

Before calling upon the distinguished Attorney General for his presentation of President Reagan's nominee, each member of the committee will be recognized for brief opening remarks. The Chair now recognizes the ranking minority member, Senator Joseph R. Biden of Delaware, after which the other members of the committee will be recognized.

Senator Biden?

OPENING STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.

Senator BIDEN. Thank you, Mr. Chairman.

Welcome, Judge O'Connor, Senator Goldwater, Senator DeConcini, Congressman Rudd.

It is a very formidable task, I know, to sit there and react to the varying views of the Senators on this committee. There is no other committee in the U.S. Senate that reflects as widely and as thoroughly the views of the entire Senate. I wish you luck in your forthcoming efforts to answer all the questions that will be put to you.

There is no more important responsibility for the Senators who serve on this committee, in my opinion, Judge, than the one we will exercise today—that is, reviewing the qualifications of a nominee for the U.S. Supreme Court. The Supreme Court has a profound impact on the shape of our Government and the well-being of our people.

Accordingly, I believe it is necessary at the outset of these hearings on your nomination to define the nature and scope of our responsibilities in the confirmation process, at least as I understand them.

First, as a Member of the U.S. Senate, I am not choosing a nominee for the Court. That is the prerogative of the President of the United States, and we Members of the U.S. Senate are simply reviewing the decision that he has made.

Second, our review, I believe, must operate within certain limits. We are attempting to answer some of the following questions: First, does the nominee have the intellectual capacity, competence, and temperament to be a Supreme Court Justice? Second, is the nominee of good moral character and free of conflict of interest that would compromise her ability to faithfully and objectively perform her role as a member of the U.S. Supreme Court? Third, will the nominee faithfully uphold the laws and Constitution of the United States of America?

We are not attempting to determine whether or not the nominee agrees with all of us on each and every pressing social or legal issue of the day. Indeed, if that were the test no one would ever pass by this committee, much less the full Senate.

However, your views on social and legal issues and how these views will offset your interpretation of the Constitution of the United States are important. Indeed, in your case, Judge, I believe it is essential that the committee in these hearings make a thorough effort through intensive questioning on various issues, to better determine your judicial philosophy—not necessarily your precise position on an issue but what your philosophy of the law is.

I say this because if there is one aspect of this nomination that concerns me—and I must acknowledge it does not concern me very

much at this point—it is your lack of extensive constitutional experience. Despite the intensive investigations into your background by the committee, both minority and majority, it is frankly difficult to determine from your record your depth of understanding and your precise views of American jurisprudence, and how you will apply that if you sit as a Supreme Court Justice.

It is my sincere hope that you will be able to demonstrate to us in these hearings that you do possess this competence, and I believe that in every other respect you are on the record an impressive nominee who is highly qualified to take a place on the Supreme Court of the United States.

You may find yourself in the position, Judge, where you have to make a determination of whether or not your response to a question would be in violation of the judicial canons of ethics. They seem, on their face, to preclude statements by nominees in any areas of the law that they might rule on in the future. However, for the purposes of legal scholarship and determinations of fitness for office, it is obviously necessary for nominees to state their views on matters of law and social policy.

The danger a nominee faces in making statements is that at some point in the future, a case that raises a particular issue may be presented for a ruling and the judge would have to disqualify herself based upon having prejudiced the issue in the past by testifying to it before the Senate committee.

However, I believe nominees should be required to answer all questions except for those questions that would necessitate an opinion as it applies to a specific set of facts that is likely to come before the judge for decision. In other words, a nominee can speak in general terms about the law but should not be forced to state opinions on controversies likely to come before her, for example, the constitutionality of a bill now pending before the U.S. Congress.

Therefore, you have a difficult task before you, one on which there is a great deal of dictum, if you will, but not any firm opinions. I wish you well in your effort to tread the path between complying with your view of the judicial canons of ethics and being forthright with this committee.

Last, I would like to say that there has been a good deal of discussion and there will be much more discussion about your being the first woman nominee to the Supreme Court. I think probably everyone in this body feels that it is high time and it is long overdue.

They often refer to the Senate as an exclusive club but there is no more exclusive club in the world than the one that you are attempting to join. There have been only 102 Supreme Court Justices during the history of this country, and I suspect that you will be a very worthy addition to that, making it number 103.

I welcome you again to the committee, look forward to hearing your answers, and wish you luck.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Mathias of Maryland, the ranking majority member.