F. Forum Club

I am happy to be in such distinguished company this afternoon. I know that the Forum Club brings together prominent businessmen and professionals who volunteer their time, talent and treasure in the public interest. Aware of your support for a wide variety of charitable and educational projects in New York City and elsewhere, I salute you for your accomplishments in the service of your fellow citizens. I know that one of your major projects has been support for the restoration and maintenance of Ellis Island. As Chairman of my County Historical Committee, I am involved in the planning of a Courthouse exhibit on

Immigration Law. I hope that your interest in Ellis Island and Immigration will lead you to participate in our enterprise.

II. US. Court of Appeals for the Second Circuit.

I bring you greetings from a Court that is 100 years of age but still relatively unknown.

1. Appeal from all federal trial courts in VA, Conn. + N.Y. Others = 11 regions + DC
2. Last word - "sort of clean up"
3. Small system - 699 Dist. 13 App. new techniques need to improve the Court's record discovery; English Rule, alternate dispute resolution; cut back cases; speed.
III. Confirming Supreme Court Justices

The confirmation of a Supreme Court Justice has been much in the news. As a federal judge, I frequently have been asked about the process. I have done so to share some thoughts on the subject with you. There are those who might say that it is senseless for me, having been included on some lists of potential appointees, to discuss the subject at all. I do think, however, that it is important for leaders like ourselves to think about the process by which appointment is made to an institution as important to all of us. Although I shall limit my remarks to this topic, I shall be happy when I have concluded to take up any questions you may have bearing on any matter relating to the federal court system.

(Historical) 1. Constitutional Convention 1787 - 1 group - Senate 2. President - Benjamin Franklin - Scottish system, lawyers choose the best among them to be a judge, so they can get rid of him and share his practice. Compromise: 3. Confer shall nominate it by with the advice and consent of the Senate, appoint Supreme Court Justices. 4. "Advice" means something. 5. Federalist Papers, Hamilton frequently speaks of the cooperation...
of the Senate in the appointment process. Anticipate

4. Good example of cooperation in appointment of pre-eminent nominee Carter. Same applied
by Robert Byrd with support of Truman, Johnson, Con-
servatives, liberals, all sectors. Sen. Durbin of Illinois can
just say pride down. 2 NY Times - 1st of October. on my
Reply Day to offer joint hip to Robert Byrd.

5. Real confrontation rather than co-
operation here. need reason for Senate to not give
a down. No prior consultation. Should be consulted.

6. Hearing supposed to assist Senate decision.

Family respect Frank return 5th. Unhelpful public
display. Kennedy, Senator Thomas. Then nothing.

Book lent to answer fully. He accurately predicted
"storytelling." But "intellectual pot & bad parsing."

7. If going to continue hearing must be
meaningful - answer questions - not spin doctors.

still can't answer for judge who tells how
he would decide a case. Kind - test on.

8. Understanding of history important
prior decisions; current issues confronting the
court. approach to judging philosophy. Issues
would turn to in deciding view of how he
would. Need those who can ask such questions.

Majority & minority counsel. Asking tough leading
questions - m.g. Refuse answer = Vote Against 6

9.
Emp - Age, Leg - experience, no reg. of "representation"  
6. mag. of justice - political part - old fashioned - Schmitt  
10. nominees must be prepared to discuss  
prior writing & speeches & of plain charges in point of view. Senate must not accept any that obviously  
continue that no disc of most simple legal issue of day.  
11. All questions must be more than pro  
forma. My last appearance - its called. Men are judges.  
Advice to Today's Law Graduates. Interpret law, not make  
12. Senate needs in-depth investig. Closed  
hearing before public hearing if sexual, financial or other  
misddeals in fs. Use detailed sworn questionnaire.  
13. Senators should insist on input on refuse  
to consider nominee. Imperial Presidency, etc.  
14. Founders did not anticipte political  

patience & partnership that would follow in selection of  
judges of Sup. Ct. They reasoned selection based on merit.  
Hamilton said that the Senate's role would be "an excellent  
check upon a spirit of favoritism in the President...Conc  
that I would tend greatly to prevent the appointment of  
unfit characters from state prejudice, from family connec- 
tion, from personal attachment, or from a view of popularity.  
14. The Senate has not fulfilled the role fore- 
seen by the Founders. Let me illustrate:  
15. See Dol & me. "Meet the Press." See  
Listen. Hamilton would have been disappointed.
Qualities desired:

1. Demonstrated judicial temperament
2. Professional expertise + competence
3. Personal + professional integrity
4. Appropriate education of background + training
5. Able, agile, lucid mind
6. Ability to communicate clearly, esp. in writing