the position that the Senate should let a President put whomever he wants on the Supreme Court, so long as the person is honest and competent.

When asked to assign priorities among a series of qualities judicial candidates should possess, 74 percent stressed being a fair and openminded person who avoids personal prejudice. Seventy-one percent stressed a spotless record of honesty and personal integrity. And 63 percent placed a very high priority on having a strong commitment to insuring that women and minorities have equal rights under the law.

This sampling of the American electorate in 1986 validates the 200-year-old tradition of the Senate in discharging its responsibility for an independent judgment as mandated by the Constitution.

Throughout its history, the Senate has played the active, independent role envisioned by the framers. The confirmation process has never been limited to questions of mere competence and ethical behavior, despite efforts by some to impose those kinds of limitations.

The social, political, and constitutional views of a nominee have a place in this process. They are the very questions considered by the Chief Executive in recommending a nominee.

Perhaps one of the best descriptions of the appropriateness of careful scrutiny was made by Senator Thurmond during the 1968 debate on the elevation of then-sitting justice—of the then-sitting Justice to be a Chief Justice. At that time, Senator Thurmond said: "It is my contention that the power of the Senate to advise and consent to this appointment should be exercised fully. To contend that we must merely satisfy ourselves that he is a good lawyer and a man of good character is to hold to a very narrow view of the role of the Senate, a view which neither the Constitution itself nor history and precedent prescribe. It further serves the end of removing the Supreme Court further away from the democratic process and our system of checks and balances. For these reasons, I believe a most thorough consideration of this appointment is clearly and completely justified."

The Senate must be able to assure the American people that Justice Rehnquist is committed to equal justice under the law, and committed to protecting the cherished constitutional liberties guaranteed by the Bill of Rights.

For the Senate to fail to do so would be a dishonor to the Constitution and a disservice to the Nation.

Senator BIDEN. Thank you very much.

Professor?

[Statement follows:]