

Book
12-10-71

Herblock Comments on Kraft's Column on Mr. Rehnquist

I'd like to say a few words about the Rehnquist nomination, and incidentally about Joe Kraft's comments on this subject in yesterday's column.

Kraft writes of the court headed by Chief Justice Warren that "in case after case, it was increasingly hard to discover the inner logic of decision-making. Blacks seemed to be favored because they were blacks . . ." It's too bad these words were not followed by an example of some kind. I'd like to know on what decisions or what inner logic that statement is based.

Kraft brushes aside Rehnquist's earlier assertions about the sinister influence of left-wing clerks and the softness of judges on communism and supposes they represent a genuine right-wing conviction. "But," he says, "Mr. Rehnquist also has a mind of the highest candle-power." And, warming to that candle, Kraft goes on: "His comments in the Judiciary Committee hearings have been unfailingly lucid and discriminating. He has been 'hesitant'—a favorite word—when unsure of the fine details of a problem."

It is here that I would like to make an observation on Mr. Rehnquist's testimony, in which he was "hesitant" to the point of admitting that he could not help the committee on the very kind of questions to which he had felt other nominees to the court should respond.

What disturbed me particularly was a paragraph early in the testimony that apparently went unnoticed — the Rehnquist reply when he was asked about his record against the rights of minorities in connection with public accommodations in Phoenix.

He said: "I think the ordinance really worked very well in Phoenix. It was readily accepted, and I think I have come to realize since it, more than I did at the time, the strong concern that minorities have for the recognition of these rights. I would not feel the same way today about it as I did then."

In those words Mr. Rehnquist displayed a candlepower that was dim but bright enough to illuminate the many things wrong with his record. He might change his views on the rights of a minority—not because they *have* those rights under the Constitution, but because he sees now that they seem to feel *strongly* about those rights.

Under this criterion, the court could perhaps have a good poll-taker ask of minorities: About rights, do you (a) feel strongly about them? (b) Moderately? (c) Not much? or (d) Don't know?

What anyone who understands the American system of justice might explain to Mr. Rehnquist and Mr. Kraft is that a judge is supposed to take into account the rights of everyone—including those who don't even

know their rights, much less feel strongly about them. This is why Kraft in his little swipe at the "Warren Court" didn't seem to understand that the court was not protecting blacks as blacks, but *rights as rights*.

It is hard to think of anything more important for a legal mind to grasp, unless he is, if I may paraphrase the words of Mr. Rehnquist's principal government "client," a loophole lawyer's loophole lawyer.

After having whacked the "Warren Court," Kraft winds up his column with a gratuitous crack at all the members of the present court by asserting that "what the court needs is more brains. Mr. Rehnquist has them—more abundantly perhaps than any present member." Wow!

One thing more. He says: "The court does not now need more liberals, more conservatives, or more middle-of-the-roads. There are enough of these to assure that nothing drastic is going to happen in civil rights or criminal law."

There are enough of what? Liberals? Conservatives? Middle-of-the-roads? And there is no likelihood of drastic change on the court? If so, President Nixon, the U.S. Senate and all of us interested citizens—including Joe Kraft—have been going to a lot of trouble for nothing.

Washington.

HERBLOCK.