

until I hear everyone. And I think he is a fine man who will potentially make a great Justice. I for one think we should have people like you on the bench. I mean "you" in the editorial sense. I do not know you well enough to know whether you should be on the bench, but I think there should be people like you gentlemen. This is the first Court that I am aware of in over 200 years that has no practitioners of any consequence on it, and that is a serious problem, in my view. That is a serious problem.

I want Justice Powells on that bench. I want Hugo Blacks on that bench. I want Earl Warrens on that bench. If I want that, the only way to get that is have Orrin Hatch appoint me President. But, I do not get to choose that.

Senator HATCH. I am thinking about it. [Laughter.]

The CHAIRMAN. But, seriously, I think it is a very important point because we are going to have some conflicts as we go on, we, this committee and the bar. We are probably going to reject the recommendation of the bar with regard to an unqualified recommendation for a district court judge in Maryland because the person had not had trial experience. We happen to think, looking at all the other factors you consider, my guess is we will say that person should be confirmed.

So I do not want people to misunderstand that the differences relate to any fundamental character questions. They relate to what you weigh as the most important factors and having the best guess that we will have a good judge, and to what we relate to it. In this case, I do not think there is much of a disagreement at all, and I am not suggesting Judge Breyer has to have trial experience, because I, quite frankly, think his experience in working in public matters, working in the political fora, gives him the same kinds of exposure one would get in court.

This is not a case against academics. I do not mean that at all. But I would like to see a Court made up of people who have actually, to use the trite phrase, been in the trenches, had to stand before clients and say, well, I do not know whether we are going to win this one, we have a settlement offer, I cannot guarantee you, we could get more, or not get more, I cannot guarantee you would be found guilty or innocent, but here is my best judgment.

They are hard decisions for lawyers to make, hard decisions, and I would like to have a few people on the Supreme Court who have had to make those kinds of hard decisions in addition to the very difficult decisions academics and scholars make as well.

So that is the reason I have raised the question, because we have not had much of a chance to talk about the entirety of the process, and I will refrain from doing that any more now. But I wanted the record to reflect the basis upon which you legitimately look to trial experience for the district court, and ironically, weigh that more. In the minds of the average person, they would say, well, gee, why would a person for the lowest court have to have that experience. Well, there is a good reason why, and you have stated it.

Mr. Greco, you look like you want to say something.

Mr. GRECO. Senator, just for the record, in the case of Chief Judge Breyer, I found during my interviews of the outstanding members of the trial bar in the first circuit that Judge Breyer enjoys tremendous respect on the part of the trial bar.

The CHAIRMAN. Absolutely.

Mr. GRECO. And I think this is so because, in addition to what you were saying, which is true—it is important to have a balanced court, especially at the Supreme Court level—what is equally or more important is to have an individual who has the respect of the trial bar and who is respected, among other things, for his fairness and open-mindedness and his concern for resolving disputes involving ordinary people. And Judge Breyer has that respect, and I just wanted to point that out for the record.

The CHAIRMAN. He clearly does, and Judge Breyer has one of those unique abilities to seem to be able to master the subject matter before him that impacts upon the people who are before him. He not only has the sympathy of the trial bar; I have no doubt that he understands the trial practice as well as anyone could who has not had a trial practice.

So I do not have any doubt about that ability. I just thought it was important that it be in the record, because people, my colleagues—this is basically a “get out of jail free” card for me a little bit, Mr. Watkins—because my colleagues constantly say to me, Joe, why do you listen to the ABA when they review this guy that the President sent up or this woman the President sent up in my district, who has practiced law for 21 years and is a fine person and give him or her a partially unqualified, you know, a mixed rating. And I say, well, why did they get the rating? They say, well, look at it. The rating says because they have not had a trial practice. So this discussion here is in part to explain that process as well.

I thank you for your answer. And, again, I do not have any doubt about Judge Breyer’s ability to handle anything that comes before the Supreme Court, but I now yield to a trial lawyer, at least a former trial lawyer, Senator Hatch.

Senator HATCH. Mr. Watkins and Mr. Greco, I just want to personally thank you for the efforts that you have put forth here. You have done a very good job. It has been thorough. It has been professional. It is the type of a job we would like to see all ABA investigations conduct. So I want to compliment both of you, and I agree with your conclusions.

Mr. WATKINS. Thank you, Senator.

Mr. GRECO. Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Metzenbaum.

Senator METZENBAUM. Well, Mr. Chairman, I appreciate the fact that you got into this matter of the Bar Association saying that a lower court judge up for approval has to have trial experience. As a matter of fact, you go much further than that. You go to the point of saying that a district court judge has to have practiced within the last 10 years in the trial court. And I must say that that is—you are making a face, Mr. Watkins, but I can tell you that in connection with a nomination that I have made, that is exactly what has been stated; that is, he has not been in the district court or in a trial court in the last 10 years.

I do not have any quarrel about Judge Breyer’s nomination and confirmation as far as his not having been in the lower court trying cases. I have more difficulty with the Bar Association somehow concluding that you do not need that experience if you are on the