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

some political forces want judges to do is change from what America's founders established.

America's founders believed that separating the branches of Government with the Legislature making the law and the Judiciary interpreting and applying the law is the linchpin of limited Government and liberty. James Madison said that no political truth has greater intrinsic value. Quoting the philosopher Montesquieu, Alexander Hamilton wrote in the Federalist No. 78 that, "There is no liberty if the power of judging be not separated from the Legislative and Executive powers."

Well, times have changed. Today some see the separation of powers not as a condition for liberty, but as an obstacle to their own political agenda. When they lose in the legislature they want the Judiciary to give them another bite at the political apple. Politicizing the Judiciary leads to politicizing judicial selection.

The confirmation process has sometimes been, it seems to me, unbecoming of the Senate and disrespectful of nominees. I applaud President Bush for resisting this trend and for nominating qualified men and women who as judges will not legislate from the bench, and you are a perfect example of that.

The conviction that judges interpret and apply but do not make the law, helps us sort out the information we need, the questions we ask, the standards we apply, and the decisions we make. With that in mind, I believe that there are three facts that should guide us in this hearing.

First, what judges do limits what judicial nominees may discuss. Judges must be impartial and independent. Their very oath of office requires impartiality and the canons of judicial ethics prohibit judges and judicial nominees from making commitments regarding issues that may come before them. I will be the first to admit that Senators want answers to a great many questions, but I also have to admit that a Senator's desire to know something is not the only consideration on the table. Some of have said that nominees who do not spill their guts about whatever a Senator wants to know are hiding something from the American people. Some compare a nominee's refusal to violate his judicial oath or abandon judicial ethics to taking the Fifth Amendment.

These might be catchy sound bites, but they are patently false. That notion misleads the American people about what judges do and slanders good and honorable nominees who want to be both responsive to Senators and protect their impartiality and independence.

Nominees may not be able to answer questions that seek hints, forecasts or previews about how they would rule on particular issues. Some Senators consult with law professors to ask these questions a dozen different ways, but we all know that is what they seek.

In 1993, President Clinton's Supreme Court nominee, Judge Ruth Bader Ginsburg, explained better than I can why nominees cannot answer such questions no matter how they are framed. She said, "A judge sworn to decided impartially can offer no forecasts, no hints, for that would show not only disregard for the specifics of the particular case, it would display disdain for the entire judicial process."

Nominees may not be able to answer questions asking them to opine or speculate about hypotheticals outside of an actual case with concrete issues and real facts. Since 1792, as long as the Judiciary itself has existed, the Supreme Court has held that judges do not have the authority to render such advisory opinions. We should not be surprised then when nominees decline to provide what judges themselves may not provide. So the first fact that should guide us here is that, no matter how badly Senators want to know things, judicial nominees are limited in what they may discuss. That limitation is real, and it comes from the very nature of what judges do.

The second fact is that nominees themselves must determine where to draw the line. Judges, not Senators, take the oath of judicial office. Judges, not Senators, are bound by the canons of judicial ethics. Judge Roberts will be a Federal judge for many years to come. This process will only determine which courtroom he will occupy. He must determine how best to honor his judicial obligations. Different nominees may draw this line a little differently, but they draw the same kind of line protecting their judicial impartiality and independence.

Justice Stephen Breyer drew that line in 1994. As he put it, clients and lawyers must understand that judges are really open-minded. Justice Anthony Kennedy drew that line in 1987. He said that the public expects that a judge will be confirmed because of his temperament and character, not his position on the issues.

Recently one of our colleagues on this Committee dismissed as a myth the idea that Justice Ginsburg refused to discuss things related to how she would rule. Anyone watching C–SPAN's recent replays of Justice Ginsburg knows that this is not a myth, it is a reality.

I was on this Committee in 1993. Justice Ginsburg was not telling mythological tales when she refused nearly 60 times to answer questions, including mine, that she believed would violate what she said was her rule of "no hints, no forecasts, no previews." Those were her words, not mine. Justice Ginsburg did what every Supreme Court nominee has done, she drew the line she believed was necessary to protect her impartiality and independence.

Finally, the third fact that should guide us is that the Senate traditionally has respected the nominee's judgment about where to draw the line. In response to some of my questions, Justice Ginsburg said, "I must draw the line at that point and hope you will respect what I have tried to tell you." Did I wish she had drawn the line differently? Of course. But I respected her decision. This is the historical standard.

In 1967, our colleague, Senator Kennedy, a former Chairman of this Committee, made the same point at a press conference supporting the Supreme Court nomination of Thurgood Marshall. Senator Kennedy said, "We have to respect that any nominee to the Supreme Court would have to defer any comments on any matters which are either before the Court or very likely to appear before the Court." This has been a procedure which has been followed in the past and is one which I think is based upon sound, legal precedent.

Justice Marshall drew his line, yet we confirmed him by a vote of 69–11. Justice Sandra Day O'Connor drew her line, yet we confirmed her by a vote of 99–0. Justice Kennedy drew his line, yet we confirmed him by a vote of 97–0. Justice Ginsburg drew her line, yet we confirmed her by a vote of 96–3. Justice Breyer drew his line, yet we confirmed by a vote of 87–9.

We must use a judicial rather than a political standard to evaluate Judge Roberts's fitness for the Supreme Court. That standard must be based upon the fundamental principle that judges interpret and apply, but do not make the law.

Judge Roberts, as every Supreme Court nominee has done in the past, you must decide how best to honor your commitment to judicial impartiality and independence. You must decide when that obligation is more important than what Senators, including this one, might want to know. As the Senate has done in the past, I believe we should honor your decision and make our own.

Judge Roberts, you have a tremendously complex and important and honorable record, from law school through the various positions in Government that you held, to the judge on the U.S. Circuit Court of Appeals for the District of Columbia to now. We have a great deal of respect for you. We expect you to make a great Justice, and I just want to congratulate you on your nomination.

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

Chairman SPECTER. Thank you very much, Senator Hatch.

I know Senator Warner is with us, one of the introducers, and, of course, he is welcome to stay. But the timing, we will move to him at about 3:20, approximately.

Senator Kennedy?

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you very much, Mr. Chairman.

Judge Roberts, I join in welcoming you and your family to this Committee and to this famous room—the site of so many historic hearings.

Today, our Nation's flags are at half mast to honor the memory of Chief Justice Rehnquist and his deep dedication to his beloved Supreme Court. We know that Judge Roberts was especially close to him, and our thoughts and prayers go to the Rehnquist family and all who knew him.

As we are all aware, the Senate's action on this nomination is profoundly important. It is a defining opportunity to consider the values that make our Nation strong and just, and how to implement them more effectively, especially the guiding principle of more than two centuries of our history—that we are all created equal.

Our commitment to this founding principle is especially relevant today. Americans are united as rarely before in compassion and generosity for our fellow citizens whose lives have been devastated by Hurricane Katrina.

That massive tragedy also taught us another lesson. The powerful winds and floodwaters of Katrina tore away the mask that has hidden from public view the many Americans who are left out and