

was pretty good back then. So all of a sudden, natural looks like it's just a matter of how you apply natural law and what your framework is, from my perspective. But at any rate, you all thought that was pretty good back then to take on Bork's positivist view that there was no such thing as unenumerated rights—"you all" I use in an editorial sense; not any one of you in particular.

With that, let me yield to my colleague from Wyoming.

Senator SIMPSON. Mr. Chairman, I do indeed remember that, but I can understand your frustration because it was a different reception to those remarks.

But just quickly, we want to get on, and I have not delayed the issue; I've taken just maybe 20 minutes all day, but I'll take these 5.

It really is fascinating to me to hear this continual reference to the word "balance"—balance, balance, balance. It is my opinion that no nominee could ever pass your test of George Bush, and I wouldn't be too sure about the views of Clarence Thomas and George Bush and where they'll end up when it's all up on the scorecard. I wouldn't go into that one at all.

But I don't think any nominee could be both conservative and the best person in your view, period. That's the way it is, and we'd just as well maybe start from there. But if you really do believe in balance—and you said you did—what about the balance in the U.S. House of Representatives where, under the remarkable preponderance of Democrats, nearly all of my life there has been no balance whatsoever? How about a little balance there?

Does anyone—I'm sure that's an absurd idea, but I just thought I'd throw it in. We have an abused minority over there called Republicans. Don't you think it would be good to unleash them and allow them to have a little staff and do the other things that other people get to do in society, and that is produce papers and writings, and it's called "balance".

What do you think of that absurd and totally nutty idea?

Mr. RAUH. Well, it's only nutty because of the fact that one is an appointed body and the other is an elected body. The appointed body, it is easy to have balance. The elected body, it is much harder to have balance.

Senator SIMPSON. Well, Joe, I would say—and I know you have a bit of disregard, I would say, for Presidents Reagan and Bush—they went out and told the American people when they ran, as they campaigned for President, that if they were nominated and elected that they would nominate judicial candidates who shared their views. That's exactly what they said when they were out on the stump. They were elected, they made the appointments, and they were reelected based sometimes on those appointments. So that's the way that is, too.

Mr. CHAMBERS. But the Senate didn't run on that same platform, and the Senate has a constitutional responsibility as well.

Senator SIMPSON. Of course.

Mr. CHAMBERS. So when the President makes his nomination, one hopes that the Senate exercises its responsibility.

Senator SIMPSON. Well, I think we have. I have been here under Presidents of the Democratic faith and the Republican faith, and I don't think I ever got tangled up in any judge of Jimmy Carter on