

body, on fact finding—and there was an extensive record made in the case, in the legislation to protect women against violence, the Court simply disregarded it.

And then the issue of States' rights, the Supreme Court of the United States has elevated States' rights, but in a context that it is impossible to figure out what the law is. The Americans With Disabilities Act had a very extensive record, but when the case came up in 2001, Garrett, a woman who had breast cancer, the Supreme Court said that the section of the Act was unconstitutional. Four years later, in *Lane v. Tennessee*, you had a paraplegic crawling up the steps access to a courtroom. The Court said that that was constitutional, again 5–4, on what really turned out to be inexplicable decisions.

You have a very extensive paper trail, and there will obviously be questions on that subject, and we will be concerned about what your views are today contrasted with what your views may have been in the past. Phyllis Schlafly, the president of the Eagles Forum, said that they were smart-alecky comments by a bachelor who did not have a whole lot of experience. So she is putting on an understandable gloss on that subject. But I know that will be a matter of considerable interest.

In one of your earlier memoranda, you came forward with an intriguing thought, one of many in those early memoranda, as your conceptualization power was evident, that Justices ought to be limited to a 15-year term. And with that idea in play, if time permits, it is something I would like to explore, voluntary action on the part of a Justice or perhaps the President could make that a condition.

Between now and the year 2040, or in the intervening years, technology will present many, many novel issues, and there, again, if time permits, I would like to explore that.

I am down to 10 seconds, and I intend to stop precisely on time, and this Committee has a record for maintaining that time. That is it.

[Laughter.]

Judge ROBERTS. Thank you, Mr. Chairman.

Chairman SPECTER. 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. Thank you for the way you have conducted the whole run-up to this hearing.

A few days ago, William Rehnquist passed away. He had 33 years of service on the Supreme Court. Last week, many of us paid our respects for his service at the monumental building across the street in which he devoted himself to protecting the independence of the Federal judiciary. I know, Judge Roberts, that was a particularly difficult time for you because of your close relationship with him. But I think of the facade of that Court with its marble from Vermont, and I think of how much our State served as a refuge for the Chief Justice, especially in the summer months.

Today, the devastation and despair facing millions of our fellow Americans in the Gulf region is a tragic reminder of why we have a Federal Government and why it is critical that our Government

be responsive. We need the Federal Government for our protection and security; to cast a lifeline to those in distress; to mobilize vital resources, beyond the ability of any State or local government, all for the common good.

The full dimensions of the disaster are not yet known. Bodies of loved ones need to be recovered, families need to be reunited, survivors need to be assisted. Long-term health risk and environmental damage have to be assessed.

But if anyone needed a reminder of the need for and role of the Government, the last few days have provided it. If anyone needed a reminder of the growing poverty and despair among too many Americans, we now have it. And if anyone needed a reminder of the racial divide that remains in our Nation, no one can now doubt that we still have miles to go.

I believe that the American people still want and expect and demand a Government that will help ensure justice and equal opportunity for all, and especially for those who, through no fault of their own, were born into poverty. The American people deserve a Government as good as they are with a heart as big as theirs are. We are all Americans, and all Americans should have an opportunity to earn a fair share of the bounty and blessings that America has to offer.

And, Judge, we have been given a great Constitution. As you know as well as anybody here, it begins, "We the People of the United States, in Order to form a more perfect Union, establish Justice, ensure domestic Tranquility, provide for the common defence, promote the general Welfare and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." It is a framework for our Government, the foundation of our rights and liberties.

In fact, Vermont joined the union the same year the Bill of Rights was ratified. Those of us from the Green Mountain State, the Nation's 14th State, have historically been very protective of our fundamental rights and liberties. Many feel that we did not join the union until we were sure the Bill of Rights was going to go through. We understand the importance of the Constitution and the Bill of Rights.

In these hearings we are going to be discussing constitutional issues that may seem legalistic, but they are vital issues. They affect every one of us every day. When we discuss the Constitution's Commerce Clause or Spending Power, for example, we are asking about Congressional authority to pass laws to ensure clean air and water and children's and seniors' health, safe food and drugs, safe work places, even wetland protection and levees that should protect our communities from natural disasters.

Our constitutional values remain constant. We want to realize the American promise of fairness and equality and justice. The Constitution says "We the People." When the Constitution was written, though, "We the People" did not include Native Americans, or African-American slaves, but only free people. It took more than four score years and a civil war before the Constitution was amended to include all citizens, all persons born and naturalized in the United States. Even then half of the people did not have one of democracy's defining rights: women were not yet guaranteed the right

to vote. That did not happen until 1920, and decades later still it took an historic constitutional ruling, a unanimous ruling by the United States Supreme Court in the case of *Brown v. Board of Education*, and then landmark legislation by the Federal Government for America to begin to provide a measure of equality to many who were held back for so long because, and only because, of the color of their skin.

I have long been a proponent of First Amendment freedoms and open Government because the public's right to know what their Government is doing promotes accountability.

Federal Judges are not elected. They serve for life if they are confirmed. The people never have the opportunity for effective oversight of their work. Judiciary is the most isolated branch of our Government from public accountability. So this is the only opportunity to examine what kind of justice John Roberts will dispense if promoted to the Supreme Court, the direction he would lead the Federal Judiciary.

This hearing is the only chance that "We the People" have to hear from and reflect on the suitability of the nominee to be a final arbiter of the meaning of the Constitution. Open and honest public conversation with a nominee in these hearing rooms is an important part of this process. This hearing is about the fundamental rights of all Americans, and you are the first nominee of the 21st century. If you are confirmed, you will serve not just for the remaining 3 years of the Bush administration, but you could serve through the administrations of the next seven or eight Presidents. Judge Roberts, you will be deciding matters that affect not only all Americans today but also our children and our grandchildren.

In one of these hearings nearly 20 years ago, I noted how critical it is for the Senate to engage in a public exploration of the judicial philosophy of Supreme Court nominees. I said: "There can hardly be an issue closer to the heart of the Senate's role than a full and public exposition of the nominee's approach to the Constitution and to the role of the courts in discerning and enforcing its commands. That is what I mean by judicial philosophy." That truth has not changed.

What is more difficult to see, though, is the arc of the law in the years ahead, as Justices will vote on which cases to accept and then how to decide them. Ours is a Government of laws. When we are faced with a vacancy on the Supreme Court, we are reminded that it is our fellow citizens, 9 out of our 280 million Americans, who interpret and apply those laws. The balance and direction of the Supreme Court is now at issue with the two vacancies of Chief Justice William Rehnquist and Justice Sandra Day O'Connor. Chief among emerging concerns are whether the Supreme Court will continue its recent efforts to restrict the authority of Congress to pass legislation to protect the people's interest in the environment and safety, and in civil rights, and whether the Supreme Court will effectively check the greatly enhanced Presidential power that has been amassed in the last few years.

In other words, Judge Roberts, the issue is whether you would be the protector of the rights of all Americans, not just Republicans, not just Democrats, not just Independents, but all Ameri-

cans, whether you can serve as the check and balance that all Americans expect.

The light of the nominations process is intense. It is intense because it is the only time that light is going to shine. The afterglow lasts for the rest of a Justice's career. "We the People" have just this one chance to inquire whether this person should be entrusted with the privilege and responsibility of interpreting our Constitution, and dispensing justice from the Nation's highest court. Two hundred eighty million Americans. The President stated his choice. Now there are only 100 Americans standing in the shoes of all other Americans, and on behalf of the American people, it is the job of the 100 of us in the Senate to do all we can to make sure we get it right.

Mr. Chairman, there is time left over, but I have said all I intend to say.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Senator Leahy for your statement. Thank you for your leadership, and your leadership on observing the time so meticulously.

Senator Hatch.

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

Senator HATCH. Thank you, Mr. Chairman.

I want to begin by saying that my thoughts and prayers are with the family of Chief Justice William Rehnquist. He concluded his life on Earth just the way he lived it, independently and with dignity. I am glad that his family was with him when he passed away. He was a good man and a great Judge.

Judge Roberts, I know that you and Chief Justice Rehnquist remained close friends. He would have been proud to have a former clerk serve with him as a colleague on the Court, and now you have been nominated to succeed him as Chief Justice.

When President Bush nominated you 2 years ago to your current post on the U.S. Court of Appeals, you had two hearings before this Committee, and additionally answered approximately 100 written questions from various Senators. The American Bar Association twice unanimously gave you its highest "well-qualified" rating. That process covered a lot of ground, including many of the same issues which are sure to be raised here. You acquitted yourself so well that the Senate confirmed you without dissent. Do not be surprised now, however, if it seems like none of that scrutiny and evaluation had ever happened.

Let me mention one example relating to my home State of Utah to show how the confirmation process has changed. President Warren G. Harding nominated former Utah Senator George Sutherland to the Supreme Court on September 5th, 1922. That same day the Judiciary Committee Chairman went straight to the Senate floor, and after a few remarks, made a motion to confirm the nomination. The Senate promptly and unanimously agreed. There was no inquisition, no fishing expedition, no scurrilous and false attack ads. The judicial selection process, of course, has changed because what