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Day One of the Neil Gorsuch hearings was not about Neil Gorsuch

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Those who tuned into C-SPAN today for hot-and-heavy questioning of President Donald Trump's Supreme Court nominee were sorely disappointed. The first day isn't actually about the nominee, but just a chance for senators on the Judiciary Committee to make opening statements. Accordingly, we learned very little about Judge Neil Gorsuch—he made an opening statement too, confirming everything we already knew about him as a humble jurist and western family man—and some about the Democrats' approach to this confirmation process.

Actually, there was nothing new there either. There was no magical coalescence around certain deadly needles found in the haystack of 2,700 Gorsuch opinions. Just the tired old issues we saw the day after the nomination announcement on January 31. First, this was a #StolenSeat, so no Republican nominee will be confirmed until Merrick Garland is returned from exile. This issue was of course litigated at the election, and the voters decided that they'd rather have Trump filling the Scalia vacancy. So it's unclear who this argument is for, other than the arch-blue base.

Second, a handful of carefully cherry-picked cases show results that don't make Gorsuch look sympathetic to the "little guy." The leading contenders for this strategy are the "frozen trucker" case, the "cancer survivor" case, and the "taser-to-the-head" case. Indeed, Senator Mazie Hirono (D-HI) accused Gorsuch of being too "fixated on the plain meaning" of a statute. Well, then.1:36

Oh, and then there's an addendum strategy. When do you think Trump stopped beating his wife? Particularly on display from Senator Richard Blumenthal (D-CT)—who leaked Gorsuch's private comment about being dismayed at attacks on the judiciary—we'll see much more of this as senators try to pin some of the president's controversial pronouncements, tweets, and policies onto the elegant nominee.

Still, the results-oriented foofaraw was really quite astonishing. Ranking Member Dianne Feinstein (D-CA) both botched the definition of originalism and then claimed that this rather

standard legal theory would lead to all sorts of bad things. (It was sort of like Ted Kennedy's "Robert Bork's America" speech, except lacking in imagination.) Sen. Sheldon Whitehouse—who once asked me at a hearing why I thought corporations had more rights than amputee vets—railed against the corporations that have apparently bought all Republican-appointed judges (and Justice Ruth Bader Ginsburg?). And on and on, as if judges were supposed to put a thumb on scale of certain preferred parties—after checking the latest hierarchy of intersectionality of course—rather than doing their best to apply the law to the facts in a neutral manner.

The Republican senators were less memorable—perhaps because I didn't have to take Bacardi shots for "super-precedent," "Garland," "*Citizens United*," and the rest—but generally set a good tone. I alas was at lunch when Senators Ted Cruz (R-TX) and Mike Lee (R-UT), both former Supreme Court clerks, gave their remarks, but Senator Ben Sasse (R-NE) gave a characteristically thorough explication of judges as ideally indistinguishable "black robes." The Twitterverse has "black rober" as the early favorite for the theme of the hearings.

Of course, Tuesday the real fun begins, with each of the 20 senators taking half an hour for questioning Gorsuch. If they need any help on what to ask, here are some good suggestions from George Will, Ramesh Ponnuru, Randy Barnett/Josh Blackman, and yours truly.

But really, unless something really weird happens, this is so much about everything except the nominee. These hearings are unlikely to change a single vote on anything (filibuster or nomination). I'm just hoping they elucidate some important areas of constitutional interpretation and legal process despite (because of?) that dynamic.

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