

1992

Remarks, Guest of Honor and Keynote Speaker, February Dinner Meeting of the Ulster County Bar Association

Roger J. Miner '56

Follow this and additional works at: <http://digitalcommons.nyls.edu/keynotes>

 Part of the [Judges Commons](#)

Recommended Citation

Miner '56, Roger J., "Remarks, Guest of Honor and Keynote Speaker, February Dinner Meeting of the Ulster County Bar Association" (1992). *Endowed/named Lectures and Keynote Addresses*. 4.
<http://digitalcommons.nyls.edu/keynotes/4>

This Article is brought to you for free and open access by the Speeches and Writings at DigitalCommons@NYLS. It has been accepted for inclusion in Endowed/named Lectures and Keynote Addresses by an authorized administrator of DigitalCommons@NYLS.

①

Ulster County Bar Assoc - Hyatt's Restaurant - 4/27/92
I. Ford memories of Ulster Co. 17 yrs ago at Spada
whispered in a certain person's ear re support. 1st
place held Court. Excellent Bar. Outstanding litigators. Spoke
after visit on Dist. Ct. 7 yrs on Circ Ct. High time to red.
Charlie Spada = Clerk. 9 yrs old when compared.

II. First, share some insights into appellate practice in
the 2nd Cir. Ct App 4 Dist App - 10th - 11th. Last word in most.
Few to Sup Ct. "Son of Sam." Interesting, some. Many of 15th
impression. Law making function + review function. In
performing both, necessary to examine records of trial*

III. Second, talk about advice + consent in judicial appts.

②

Take behind headlines. Share some of my experiences.
Imp for lawyers to think about process of appt to fed.
cts, incl S. Ct, + inform fellow citizens. Small corps-
imp work - 649 Dist App (NY) - 139 App in nation

A. Partic. approp. topic in view of forthcoming
confirm hearing of Mike Kavanagh to serve in NDNY-32
courts. First since Ulster, along w/ Col + theme joined in
1978. Before SDNY - John Cashin apptd Pres Eisenhower 1955
Was also Co Judge + Kingston City Treas. if history OK. Dec. 1970.

B. Appt. of federal judges not a matter of great
debate or Constit Conv. 1787. 1 Group = Senate; 1 = President
Benj. Franklin - Scotland = lawyers choose - find best among
them so can get rid of + share protecti. Compromise:

* Last nominee best quality. in Ct. Tell Livingston -
Rhine cliff Bridge. Say for diversity, ideology, politics, regional (3)

C. Pres. shall nominate + by + with the advice
+ consent of the Senate, appoint federal judges, incl
1 Ct judges. Large adv + consent, not just approve
But that is what the Senate now does ^{most} just approves
and the President himself really doesn't nominate

D. In the case of Dist. Judges = Senators. N.B.
Agreement) N.Y. special. Justice Dept., ABA, FBI. In case of Co/Opp
+ 1. Ct - Presidential advisors + staff. This Pres out of
C. Boyden ^(Law) ^{Thornburgh} ^{See} ^{Liber} ^{man} ^{Federalist} ^{Doc.} ^{Concern}
ideologues. I don't think they are federalist or concerned
^(are radical) *
My experience last admin. Campaign Friends. Scouring
short list. ^{Anthony} Kennedy ^{oppt} (Moot Ct) ^(Pres. staff) ^{Open} ^{to} ^{White} ^{House}

E. What about function of Senate after the
nominal nomination by the President?

I think

"Advice" was intended to mean something. In Federalist
Papers, Alexander Hamilton frequently spoke of the co-op.
of the Senate in the appointment process. He anticipated
input from the Senate. ~~that, of course, before political parties.~~

F. Even w/ politics, good example of Co-op in
oppt of Cardozo, pre-em jurist of his day. He was Demo
opptd by Hoover, Repub w/ support of business, labor, Conserv
attnea, liberals, academics, Hoover should list to Senators
Cardozo last Sen Borah said upside down Hoover really
wanted Westener. Already 2 New Yorkers (Stone + Hughes) +
1 Jew (Brandeis) on Court. ^{might cooperate} Last ~~was~~ selection.

G. Now = confrontation rather than co-opera-
tion. Pres. sends name for Senate to vote up or down.
No prior consultation should be consultative process.

H. Hearings supposed to assist Senate decision-making. Fairly recent. 1st for S. Ct. - Harlan Fiske Stone 1925 Coolidge Atty Gen. Pro forma in case of Dist. Ct + Ct/App. I = twice. Sen. Thurmond, SC chair. Important both Senators Sen Tomata. Ques. re article. Interpret law, not made. ^{Sen} from

I. Recently, unhelpful public display in S Ct confirm process. Spectacle of Senate failing to perform its advise + consent function. Also, stonewalling by nominee as with Kennedy, Souter. Learn nothing. Bork lost to answer truthfully. But out of waviness "Intellectual feast." He predicted stonewalling.

J. Hearings must be meaningful if to continue. Ans. questions. No "spin doctors" e.g. Ken Dubenstein.

Maybe meet immed. after nomination. Lincoln said no respect for judge who tells how he would decide a case. But can & should ask about:

(a) Understanding of history; important prior decisions. what issues currently confront the Ct. Approach to judging; philosophy; sources would turn to in deciding; views of stare decisis (Constat & other)

(b) heed those who can ask such questions. Majority + minority counsel. How: Aides in back hearing up questions. If refuse to answer: Vote against. Discuss prior writings + speeches + explain changes in pts. of view. Cannot accept answer that is obviously untrue - e.g. that never discussed most imp. legal issue of day.

* The problem of course, is that intellectual
distinction has no political constituency? (7)

(c) Senate needs full in-depth investig-
nothing is out of bounds. Financial, sexual, any
misdeeds. Bec. not a "job" as latest appointee called J.
Senators should insist on input or refuse to consider
the nominee. Reject Imperial Presidency concept. Now, can't
get rid of political considerations (Note: Schmultz)*

K. Founders did not anticipate political parties &
partisanship that would follow in selection of federal
judges. They foresaw selection based on merit and an
important role for the Senate. Hamilton said that
the advice & consent function would be "an excellent
check upon a spirit of favoritism in the President...
[One that] would tend greatly to prevent the appoint-

ment of unfit characters from state prejudice, from
family connections, from personal attachment, or
from a view of popularity." (8)

L. The Senate has not fulfilled the role
foreseen by the Founders. Let me illustrate: Sen. Dole
& me. "Meet the Press." See Summary.

Alexander Hamilton would have been disappointed

* City Court: Ted Feeney; Michael Bruhn

Supreme Court: Joe Torreda; Vince Bradley

County Court: Frank Voght

Surrogate: Joe Traficante - Dep Ch. Adv. S. - ideas

Family Court: Kdren Peters (to Sup Ct?); Mary Work *

1. Demonstrated judicial temperament
 2. Professional expertise + competence
 3. Personal + professional integrity
 4. Appropriate educational background + training
 5. Able, agile, lucid mind
 6. Ability to communicate clearly, esp. in writing
- 2 Age + experience in legal profession
N.B. Geography, ethnicity.