

as these hearings begin. This is the quintessential example of separation of powers under our constitutional process, as the President nominates, the Senate confirms or rejects, and the successful nominee ascends to the bench. While it may be a bit presumptuous, I believe the Framers, if they were here, would be proud and pleased to see how well their Constitution is being applied.

My red light just went on, and I now yield to my distinguished colleague, Senator Leahy.

**STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR
FROM THE STATE OF VERMONT**

Senator LEAHY. Thank you, Mr. Chairman.

Good afternoon, Judge and Mrs. Alito, and the others.

Following up on what the Chairman was saying, the challenge for Judge Alito in the course of these hearings is to demonstrate that he is going to protect the rights and liberties of all Americans, and in doing that, serve as an effective check on Government overreaching. I have said that the President did not help his cause by withdrawing his earlier nomination of Harriet Miers in the face of criticism from a narrow faction of his own party who were concerned about how she might vote.

Supreme Court nominations should not be conducted through a series of winks and nods designed to reassure a small faction of our population, while leaving the American people in the dark. And no President, I think we would all agree, should be allowed to pack the courts, and especially the Supreme Court, with nominees selected to enshrine Presidential claims of Government power. The checks and balances that should be provided by the courts, Congress and the Constitution are too important to be sacrificed to a narrow partisan agenda.

This hearing is the opportunity for the American people to learn what Samuel Alito thinks about their fundamental constitutional rights and whether he—you, Judge—will protect their liberty, their privacy and their autonomy from Government intrusion.

The Supreme Court belongs to all Americans, not just to the person occupying the White House, and not just to a narrow faction of either political party, because the Supreme Court is our ultimate check and balance. Independence of the Court and its members is crucial to our democracy and our way of life, and the Senate should never be allowed to be a rubber stamp. Neither should the Supreme Court. So I will ask the Judge to demonstrate his independence from the interests of the President nominating him. This is a nomination to a lifetime seat on the Nation's highest Court. It is a seat that has often represented the decisive vote on constitutional issues, so we have to make an informed decision. That means knowing more about Samuel Alito's work in the Government and knowing more about his views.

I will, as the Judge knows, ask about the disturbing application he wrote to become a political appointee in the Meese Justice Department. In that application he professed concern with the fundamental principle of "one person, one vote," a principle of the equality that is the bedrock of our laws. This hearing is the only opportunity that the American people and their representatives have to consider the suitability of the nominee to serve as a final arbiter

on the meaning of the Constitution and its laws. Has he demonstrated commitment to the fundamental rights of all Americans? Would he allow the Government to intrude on Americans' personal privacy and freedoms?

In a time when this administration seems intent on accumulating unchecked power, Judge Alito's views on Executive power are especially important. It is important to know whether he would serve with judicial independence or as a surrogate for the President nominating him. So this public conversation, this hearing over the next few days is extremely important. It is the people's Constitution and the people's right that we are all charged with protecting and preserving. In this hearing we embark on the constitutional process, one that was designed to protect these rights and has served this country so very well for more than two centuries.

I am reminded of a photograph, Mr. Chairman, that hangs in the National Constitution Center in Philadelphia. It shows the first women ever to serve on the Supreme Court of the United States taking the oath of office in 1981. How Justice Sandra Day O'Connor serves is as a model Supreme Court Justice, widely recognized as a jurist with practical values and a sense of the consequences of the legal decisions being made by the Supreme Court. I regret that some on the extreme right have been so critical of Justice O'Connor, and that they adamantly oppose the naming of a successor who shares her judicial philosophy and qualities. Their criticism actually reflects poorly upon them. It does nothing to tarnish the record of the first woman to serve as Associate Justice of the Supreme Court of the United States. She is a Justice whose graciousness and sense of duty fuels her continued service, even agreeing to serve more than 6 months after her retirement date, and I know both you and I commend her for that.

The Court that serves America should reflect America. This nomination was an opportunity, of course, for the President to make a nomination based on diversity. He did not, even though there is no dearth of highly qualified Hispanics and African-Americans, other individuals who could well have served as unifying nominees while adding to diversity. But that, of course, is the President's choice, Judge, not yours. But I look forward to a time when the membership of the Supreme Court is more reflective of the country it serves.

As the Senate begins its consideration of President Bush's nominee, his third to this seat, to Justice O'Connor's seat, we do so mindful of her critical role in the Supreme Court. Her legacy is one of fairness, and when I decide how to vote it is because I want to see that legacy preserved. Justice O'Connor has been a guardian of the protections the Constitution provides the American people. She has come to provide balance and a check on Government intrusion into our personal privacy and freedoms. In the *Hamdi* decision she rejected the Bush administration's claim that they could indefinitely detain a United States citizen. She upheld the fundamental principle of judicial review over the exercise of Government power, and she wrote—and this is one we should all remember—she wrote that even war is not a blank check for the President when it comes to the rights of the Nation's citizens. She held that even this President is not above the law, and of course, no President, Democratic

or Republican, no President is above the law, as neither are you, nor I, nor anyone in this room.

Her judgment has also been critical in protecting our environmental rights. She joined in 5-4 majorities affirming reproductive freedom, and religious freedom, and the Voting Rights Act. I mention each of these cases because they show how important a single Supreme Court Justice is, and it is crucial that we determine what kind of Justice Samuel Alito would be if confirmed. Of course, Judge, my question will be, will you be an independent jurist?

It is as the elected representatives of the American people, all of the people, nearly 300 million people, that we in the Senate are charged with the responsibility to examine whether to entrust their precious rights and liberties to this nominee. The Constitution is their document. It guarantees their rights from the heavy hand of Government intrusion, and individual liberties, to freedom of speech, to religion, to equal treatment, to due process and to privacy. Actually, this hearing, this is their process. The Federal Judiciary is unlike the other branches of Government. Once confirmed, a Federal Judge serves for life, and there is no court above the Supreme Court. The American people deserve a Supreme Court Justice who can demonstrate that he or she will not be beholden to the President, but only to the law.

Last October, the President succumbed to partisan pressure from the extreme right of his party by withdrawing Harriet Miers. By withdrawing her nomination and substituting this one, the President has allowed his choice to be vetoed by an extreme faction within his party before even a hearing or a vote. Frankly, that was an eye-opening experience to me. It gives the impression there are those who do not want an independent Federal Judiciary. They demand judges who will guarantee the results that they want, and that is why the questions will be asked so specifically of you, Judge.

The nomination is being considered against the backdrop of another recent revelation, that the President has, outside the law, been conducting secret and warrantless spying on Americans for more than 4 years. This is a time when the protections of America's liberties are directly at risk, as are the checks and balances that serve to constrain abuses of power for more than 200 years. The Supreme Court is relied upon by all of us to protect our fundamental rights.

I have not decided how I will vote in this nomination, and like the Chairman, I will base my determination on the whole record at the conclusion of these hearings, just as I did in connection with the nomination of John Roberts to be Chief Justice. At the conclusion of those hearings I determined to vote for him.

The stakes for the American people could not be higher. At this critical moment, Senate Democrats serving on this Committee will perform our constitutional advice and consent responsibility with heightened vigilance. I would urge all Senators, Republicans and Democrats and Independents, to join with us in serious consideration. The appointment of the next Supreme Court Justice must be made in the people's interest and in the Nation's interest, not in the interest of any partisan faction.

Mr. Chairman, Thank you very much.

Chairman SPECTER. Thank you very much, Senator Leahy.
Senator Hatch.

**OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S.
SENATOR FROM THE STATE OF UTAH**

Senator HATCH. Thank you, Mr. Chairman.

I welcome you, Judge Alito, your family members, friends and others who are accompanying you.

This hearing is part of an ongoing evaluation of Judge Samuel Alito's nomination to replace Justice Sandra Day O'Connor as Associate Justice of the Supreme Court of the United States. It is remarkable that after a nearly record-long period without a Supreme Court vacancy, we are here considering a second nominee in less than 6 months.

Mr. Chairman, let me first commend you for firmly and fairly handling these hearings. The timetable we are following reflects your efforts to accommodate all sides, and the 70 days since President Bush announced the nomination significantly exceeds the average for other Supreme Court nominees.

The debate over this and other judicial nominations is a debate over the judiciary itself. It is a debate over how much power unelected judges should have in our system of government, how much control judges should have over a written Constitution that belongs to the people. Ending up in the right place in this debate requires starting in the right place. The right place to start is the proper description of what judges are supposed to do, and the rest of the process should reflect this judicial job description.

The process for evaluating Judge Alito's nomination began when President Bush announced it more than 2 months ago. It continued with Judge Alito's meetings with more than two-thirds of the Senators and a vigorous debate in the media among analysts, scholars, and activists. As the Senate completes the evaluation process, we must keep some very important principles in mind and follow a few basic rules.

The first principle is that in this judicial selection process, the Senate and the President have different roles. Under the Constitution, the President, not the Senate, nominates and appoints judges. The Senate has a different role. We must give our advice about whether President Bush should actually appoint Judge Alito by giving or withholding our consent. Abiding by the Constitution's design and our own historical tradition requires that after Judge Alito's nomination reaches the Senate floor, we vigorously debate it and then vote up or down.

The second principle is that in our system of Government the judicial and legislative branches have different roles. As Chief Justice Roberts described it when he was before this Committee last fall, "Judges are not politicians. Judges must decide cases, not champion causes. Judges must settle legal disputes, not pursue agendas. Judges must interpret and apply the law, not make the law." This principle that judges are not politicians lies at the very heart of the judicial job description.

In addition to these two principles, a few basic rules should guide how we complete this confirmation process. First, we must remember that judicial nominees are constrained in what they may dis-