STATEMENT OF SENATOR ORRIN G. HATCH

NOMINATION HEARING FOR WILLIAM H. REHNQUIST

JULY 29, 1986

THANK YOU, MR. CHAIRMAN. ON DECEMBER 10, 1971, MR. WILLIAM HUBBS REHNQUIST WAS CONFIRMED AS THE 100TH JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, THE MOST POWERFUL JUDICIAL BODY IN THE WORLD. THIS WAS A VERY SIGNIFICANT OCCASION.

IT WOULD BE DIFFICULT INDEED TO MENTION AN ASPECT OF AMERICAN LIFE THAT HAS NOT BEEN SHAPED BY THE NINE LEGAL SCULPTORS OF THE SUPREME COURT. JUST SINCE 1971, A PRESIDENT HAS RESIGNED, THE WORLD'S LARGEST TELECOMMUNICATIONS COMPANY HAS DISINTEGRATED, RULES FOR CRIMINAL TRIALS HAVE CHANGED, EVEN A TOWN'S ABILITY TO DISPLAY A CRECHE HAS BEEN ESTABLISHED -- ALL BECAUSE JUSTICE REHNQUIST AND EIGHT OTHER INDIVIDUALS HAVE FOUND ENDURING PRINCIPLES IN A WEATHERED PIECE OF PARCHMENT. IN FACT, WHEREVER THE LAWS OF THIS NATION AND ITS STATES REACH, WE CAN PERCEIVE THE HANDPRINTS OF THE HIGHEST COURT.

AS THE NATION'S THIRD CHIEF JUSTICE DECLARED IN MARBURY V. MADISON, "OURS IS A GOVERNMENT OF LAWS, AND NOT OF MEN." THIS IS THE GENIUS OF THE CONSTITUTION -- THAT AMERICANS DO

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NOT OWE THEIR HIGHEST LEGAL ALLEGIANCE TO ANY PERSON, NO MATTER HOW TRUSTED AND TRUSTWORTHY, BUT TO THE CONCEPT OF LIBERTY EMBODIED IN LAW. CHIEF JUSTICE JOHN MARSHALL, IN THAT SAME PIVOTAL CASE, EMPHASIZED THE VITAL MISSION OF THE JUDICIARY WITHIN THIS INSPIRED CONSTITUTIONAL SCHEME WITH THE WORDS: "IT IS EMPHATICALLY THE PROVINCE AND DUTY OF THE JUDICIAL DEPARTMENT TO SAY WHAT THE LAW IS." IN OTHER WORDS, THE CONFIRMATION OF JUSTICE REHNQUIST WAS ONE OF THE MOST IMPORTANT GOVERNMENTAL ACTIONS OF THAT ERA. HE WAS APPOINTED A "KEEPER OF THE COVENANT," A PROTECTOR OF THE AGREEMENT BETWEEN THE GOVERNMENT AND THE GOVERNED.

JUSTICE REHNQUIST WAS REMARKABLY PREPARED AND QUALIFIED FOR THAT MISSION IN 1971. HE HAD RECEIVED A M.A. FROM HARVARD, SCORED A 99.6 OUT OF 100 ON THE LAW SCHOOL APTITUDE TEST, AND GRADUATED FIRST IN HIS 1952 LAW SCHOOL CLASS. A CLASSMATE, SANDRA DAY, NOW ASSOCIATE JUSTICE O'CONNOR, RECALLS THAT WILLIAM REHNQUIST WAS "HEAD AND SHOULDERS ABOVE ALL THE REST OF US IN TERMS OF SHEER TALENT AND ABILITY." MOREOVER HE WON A COVETED SUPREME COURT CLERKSHIP AND SERVED AS AN ASSISTANT ATTORNEY GENERAL BEFORE ASCENDING TO THE BENCH.

SINCE THAT TIME, JUSTICE REHNQUIST HAS PROVEN A MATCH FOR THE AWESOME TRUST PLACED IN HIM BY THE PRESIDENCY, THE SENATE, AND THE PEOPLE OF THE UNITED STATES. A 1985 NEW YORK TIMES ARTICLE STATES THAT "REHNQUIST STANDS OUT" FROM

AMONGST HIS COLLEAGUES ON THE COURT. ESTEEMED UNIVERSITY OF VIRGINIA LAW PROFESSOR, A. E. "DICK" HOWARD, COMMENTED WELL OVER A YEAR AGO THAT "/JUSTICE REHNQUIST/ HAS A CLAIM TO THE LEADERSHIP ROLE ON THE COURT." PROFESSOR HOWARD ALSO NOTED IN A RECENT ABA JOURNAL THAT "PERHAPS NO JUSTICE AT THE COURT GENERATES MORE GENUINE WARMTH AND REGARD MONG BOTH HIS COLLEAGUES AND OTHERS WHO WORK AT THE COURT." THIS ASSERTION IS CONFIRMED BY JUSTICE WILLIAM BRENNAN WHO, IN RESPONSE TO A PRESS INQUIRY, STATED THAT JUSTICE REHNQUIST WOULD MAKE A "SPLENDID CHIEF JUSTICE."

PRESIDENT REAGAN IS TO BE COMMENDED FOR RECOGNIZING THESE MARVELOUS QUALITIES IN JUSTICE REHNQUIST AND APPOINTING HIM TO BECOME THE 16TH CHIEF JUSTICE OF THE UNITED STATES. PERHAPS NO OTHER INDIVIDUAL TODAY WOULD GRACE MORE THE ERMINE WORN BY CHIEF JUSTICES JOHN MARSHALL, SALMON CHASE, WILLIAM H. TAFT, AND WARREN BURGER THAN JUSTICE WILLIAM H. REHNQUIST.

IF I MAY, MR. CHAIRMAN, I WOULD LIKE TO COMMENT JUST BRIEFLY ON THESE CONFIRMATION PROCEEDINGS. AS WE ALL KNOW, THE CONSTITUTION CONTAINS NO EXPLICIT STANDARD FOR NOMINATION PROCEEDINGS. ARTICLE III DEFINING THE ROLE OF THE JUDICIARY AND ARTICLE VI REQUIRING JUDGES TO TAKE AN OATH TO UPHOLD THE CONSTITUTION SUGGEST A STANDARD APPLICABLE TO THE PROPER ROLE OF THE COURT AND THE ABILITY OF CANDIDATES TO FULFILL THE OBLIGATIONS OF SERVING ON OUR

NATION'S HIGHEST TRIBUNAL. THESE PROVISIONS NOTE THAT A JUDGE'S DUTY IS TO DECIDE CASES AND CONTROVERSIES IN ACCORD WITH THE CONSTITUTION AND LAWS OF THE UNITED STATES. SINCE JUDGES ARE OBLIGATED TO FIND, AND NOT MAKE, THE LAW, THEIR PERSONAL VIEWS ON THE POLITICAL OR SOCIOLOGICAL MERITS OF AN ISSUE HAVE LITTLE RELEVANCE TO INQUIRIES ABOUT JUDICIAL QUALIFICATIONS.

MOREOVER SINCE JUDICIAL CANDIDATES, AND PARTICULARLY SITTING JUDGES, OWE THE NATION A DUTY TO AVOID PREJUDGING ISSUES, IT IS INAPPROPRIATE FOR THEM TO PRESUME TO GUESS IN THE ABSTRACT HOW THEY MIGHT DECIDE A SPECIFIC ISSUE IN ITS FACTUAL CONTEXT. IN SHORT, MR. CHAIRMAN, THE OFFICE HE NOW HOLDS AND THE OFFICE TO WHICH HE MAY ASCEND REQUIRE JUSTICE REHNQUIST TO REFRAIN FROM SPECIFIC ANSWERS TO SOME QUESTIONS. I MENTION THAT TO ASSURE MY COLLEAGUES AND OTHER WITNESSES THAT JUDICIAL DUTY, NOT ANY DESIRE TO EVADE, MAY PROMPT THE JUSTICE TO AVOID RESPONDING TO SOME INAPPROPRIATE INQUIRIES. FRANKLY, IF THIS COMMITTEE OR ANY CITIZEN WANTS TO KNOW HOW JUSTICE REHNQUIST DECIDES QUESTIONS, HIS LEGAL OPINIONS ARE AVAILABLE FOR ALL TO SEE IN 70-ODD VOLUMES OF THE UNITED STATES REPORTS.

ONE FURTHER POINT, MR. CHAIRMAN, WE ARE ALL AWARE THAT MANY QUESTIONS HAVE BEEN RAISED ABOUT THIS NOMINATION WHICH DATE BACK SEVERAL DECADES. NOT ONLY DO MANY OF THESE ALLEGED CONCERNS PREDATE JUSTICE REHNQUIST'S 1971

CONFIRMATION, MANY RELATE TO HIS CLERKSHIP IN 1952. JUST TO PUT THESE EVENTS IN THEIR PROPER PERSPECTIVE, I THINK IT IS IMPORTANT TO NOTE THAT AT THAT TIME THE HOOLA HOOP WAS STILL A DECADE FROM ITS HEYDAY. "BONANZA" AND THE "MOUSEKETEER CLUB" WOULD NOT APPEAR FOR MANY YEARS. IN FACT, TV WAS STILL A LUXURY FOR MOST AMERICAN HOMES. CARMAKERS WERE NOT DESIGNING MINI-VANS, BUT CONVERTIBLES WITH ENORMOUS TAILFINS. FINALLY AND MOST SHOCKING OF ALL, STROM THURMOND WAS STILL A MISGUIDED DEMOCRAT AND HAD NOT YET EMBARKED ON HIS SENATE CAREER. IMAGINE A SENATE WITHOUT STROM THURMOND AND YOU CAN IMAGINE THE RELEVANCE OF THESE ACCOUNTS.

I HOPE YOU WILL PARDON ME FOR LOWERING THE TENOR OF THIS ESTEEMED PROCEEDING FOR A MOMENT. I WOULD, HOWEVER, LIKE TO CONCLUDE ON A HIGHER NOTE. THE IMPORTANCE OF THIS PROCEEDING IS ILLUSTRATED BY THE OBSERVATION OF ALEXIS DE TOCQUEVILLE THAT "SCARCELY ANY POLITICAL QUESTION ARISES IN THE UNITED STATES THAT IS NOT RESOLVED, SOONER OR LATER, INTO A JUDICIAL QUESTION." I WOULD ONLY ADD THAT IN THIS ERA WHEN MANY SUPREME COURT PRONOUNCEMENTS ARE DEBATED IN CONGRESS THAT SCARCELY ANY LEGAL QUESTION ARISES THAT IS NOT SOON A POLITICAL QUESTION. THE LEGAL HISTORY OF THIS NATION, THE DAILY LIVES OF ITS CITIZENS, AND THE FUTURE AGENDA OF BOTH CONGRESS AND THE COURT MAY WELL BE SHAPED BY TODAY'S EVENTS.

THE SUPREME COURT WILL INEVITABLY BE ENSNARLED IN THE GREAT QUESTIONS OF OUR GENERATION. INDEED JUSTICE HOLMES NOTED THAT THE ONLY PEACE FOUND AT THE COURT IS THE UNEASY STILLNESS FOUND AT THE EYE OF A HURRICANE. I AM GRATEFUL THAT PRESIDENT REAGAN HAS CHOSEN AN INDIVIDUAL OF THE QUALITY OF JUSTICE REHNQUIST TO GUIDE THE COURT THROUGH COMING STORMS.