

The CHAIRMAN. Justice Rehnquist, this is your hearing, but you haven't had a chance to say anything yet. We now ask you to come around.

If you will stand and raise your right hand and be sworn.

[Justice Rehnquist stands and raises his right hand.]

The CHAIRMAN. Will the evidence you give at this hearing be the truth, the whole truth, and nothing but the truth, so help you god?

Justice REHNQUIST. It will.

The CHAIRMAN. Have a seat. We won't ask any questions this afternoon, but first would you like to introduce your family who is here?

TESTIMONY OF HON. WILLIAM H. REHNQUIST, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, TO BE CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Justice REHNQUIST. Yes, I would very much, Mr. Chairman. My wife of 33 years, Nan. My daughter, Janet. My son-in-law, Joe Lynch.

The CHAIRMAN. Thank you very much. Do you have any opening statement that you would care to make?

Justice REHNQUIST. Yes, I do, Mr. Chairman. Mr. Chairman, members of the Senate Judiciary Committee, it is a great honor to have an opportunity to appear before this committee today. I am deeply grateful to the President for the confidence he manifested in me when he nominated me to be Chief Justice of the United States, and I welcome the opportunity these hearings afford the committee and the Senate to discharge their constitutional duty in the appointment process.

I want to thank Senator Dole, Senator DeConcini, Senator Warner, and Senator Tribble for spending the time and effort necessary to introduce me to the Committee.

I am at the committee's disposal, Mr. Chairman.

The CHAIRMAN. Are there any other remarks you would like to make at this time?

Justice REHNQUIST. No, Mr. Chairman. I understand the questioning is reserved for tomorrow.

The CHAIRMAN. That's correct; we will refrain from questioning you this afternoon. And, unless somebody has something else to say, we will now stand in recess.

Senator BIDEN. Mr. Chairman, I have no questions, but—

Senator METZENBAUM. I don't want the nominee for Chief Justice to overlook the fact that Senator Goldwater put a statement in the record.

You want to thank him, too, don't you?

Justice REHNQUIST. Thank you, Senator Metzenbaum. Let me amend my statement to thank Senator Goldwater.

Senator BIDEN. Senator Metzenbaum would make a heck of a clerk, wouldn't he? [Laughter.]

Mr. Chairman, I have no questions for the Chief Justice, but I do think there are two things that we should settle unrelated to the Chief Justice's presence, raised by two of my colleagues, and one item raised by me, before we begin tomorrow morning so we can

begin tomorrow with a clean slate right out of the box, if I may, if it's appropriate. I'd like to raise those with you now.

As far as I'm concerned, the Chief Justice can be excused—I have no questions for him.

But I do have a question for you, Mr. Chairman, and my colleagues have one also.

The CHAIRMAN. Well, I'm not on trial, but I'll try to answer it.

Senator BIDEN. No, no, no, it's no trial. I really think, in light of the—and I'd like to publicly thank the Chief Justice nominee for his indulgence today, and specifically for it must be notwithstanding whatever degree of confidence a nominee has in his or her ability, it's not an easy thing to go through, as the rodeo king from Wyoming has pointed out earlier today. [Laughter.]

But I hope he understands—I know he does—why the hearing was delayed, and I want to publicly thank the chairman—Ambassador and Governor and statesman extraordinaire Averell Harriman's funeral was today in New York, and many of us wished to attend.

So I appreciate the accommodation.

And in order to be able to get things off to a running start tomorrow so we can conclude this hearing as expeditiously as is reasonable, I'd like to ask a few procedural questions, Mr. Chairman. This is not a trial, it's just a matter of working it out so we don't wrangle about it tomorrow if we can settle it tonight.

First of all—

Justice REHNQUIST. Is it my understanding that I may be excused, Mr. Chairman?

Senator BIDEN. From my standpoint, yes.

The CHAIRMAN. You are now excused, if you wish; he just wants to ask me a question. We are going to meet at 10 o'clock—stand in recess until 10 tomorrow—and you are now excused.

Justice REHNQUIST. Thank you, Mr. Chairman, and members of the committee.

Senator METZENBAUM. We don't stand in recess yet.

Senator BIDEN. No, we don't. Mr. Chairman—I'd make a heck of a clerk to the Chairman—Mr. Chairman, there are two matters that we have to resolve, if you would, as you say, in the open, and several we have to resolve when we move off the dais here.

But the first is I would like to respectfully suggest that in order to have some continuity to the hearing tomorrow in a nomination as significant as the Chief Justice's, that rather than limiting our questions to 10 or 15 minutes, each Senator be allowed in the opening round to have a half hour of questioning with the Chief Justice, so that there is continuity, so that we know what we are asking and have an opportunity to follow up on it so it doesn't come off like a White House press conference—I don't mean President—any White House press conference.

So I would like to ask you whether the chairman would be willing to extend the questioning period for each Senator to one-half hour so we can plan our time.

The CHAIRMAN. Ordinarily, we allow 10 minutes to each Senator. We have 18 Senators, and that takes a long time to get around. I had in mind, tomorrow, to allow 15 minutes to the Senator. In order to compromise this situation, then, we will double the 10-

minute time and allow 20 minutes to each Senator. I think that would be fair.

Senator BIDEN. I concur with that, Mr. Chairman, and, as usual, you are always accomodating. Two of my colleagues have raised with me a question that they could better articulate than I, and I happen to agree with them on the point, but I would like to yield to Senator Metzbaum, at this moment, if I may.

Senator METZENBAUM. Mr. Chairman, at the meeting we had in your office, I had indicated to you that, on behalf of Senator Simon and myself, we had wanted the Arizona and California witnesses to be present at the hearing. Duke indicated at that time, that the FBI was completing its investigation. It is now my understanding the investigation has been completed.

I have not seen that, but I understand there is a single copy of that report in Duke's office. Regardless of what the FBI has concluded, I think we are all good enough lawyers to know that the best evidence comes from the witnesses themselves, and that the right to examine the witnesses, and cross examine them, is entirely appropriate. Therefore, on behalf of Senator Simon and myself—Senator Biden joins us, and I think other Members do as well—I would like to be certain of that, so there will be no delay in these proceedings, that the chairman instruct the staff to arrange for the 12 witnesses, or whatever the exact number is, to be present at such time as the chairman designates.

The CHAIRMAN. I had not had a chance to review it. The report just came in at 3:30 this afternoon, but I will do it by tomorrow's meeting, and at that time I will be glad to respond. We wish to extend every privilege we can.

Senator METZENBAUM. Mr. Chairman, you have been very cooperative, and I do not wish to be in a position of confrontation with you, but I want to point out, that you have made it clear that if you can you would like to conclude the hearing by Friday.

I do not have any desire to delay the time of the hearings, but I want to say that these are people who are out in the countryside. They are not waiting for fall. They are not ready to drop everything they are doing. They have to make arrangements with their own families in order to travel across the country. You lose three hours in crossing the country.

And I would very strongly urge you, so that we not get into a wrangle about whether we have a hearing next week, or what we do—I would very strongly urge you, Mr. Chairman, that regardless of the FBI's report, that you instruct the staff to go to work tonight, seeing to it that arrangements are made for those witnesses to come at any time that the chairman feels is an appropriate time.

The CHAIRMAN. Well, the staff and I will review the FBI reports tonight, and I am quite sure the matter can be handled satisfactorily.

Senator BIDEN. Mr. Chairman, if I can add—

The CHAIRMAN. I would not want to make any final statement until I review the report.

Senator BIDEN. Well, Mr. Chairman, during your deliberation, let me point out the following: My staff, Mr. Govan, and other staff members in the minority, have in fact spoken to—over the telephone—we know none of these witnesses—have spoken to each of

them on the telephone, I believe each and every one. And I really think that, notwithstanding what the FBI report says, we all acknowledge we do not know what it says.

Notwithstanding what it says, that the committee should not be bound, one way or another, by the FBI interpretation of a witness' legitimacy or illegitimacy. That is the business of the committee.

And I would, based on the assertion of two of the investigators on this side, and I suspect maybe Mr. Short has also spoken to some, I strongly urge that the chairman move through this, as he will, expeditiously, by just suggesting that these witnesses, 99 percent of whom are new to this process, they were not—prior to the last hearing on Justice Rehnquist—that they be called, and we can judge their credibility here, notwithstanding the FBI report.

Senator SIMON. Mr. Chairman.

The CHAIRMAN. Well, that is an additional twelve witnesses. That is a good many more witnesses. Now I understand that one of those witnesses refused to be interviewed by the FBI.

Senator BIDEN. Well, I think it is appropriate, if he refuses to come, then—if they refuse to come, do not—

The CHAIRMAN. I do not mean refused to come. He just refused to be interviewed, and if he refused to be interviewed I would oppose his testifying until he does agree to an interview.

Senator BIDEN. Well—

The CHAIRMAN. The Democrats requested these interviews by the FBI.

Senator BIDEN. Well, I do not want to argue about that. Let's agree on 11 out of 12, then, and we can save the 12th for another time, to discuss.

Senator METZENBAUM. And it may be that he—

The CHAIRMAN. Well, it may be there is a lot of duplication. I am not too sure we will need that many. Maybe we can. I will try to work it out. I will give you an answer tomorrow.

Senator METZENBAUM. Mr. Chairman, I think the Senator from Illinois wishes to be heard.

Senator SIMON. Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Illinois.

Senator SIMON. Yes. If I could just join in supporting the request of my colleagues. It does seem to me, because of the importance of this, that no question should go unanswered. If there is a possibility of something out there, we ought to know about it. I would urge the chairman to very seriously consider this request.

And frankly, I am among those who is not sure how I am going to vote yet on this nomination.

The CHAIRMAN. I am sure we could use some of those witnesses. I just wonder, if there is duplication, if we need to have 12, or even 11, and that is the reason I would like to look at the report there, and we can get together on it in a satisfactory way, I am quite sure.

Senator SIMON. Well, I would trust the judgment of the chairman, but I would urge him to seriously consider this request.

The CHAIRMAN. I understand there are about 50 names in the report there, and so I think I would have to take a look at it, but we will give you an answer in the morning.

Senator METZENBAUM. Well, Mr. Chairman, we want to work with you but we do not want to wait for the very last minute, and I think getting one or two would not be adequate. I think it is a question of bringing—we are not now talking as the committee's—

The CHAIRMAN. Well, could you agree on six, for instance, if they—in other words, in those, is there not a lot of duplication? If some of them know the facts, could they not just—

Senator BIDEN. Well, this is a matter of credibility, Mr. Chairman, and obviously, numbers relate to credibility.

Senator SIMPSON. Well, Mr. Chairman—

Senator BIDEN. If I can just finish. Maybe the way to resolve this is to let us set—let the chairman set a time when the witnesses will appear, if they are called. So, all of them are on notice, that if we conclude they should be called, they would know when they would come, so they can make their plans to come now, if we conclude to have 1, or 6, or 12, or whatever.

If the chairman would set a time now, then in fact there is no misunderstanding about when that would occur, and those witnesses, all of whom are cross country, I am told, could make tentative plans to be here, unless the committee chooses not to have them.

The CHAIRMAN. Well, those that will come, we could have them Thursday, say, Thursday afternoon, if that would be agreeable.

Senator BIDEN. Why not make it Friday to give them an opportunity, if we are going to—

Senator DECONCINI. Mr. Chairman, some of those witnesses are—

The CHAIRMAN. How is that?

Senator DECONCINI. Some of those witnesses are from the State of Arizona, and I have had some contact with them, and some of them are on retirement and cannot afford to come at their own expense. Others are working, practicing in their profession and jobs, and need some time. I would just like to point out to the committee that—

The CHAIRMAN. Well, I was hoping to finish here on Friday afternoon, but—

Senator DECONCINI [continuing]. We have 12 or 15 witnesses here, and they need some notice. Well, why don't we make them the last—

The CHAIRMAN. I mean Thursday afternoon.

Senator BIDEN. I do not think that is realistic, Mr. Chairman.

The CHAIRMAN. Would you want to take them Thursday afternoon?

Senator METZENBAUM. I think Senator DeConcini is making the point that that would probably be quite an imposition on them to be able to get here at that point. Perhaps we ought to take—

Senator BIDEN. Want to make them Friday morning and—

The CHAIRMAN. Senator Simpson.

Senator SIMPSON. Well, Mr. Chairman, I do not know how long this exercise is going to go. The chairman has been very fair; he is going to be fair. He has not read the report. He is going to read the report and then he will deal openly with the members who are opposed to the Chief Justice nominee, as he has always done.

I see no need to, just for the exercise, you know, of the evening, to do that. He will be fair with us. These are witnesses who were all, I think, or many of them, examined in 1971, when we put the Chief Justice nominee through the hoops when he went to the Supreme Court, and here we go again. I would not want anyone to be disabused of this "mother lode" that we are digging, but that was done in 1971.

Senator BIDEN. Will the Senator yield?

Senator SIMPSON. Yes; I certainly will.

Senator BIDEN. I want to make something clear. The Senator from Wyoming and I have a tendency on occasion—each of us have similarities. We like to engage in humor. The Senator is better at it than I am. We sometimes have rhetorical flights of fancy, both of us. We have each counseled one another on that as friends.

I want to make it clear: This Senator from Delaware has not made up his mind. This is not, No. 1, a decision made by those who have concluded they are going to vote against the Chief Justice nominee. Second, the second point I would like to make, is that almost all of these witnesses are people who never were known prior to the last hearing, and third—

The CHAIRMAN. I think we can solve it without so much talk.

Senator BIDEN. All right.

Senator DECONCINI. Mr. Chairman.

The CHAIRMAN. We will finish all witnesses Wednesday and Thursday, except Senator DeConcini says we need more time—

Senator DECONCINI. Perhaps, Mr. Chairman. I do not know.

The CHAIRMAN. And we will take them Friday and get through by 1 o'clock Friday. Is that fair enough?

Senator DECONCINI. Mr. Chairman. Would the chairman yield? I thank him for that. I just want to point out to Senator Simpson that nobody is accusing the chairman here of being unfair. I agree with—

The CHAIRMAN. I am aware of that.

Senator DECONCINI [continuing]. Senator Simpson. He is fair, he has been fair, and I think will be. I just wanted to go on record here that I do not think anybody is playing any games or digging—

The CHAIRMAN. We will finish all witnesses, if we have to run late tomorrow night, and late the next night. We are going to finish up everything except these witnesses you are talking about, and we will not go longer than 1 o'clock Friday on them. Is that agreeable?

Senator BIDEN. Well, no, it is not agreeable, we will not go longer than 1. I do not know, Mr. Chairman. The answer is none of—

The CHAIRMAN. Well, we will start sooner. I can start at 8 o'clock in the morning if—

Senator BIDEN. I think that is fine. None of us want to hang around here—

The CHAIRMAN. Well, I am going to finish at 1 o'clock on Friday. Now, if you want to start at 7 or 8, I would be ready to do it.

Senator BIDEN. Fine.

Senator METZENBAUM. Mr. Chairman, let me just—

The CHAIRMAN. Senator Metzenbaum.

Senator METZENBAUM. Just 1 second. There is not any member on this committee that I know of that wants to unduly prolong the hearing. I attest to that myself, and I do not know anybody else who has any inclination along that line.

The chairman has worked very well with all of us. The ranking member has indicated he does not know how he is going to vote and I certainly have not indicated how I am going to vote, and I am not sure. This is the most important responsibility this committee has had this session. And so I would urge the chairman not to set arbitrary hours of 1 o'clock or 2 o'clock or 7 o'clock. We will work with you. Let's work cooperatively. Let's not work against deadlines.

The CHAIRMAN. Senator, we have had a hearing now today. We have put it off the floor to accommodate you gentlemen.

Senator METZENBAUM. You have been wonderful.

The CHAIRMAN. And then tomorrow we will have it—

Senator METZENBAUM. You will be great tomorrow.

The CHAIRMAN. And we are going to start at 10 and go late tomorrow night. And the next day we will start it and go late. And that will finish it, all except these witnesses from Arizona.

Now, out of respect for Senator DeConcini, I thought that would be time for them to get here.

Senator METZENBAUM. We will work with you, Mr. Chairman, but let's not try to get into a battle with 1 o'clock, or something.

The CHAIRMAN. Well, I have got to finish here. I have got to finish—

Senator BIDEN. Mr. Chairman, just as—

The CHAIRMAN. I planned to finish here Thursday night, but, out of respect for you with these witnesses from Arizona, we will go as late as necessary, till 1 o'clock on Friday, if it is necessary. I hope we will not have to go that line. We are now in recess until 10 a.m. tomorrow.

[Whereupon, at 7:45 p.m., the committee was recessed, to reconvene at 10 o'clock a.m., July 30, 1986.]

NOMINATION OF JUSTICE WILLIAM HUBBS REHNQUIST

WEDNESDAY, JULY 30, 1986

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Biden, Mathias, Metzenbaum, Heflin, Hatch, Grassley, Simon, McConnell, Broyhill, Kennedy, Laxalt, DeConcini, Specter, Leahy, and Simpson.

Staff present: Dennis Shedd, chief counsel and staff director; Duke Short, chief investigator; Frank Klonoski, investigator; Jack Mitchell, investigator; Reginald Govan, minority investigator; Mark Gitenstein, minority chief counsel; Cindy Lebow, minority staff director; and Melinda Koutsoumpas, chief clerk.

The CHAIRMAN. The committee will come to order.

Our first witness today is Mr. Gene W. Lafitte, and Mr. John D. Lane, of the American Bar Association Standing Committee on the Judiciary. If you gentlemen would come around, please, hold up your hands and be sworn. Let us get quiet.

Senator BIDEN. Mr. Chairman, aren't we starting with Justice Rehnquist?

The CHAIRMAN. The ABA is here. I want to take them.

Will the evidence you give in this hearing be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. LAFITTE. It will be.

Mr. LANE. It will be.

Senator METZENBAUM. Mr. Chairman, may I inquire of the procedure? I thought we were going to have an opportunity to inquire of Justice Rehnquist at this point.

The CHAIRMAN. You sure will; the rest of the day, if you want to. But the ABA people are here, and I am going to take them so we can release them.

Senator METZENBAUM. There are a lot of other people who are here as witnesses.

The CHAIRMAN. Well, you cannot have but one chairman, and that is what I have ruled. [Laughter.]

Mr. Lafitte, would you please proceed?

TESTIMONY OF GENE W. LAFITTE AND JOHN D. LANE, STANDING COMMITTEE ON FEDERAL JUDICIARY, AMERICAN BAR ASSOCIATION

Mr. LAFITTE. Thank you, Mr. Chairman, members of the committee.

My name is Gene Lafitte. I practice law in New Orleans, LA. I am a member as the Fifth Circuit Representative of the American Bar Association's Standing Committee on Federal Judiciary. With me today is John D. Lane, of Washington, DC, another member of our committee. And Mr. Chairman, Mr. Lane and I are pinch-hitters for our chairman, Robert B. Fiske, Jr., the chairman of our committee, who is involved in some litigation in New York City and regrettably was unable to be with us this morning.

The CHAIRMAN. Speak into the mike so we can hear you better.

Mr. LAFITTE. All right, sir. I was just saying, Mr. Chairman, that Mr. Lane and I are substituting this morning for Robert B. Fiske, Jr., who is chairman of our committee but could not be here because of some litigation in New York.

The CHAIRMAN. Yes.

Mr. LAFITTE. We appear here to present the views of the American Bar Association on the nomination of the honorable William H. Rehnquist, Associate Justice of the Supreme Court of the United States to be Chief Justice of the United States. At the request of the Attorney General, our committee investigated the professional competence, judicial temperament and integrity of Justice Rehnquist. Because the nominee is a sitting Justice of the Supreme Court and is being nominated for the position of Chief Justice, we were particularly interested in his administrative abilities, his leadership qualities and collegiality.

Our work included discussions with more than 300 persons, including first, all Associate Justices of the Supreme Court of the United States, and many Federal and State judges throughout the country; second, a national cross-section of practicing lawyers; third, many law school deans and faculty members, including constitutional law and Supreme Court scholars; fourth, a group of practicing lawyers who studied Justice Rehnquist's other judicial opinions; and finally, Justice Rehnquist himself, who was interviewed by three members of our committee.

Based on our investigation, the committee is unanimously of the opinion that Justice Rehnquist is entitled to the highest evaluation of the committee: well-qualified.

Under our committee guidelines, that evaluation is reserved for those who meet the highest standards of professional competence, judicial temperament, and integrity. It is reserved for those persons who are among the best available for appointment.

I have filed with this committee a letter describing the results of our investigation and shall not repeat its content in detail here, Mr. Chairman. I do request that that letter be included in the record of these proceedings.

The CHAIRMAN. It will be made part of the committee record.

[Document follows:]